

**JAVERBAUM  WURGAFT**  
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*Certified Trial Attorneys*

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**KENNETH S. JAVERBAUM, ESQ.**

Partner

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Admitted to Practice in New Jersey  
Certified Civil Trial Attorney  
Chair - Global Litigation

Writer's Direct Line:  
(973) 379-6550

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Kjaverbaum@lawjw.com

March 11, 2014

VIA HAND DELIVERY

Robert E. Barry, Esq.  
Union County Counsel  
Office of County Counsel  
10 Elizabethtown Plaza  
Elizabeth, NJ 07207

UNION COUNTY COUNSEL  
RECEIVED  
MAR 12 2014  
ADMINISTRATION BUILDING  
ELIZABETH, NJ

**Re: Christopher Coon v. PMA Insurance Company and the County of Union**  
**Docket No.: UNN-L-0391-14**

Dear Mr. Barry:

In connection with the above-captioned matter enclosed please find:

1. Summons;
2. First Amended Complaint and Summary Disposition Pursuant to R.4:67-1(b);
3. Original Complaint for Declaratory Relief and Summary Disposition pursuant to R.4:67-1(b);
4. Civil Case Information Statement;
5. Notice of Motion to Proceed Summarily Pursuant to R. 4:67-2(b);
6. Affidavit of Counsel Pursuant to R. 4:67-2(b);
7. Track Assignment Notice;



Robert E. Barry, Esq.  
Union County Counsel  
Page 2  
March 11, 2014

**Re: Christopher Coon v. PMA Insurance Company and the County of Union  
Docket No.: UNN-L-0391-14**

Additionally, I am also enclosing a copy of the New Jersey Courts Public Access Notice which indicates that the Motion is currently returnable on FRIDAY, MARCH 28, 2014.

If you have any questions, please feel free to contact me at any time.

Very truly yours,

KENNETH S. JAVERBAUM

KSJ/mmt  
Enclosures

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
505 Morris Avenue, Second Floor  
Springfield, NJ 07081  
Telephone No. (973) 379-4200  
Attorney I.D. No. Kenneth S. Javerbaum (232991966)  
Attorneys for Plaintiff, Christopher Coon

\_\_\_\_\_  
Plaintiff

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

CHRISTOPHER COON

Docket No.: UNN-L-0391-14

vs.

CIVIL ACTION

Defendant

PMA INSURANCE COMPANY and THE  
COUNTY OF UNION.

**SUMMONS**

\_\_\_\_\_  
FROM THE STATE OF NEW JERSEY  
To The Defendant(s) Named Above:

COUNTY OF UNION - UNION COUNTY COUNSEL  
10 Elizabethtown Plaza  
Elizabeth, NJ 07207

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. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).) 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. 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 \$135.00 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 or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). 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 directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).)

DATED: March 11, 2014

*Michelle M. Smith*

MICHELLE M. SMITH  
Clerk of the Superior Court

Name of Defendant to Be Served: County of Union

Address of Defendant to Be Served: Office of County Counsel  
10 Elizabethtown Plaza  
Elizabeth, NJ 07207

RECEIVED / FILE  
Superior Court of New Jersey

MAR - 4 2014

CIVIL CASE MANAGEMENT  
UNION COUNTY

COMPUTER  
MAR - 4 2014  
SECTION

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
505 Morris Avenue, Second Floor  
Springfield, NJ 07081  
Telephone No. (973) 379-4200  
Attorney I.D. No. Kenneth S. Javerbaum (232991966)  
Attorneys for Plaintiff, Christopher Coon

Plaintiff

CHRISTOPHER COON

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

Docket No. UNN-L-0391-14

vs.

Defendants

PMA INSURANCE COMPANY and THE  
COUNTY OF UNION.

CIVIL ACTION

FIRST AMENDED  
COMPLAINT FOR DECLARATORY RELIEF  
AND SUMMARY DISPOSITION PURSUANT  
TO R.4:67-1(b)

Plaintiff, Christopher Coon, residing at 782 Hillside Road, Rahway,  
New Jersey, by way of Complaint against the Defendants, says:

FIRST COUNT

1. On or about the 2<sup>nd</sup> day of December, 2008 and at all times hereinafter mentioned and relevant, the Defendant, County of Union, was a political subdivision of the State of New Jersey encompassing multiple towns and communities.
2. At all times material to the within cause of action, Defendant, PMA Insurance Company, was an insurance company licensed to do business in the State of New Jersey and, as such, provided Worker's Compensation insurance to the co-defendant, County of Union.
3. On or about the 2<sup>nd</sup> day of December, 2008, and at all times hereinafter mentioned, the Defendant, County of Union, was the employer

of the Plaintiff, Christopher Coon, who sustained serious and severe personal injuries as a result of the work-related incident occurring on December 2, 2008.

4. As a result of the relationship between the co-defendants, PMA Insurance Company and the County of Union, the Defendant, County of Union, maintained self-insurance with a retention of \$500,000 and the policy of insurance with PMA Insurance Company provided additional coverage for all related Worker's Compensation expenses in excess of the retention of \$500,000 maintained by the County of Union.

5. As a result of the motor vehicle in which the Plaintiff Christopher Coon sustained serious personal injuries, he instituted suit for personal injuries against several persons and entities which was venued in the Superior Court of New Jersey, Law Division, Union County, Docket No.: UNN-L-1572-09, and captioned *Christopher Coon and Leida Coon, Plaintiffs vs. Waleed Dozier, et al.*

6. On or about September 16, 2013, a trial commenced in the matter of *Coon v. Dozier, et al.* in the Superior Court of New Jersey, Law Division, Union County, before the Honorable Lisa Chrystal, J.S.C.

7. After an approximate six-week trial, the jury rendered a verdict in the matter of *Coon v. Dozier, et al.*, allocating 90% of the responsibility for Plaintiff's accident to Defendant Waleed Dozier, finding Plaintiff 10% responsible for the accident, and awarding Plaintiff damages in the amount of \$1,600,000. The net jury award to Plaintiff was in the amount of \$1,440,000 and the net recoverable amount \$1,000,000 representing the UMI coverage provided to the Plaintiff, as apportioned

between his own insurer, New Jersey Manufacturers and PMA as Auto Liability Insurer for Union County.

8. On November 21, 2013 an Order for Judgment was entered by Judge Chrystal reflecting the aforesaid jury determinations in the matter of *Coon v. Dozier, et al.* A copy of the Order is annexed as Exhibit "A".

9. Defendant PMA Insurance Company has asserted a lien on the recovery to Plaintiff as a result of the worker's compensation insurance provided to him pursuant to N.J.S.A. 34:15-10. As of November 4, 2013, the gross lien asserted by Defendant PMA Company and the County of Union includes medical benefits in the amount of \$475,507.24 and indemnity benefits in the amount of \$78,970.00. The net lien is \$368,901.49.

10. Defendant PMA Insurance Company and, based upon information and belief, the County of Union, has requested payment of its liens from the monies recovered by Plaintiff in *Coon v. Dozier, et al.*

11. On November 4, 2013, counsel for Plaintiff Coon communicated with representatives of Defendant, advising that the Superior Court of New Jersey, Appellate Division rendered an opinion in the matter of John K. Dever v. New Jersey Manufacturers Insurance Company, Docket No.: A-3102-11T2, decided October 23, 2013, the input of which is to hold the lien asserted by Defendants against Plaintiff for medical expenses to be not recoverable.

12. Counsel for Plaintiff is holding the lien monies asserted by the Defendants for medical expenses pending a ruling in the within action as to Defendants' entitlement or non-entitlement of the asserted lien in accordance with the decision in Dever v. New Jersey Manufacturers, supra.

WHEREFORE, Plaintiff, Christopher Coon, demands judgment against Defendants PMA Insurance Company and the County of Union as follows:

1. Seeking summary disposition of this action pursuant to R.4:67-1(b) and R.4:67-2(b);
2. Seeking a Declaratory Judgment that Defendant is not entitled to its asserted lien for worker's compensation medical benefits;
3. Such other or further relief as the Court deems just.

NOTICE OF TRIAL COUNSEL

Please take notice that **KENNETH S. JAVERBAUM, ESQ.** is hereby designated as Trial Counsel in the above-captioned matter for the firm of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, pursuant to Rule 4:25 et. seq.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
Attorneys for Plaintiff

By:   
KENNETH S. JAVERBAUM

Dated: March 3, 2014



CERTIFICATION

Pursuant to the requirements of Rule 4:5-1 (NOTICE OF OTHER ACTIONS), I, the undersigned, do hereby certify to the best of my knowledge, information and belief, that except as hereinafter indicated, the subject matter of the controversy referred to in the within pleading is not the subject of any other Cause of Action, pending in any other Court, or of a pending Arbitration Proceeding, nor is any other Cause of Action or Arbitration Proceeding contemplated;

1. OTHER ACTIONS PENDING.....YES \_\_\_\_\_ NO X  
A. If YES - Parties to other Pending Actions.  
B. In my opinion, the following parties should be joined in the within pending Cause of Action.
  
2. OTHER ACTIONS CONTEMPLATED?.....YES \_\_\_\_\_ NO X  
A. If YES - Parties contemplated to be joined, in other Causes of Action.
  
3. ARBITRATION PROCEEDINGS PENDING?.....YES \_\_\_\_\_ NO X  
A. If YES - Parties to Arbitration Proceedings.  
B. In my opinion, the following parties should be joined in the pending Arbitration Proceedings.
  
4. OTHER ARBITRATION PROCEEDINGS CONTEMPLATED?...YES \_\_\_\_\_ NO X  
A. If YES - Parties contemplated to be joined to Arbitration Proceedings.

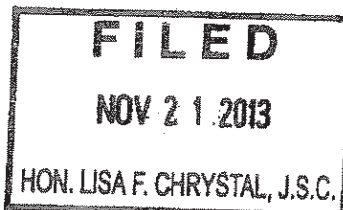
In the event that during the pendency of the within Cause of Action, I shall become aware of any change as to any facts stated herein, I shall file an amended certification and serve a copy thereof on all other parties (or their attorneys) who have appeared in said Cause of Action.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
Attorneys for Plaintiff

By:   
KENNETH S. JAVERBAUM

DATED: March 3, 2014

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
505 Morris Avenue, Second Floor  
Springfield, NJ 07081  
Telephone No. (973) 379-4200  
Attorneys for Plaintiff, Christopher Coon



\_\_\_\_\_  
Plaintiff(s) SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

CHRISTOPHER COON AND LEIDA COON, HIS WIFE. **RECEIVED** Docket No. UNN L-1572-09

vs. NOV - 8 2013 CIVIL ACTION

Defendant(s) LISA F. CHRYSTAL,  
J.S.C.  
WALEED T. DOZIER AND QIMMAH A. DOZIER, et als. ORDER FOR JUDGMENT

THIS MATTER, having come on for trial before the Honorable Lisa F. Chrystal, J.S.C. and a jury, which commenced on September 18, 2013 and resulted in a verdict on October 28, 2013, and the parties having been represented at trial as follows: for the Plaintiff Christopher Coon, Kenneth S. Javerbaum and Rubin M. Sinins (Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C.); for Plaintiff Leida Coon, Stephanie A. Mitterhoff, (Bramnick, Rodriguez, Mitterhoff, Grabas & Woodruff, LLC); for Defendants Xiomara Santiago, Folashade Oloyede and Ilidio Ferriera, Gary S. Lipshutz and Avion M. Benjamin (Newark Corporation Counsel, Newark Law Department); for Defendant Joseph Cocuzza, Stephen C. Cahir and Felicia G. Smith (Law Offices of William E. Staehle); and UM/UIM Carriers PMA Insurance Group ("PMA") and NJ Manufacturers Insurance Company ("NJM"), having intervened pursuant to Zirger v. General Acc. Ins. Co., and appearances by Timothy P. Burns (Robinson Burns, LLC) for

intervenor PMA; and for intervenor NJM, Jeffrey D. Noonan (Pomeroy Heller & Ley, LLC); and

The jury having found no willful misconduct on the part of Defendants Xiomara Santiago, Folashade Oloyede, Ilidio Ferriera and Joseph Cocuzza resulting in a verdict of no cause for action in favor of said defendants; and

The jury having found negligence on the part of Defendant Waleed Dozier, in whose interests intervenors PMA and NJM have appeared and defended; and

The jury having found negligence on the part of Plaintiff Christopher Coon; and

The jury having apportioned liability for the accident to be 90% as against Defendant Waleed Dozier and 10% as against Plaintiff Christopher Coon; and

The jury having awarded compensatory damages to the Plaintiff Christopher Coon in the amount of one million, six hundred thousand dollars (\$1,600,000.00) and, to the Plaintiff, *per quod*, Leida Coon, in the amount of one hundred thousand dollars (\$100,000.00); and

The parties having stipulated and agreed that the gross amount of the Workers' Compensation lien shall be added to any verdict, and said amount being five hundred forty thousand, two hundred forty-five dollars and twenty-two cents (\$540,245.22) consisting of seventy-eight thousand, nine hundred seventy dollars (\$78,970.00) for indemnity/temporary disability payments and four hundred sixty-one thousand, two hundred

seventy-five dollars and twenty-two cents (\$461,275.22) for medical expenses'; and

Intervenor PMA having applicable UM/UIM insurance policy limits of one million dollars (\$1,000,000.00), and intervenor NJM having applicable insurance policy limits of five hundred thousand dollars (\$500,000.00), such that the *pro rata* responsibility of intervenors PMA and NJM, to pay any verdict/judgment entered as against Defendant Waleed Dozier to be two-thirds (2/3) the responsibility of PMA and one-third (1/3) the responsibility of NJM; and

The pre-judgment interest from May 2, 2009 (6 months from the date of the accident) to October 28, 2013, the date of the verdict, on two million, sixteen thousand, two hundred twenty dollars and sixty cents (\$2,016,220.60), which constitutes Plaintiffs' damages together with the potential workers' compensation lien amounts, less 10% for Plaintiff Christopher Coon's comparative negligence, is two hundred eighty-nine thousand, five hundred thirty-four dollars and seventy-nine cents (\$289,534.79) together with per diem interest for 2013 of \$124.29;

NOW THEREFORE, on this 21<sup>st</sup> day of November 2013, Judgment be and hereby is entered in favor of Plaintiffs Christopher Coon and Leida Coon, as against Defendant Waleed Dozier in the amount of two million, three hundred five thousand, seven hundred fifty-five dollars and thirty cents (\$2,305,755.30), representing Plaintiffs' damages, potential workers' compensation lien and pre-judgment interest with a proportionate allocation two million, two hundred two thousand, eight

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\* Whether the medical expenses portion of workers' compensation payments is properly part of the lien is an open question which shall separately be presented to the Court.

hundred thirty-one and ten cents (\$2,202,831.10) allocated to Plaintiff Christopher Coon and one hundred two thousand, nine hundred twenty-four dollars and twenty-two cents (\$102,924.22) allocated to Plaintiff Leida Coon resulting in intervenors PMA and NJM, being responsible for UMI payments in the total amount of one million dollars (\$1,000,000.00), with responsibility for payment to be six hundred sixty-six thousand, six hundred sixty-six dollars and sixty-six cents (\$666,666.66) as to intervener PMA and three hundred thirty-three thousand, three hundred thirty-three dollars and thirty-four cents (\$333,333.34) as to intervener NJM; and

Post-judgment interest shall continue to accrue as against Defendant Waleed Dozier until payment from October 29, 2013 until the date of payment.



Hon. Lisa F. Chrystal, J.S.C.

RECEIVED / FILED  
Superior Court of New Jersey

JAN 31 2014

CIVIL ASSIGNMENT  
UNION COUNTY

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
505 Morris Avenue, Second Floor  
Springfield, NJ 07081  
Telephone No. (973) 379-4200  
Attorney I.D. No. Kenneth S. Javerbaum (232991966)  
Attorneys for Plaintiff, Christopher Coon

\_\_\_\_\_  
Plaintiff

CHRISTOPHER COON

vs.

Defendant

PMA COMPANIES.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

Docket No. UNN-L-1572-09-1

**CIVIL ACTION**

**COMPLAINT FOR DECLARATORY RELIEF  
AND SUMMARY DISPOSITION PURSUANT  
TO R.4:67-1(b)**

\_\_\_\_\_  
Plaintiff, Christopher Coon, residing at 782 Hillside Road, Rahway,  
New Jersey, by way of Complaint against the Defendant, says:

**FIRST COUNT**

1. At all times material to the within cause of action, Defendant PMA COMPANIES, was an insurance company licensed to do business in the State of New Jersey which provided worker's compensation insurance to Union County, the employer of Plaintiff Christopher Coon on December 2, 2008, the date he suffered a work-related motor vehicle accident.

2. As a result of said motor vehicle accident, Plaintiff Christopher Coon instituted a suit for personal injuries against several persons and entities which was venued in the Superior Court of New Jersey, Law Division, Union County, Docket No.: UNN-L-1572-09, and captioned *Christopher Coon and Leida Coon, Plaintiffs vs. Waleed Dozier, et al.*

3. On or about September 16, 2013, a trial commenced in the matter of *Coon v. Dozier, et al.* in the Superior Court of New Jersey, Law Division, Union County, before the Honorable Lisa Chrystal, J.S.C.

4. After an approximate six-week trial, the jury rendered a verdict in the matter of *Coon v. Dozier, et al.*, allocating 90% of the responsibility for Plaintiff's accident to Defendant Waleed Dozier, finding Plaintiff 10% responsible for the accident, and awarding Plaintiff damages in the amount of \$1,600,000. The net jury award to Plaintiff was in the amount of \$1,440,000 and the net recoverable amount \$1,000,000 representing the UMI coverage provided to the Plaintiff, as apportioned between his own insurer, New Jersey Manufacturers and PMA as Auto Liability Insurer for Union County.

5. On November 21, 2013 an Order for Judgment was entered by Judge Chrystal reflecting the aforesaid jury determinations in the matter of *Coon v. Dozier, et al.* A copy of the Order is annexed as **Exhibit "A"**.

6. Defendant PMA Companies has asserted a lien on the recovery to Plaintiff as a result of the worker's compensation insurance provided to him pursuant to N.J.S.A. 34:15-10. As of November 4, 2013, the gross lien asserted by Defendant PMA Companies includes medical benefits in the amount of \$475,507.24 and indemnity benefits in the amount of \$78,970.00. The net lien is \$368,901.49.

7. Defendant PMA Companies has requested payment of its lien from the monies recovered by Plaintiff in *Coon v. Dozier, et al.*

8. On November 4, 2013, counsel for Plaintiff Coon communicated

with representatives of Defendant, advising that the Superior Court of New Jersey, Appellate Division rendered an opinion in the matter of John K. Dever v. New Jersey Manufacturers Insurance Company, Docket No.: A-3102-11T2, decided October 23, 2013, the input of which is to hold the lien asserted by Defendant against Plaintiff for medical expenses to be not recoverable.

9. Counsel for Plaintiff is holding the lien monies asserted by the Defendant for medical expenses pending a ruling in the within action as to Defendant's entitlement or non-entitlement of the asserted lien in accordance with the decision in Dever v. New Jersey Manufacturers, supra.

WHEREFORE, Plaintiff, Christopher Coon, demands judgment against Defendant PMA Companies as follows:

1. Seeking summary disposition of this action pursuant to R.4:67-1(b) and R.4:67-2(b);
2. Seeking a Declaratory Judgment that Defendant is not entitled to its asserted lien for worker's compensation medical benefits;
3. Such other or further relief as the Court deems just.

**NOTICE OF TRIAL COUNSEL**

Please take notice that **KENNETH S. JAVERBAUM, ESQ.** is hereby designated as Trial Counsel in the above-captioned matter for the firm of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, pursuant to Rule 4:25 et. seq.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
Attorneys for Plaintiff

By:   
KENNETH S. JAVERBAUM

Dated: January 23, 2014




CERTIFICATION

Pursuant to the requirements of Rule 4:5-1 (NOTICE OF OTHER ACTIONS), I, the undersigned, do hereby certify to the best of my knowledge, information and belief, that except as hereinafter indicated, the subject matter of the controversy referred to in the within pleading is not the subject of any other Cause of Action, pending in any other Court, or of a pending Arbitration Proceeding, nor is any other Cause of Action or Arbitration Proceeding contemplated;

1. OTHER ACTIONS PENDING.....YES \_\_\_\_\_ NO X  
A. If YES - Parties to other Pending Actions.  
B. In my opinion, the following parties should be joined in the within pending Cause of Action.
  
2. OTHER ACTIONS CONTEMPLATED?.....YES \_\_\_\_\_ NO X  
A. If YES - Parties contemplated to be joined, in other Causes of Action.
  
3. ARBITRATION PROCEEDINGS PENDING?.....YES \_\_\_\_\_ NO X  
A. If YES - Parties to Arbitration Proceedings.  
B. In my opinion, the following parties should be joined in the pending Arbitration Proceedings.
  
4. OTHER ARBITRATION PROCEEDINGS CONTEMPLATED?...YES \_\_\_\_\_ NO X  
A. If YES - Parties contemplated to be joined to Arbitration Proceedings.

In the event that during the pendency of the within Cause of Action, I shall become aware of any change as to any facts stated herein, I shall file an amended certification and serve a copy thereof on all other parties (or their attorneys) who have appeared in said Cause of Action.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS  
Attorneys for Plaintiff

By:   
KENNETH S. JAVERBAUM

DATED: January 23, 2014

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
505 Morris Avenue, Second Floor  
Springfield, NJ 07081  
Telephone No. (973) 379-4200  
Attorneys for Plaintiff, Christopher Coon

**FILED**  
NOV 21 2013  
HON. LISA F. CHRYSTAL, J.S.C.

\_\_\_\_\_  
Plaintiff(s) SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

CHRISTOPHER COON AND LEIDA COON, HIS WIFE. **RECEIVED** No. UNN L-1572-09

vs. NOV - 8 2013 CIVIL ACTION

Defendant(s) LISA F. CHRYSTAL,  
J.S.C. ORDER FOR JUDGMENT  
WALEED T. DOZIER AND QIMMAH A. DOZIER, et als.

THIS MATTER, having come on for trial before the Honorable Lisa F. Chrystal, J.S.C. and a jury, which commenced on September 18, 2013 and resulted in a verdict on October 28, 2013, and the parties having been represented at trial as follows: for the Plaintiff Christopher Coon, Kenneth S. Javerbaum and Rubin M. Sinins (Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C.); for Plaintiff Leida Coon, Stephanie A. Mitterhoff, (Bramnick, Rodriguez, Mitterhoff, Grabas & Woodruff, LLC); for Defendants Xiomara Santiago, Folashade Oloyede and Ilidio Ferriera, Gary S. Lipshutz and Avion M. Benjamin (Newark Corporation Counsel, Newark Law Department); for Defendant Joseph Cocuzza, Stephen C. Cahir and Felicia G. Smith (Law Offices of William E. Staehle); and UM/UIM Carriers PMA Insurance Group ("PMA") and NJ Manufacturers Insurance Company ("NJM"), having intervened pursuant to Zirger v. General Acc. Ins. Co., and appearances by Timothy P. Burns (Robinson Burns, LLC) for

intervenor PMA; and for intervenor NJM, Jeffrey D. Noonan (Pomeroy Heller & Ley, LLC); and

The jury having found no willful misconduct on the part of Defendants Xiomara Santiago, Folashade Oloyede, Ilidio Ferriera and Joseph Cocuzza resulting in a verdict of no cause for action in favor of said defendants; and

The jury having found negligence on the part of Defendant Waleed Dozier, in whose interests intervenors PMA and NJM have appeared and defended; and

The jury having found negligence on the part of Plaintiff Christopher Coon; and

The jury having apportioned liability for the accident to be 90% as against Defendant Waleed Dozier and 10% as against Plaintiff Christopher Coon; and

The jury having awarded compensatory damages to the Plaintiff Christopher Coon in the amount of one million, six hundred thousand dollars (\$1,600,000.00) and, to the Plaintiff, *per quod*, Leida Coon, in the amount of one hundred thousand dollars (\$100,000.00); and

The parties having stipulated and agreed that the gross amount of the Workers' Compensation lien shall be added to any verdict, and said amount being five hundred forty thousand, two hundred forty-five dollars and twenty-two cents (\$540,245.22) consisting of seventy-eight thousand, nine hundred seventy dollars (\$78,970.00) for indemnity/temporary disability payments and four hundred sixty-one thousand, two hundred

seventy-five dollars and twenty-two cents (\$461,275.22) for medical expenses'; and

Intervenor PMA having applicable UM/UIM insurance policy limits of one million dollars (\$1,000,000.00), and intervenor NJM having applicable insurance policy limits of five hundred thousand dollars (\$500,000.00), such that the *pro rata* responsibility of intervenors PMA and NJM, to pay any verdict/judgment entered as against Defendant Waleed Dozier to be two-thirds (2/3) the responsibility of PMA and one-third (1/3) the responsibility of NJM; and

The pre-judgment interest from May 2, 2009 (6 months from the date of the accident) to October 28, 2013, the date of the verdict, on two million, sixteen thousand, two hundred twenty dollars and sixty cents (\$2,016,220.60), which constitutes Plaintiffs' damages together with the potential workers' compensation lien amounts, less 10% for Plaintiff Christopher Coon's comparative negligence, is two hundred eighty-nine thousand, five hundred thirty-four dollars and seventy-nine cents (\$289,534.79) together with per diem interest for 2013 of \$124.29;

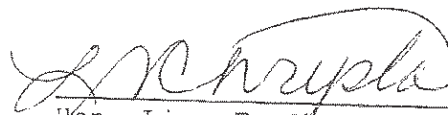
NOW THEREFORE, on this 21<sup>st</sup> day of November 2013, Judgment be and hereby is entered in favor of Plaintiffs Christopher Coon and Leida Coon, as against Defendant Waleed Dozier in the amount of two million, three hundred five thousand, seven hundred fifty-five dollars and thirty cents (\$2,305,755.30), representing Plaintiffs' damages, potential workers' compensation lien and pre-judgment interest with a proportionate allocation two million, two hundred two thousand, eight

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\* Whether the medical expenses portion of workers' compensation payments is properly part of the lien is an open question which shall separately be presented to the Court.

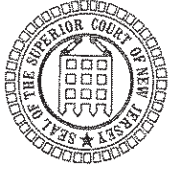
hundred thirty-one and ten cents (\$2,202,831.10) allocated to Plaintiff Christopher Coon and one hundred two thousand, nine hundred twenty-four dollars and twenty-two cents (\$102,924.22) allocated to Plaintiff Leida Coon resulting in intervenors PMA and NJM, being responsible for UMI payments in the total amount of one million dollars (\$1,000,000.00), with responsibility for payment to be six hundred sixty-six thousand, six hundred sixty-six dollars and sixty-six cents (\$666,666.66) as to intervener PMA and three hundred thirty-three thousand, three hundred thirty-three dollars and thirty-four cents (\$333,333.34) as to intervener NJM; and

Post-judgment interest shall continue to accrue as against Defendant Waleed Dozier until payment from October 29, 2013 until the date of payment.



Hon. Lisa F. Chrystal, J.S.C.

Appendix XII-B1



## 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 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<br>KENNETH S. JAVERBAUM, ESQ. | TELEPHONE NUMBER<br>(973) 379-4200 | COUNTY OF VENUE<br>Union |
|--|------------------------------------|--------------------------|

|   |  |
|---|--|
| FIRM NAME (if applicable)<br>JAVERBAUM WURGAFT HICKS KAHN WIKSTROM & SININS, P.C. | DOCKET NUMBER (when available)<br><b>UNN-L-0391-14</b> |
|---|--|

|   |                            |
|---|----------------------------|
| OFFICE ADDRESS<br>505 Morris Avenue, Second Floor, Springfield, NJ 07081        | DOCUMENT TYPE<br>COMPLAINT |
| JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |                            |

|  |  |
|--|--|
| NAME OF PARTY (e.g., John Doe, Plaintiff)<br>Christopher Coon, Plaintiff | CAPTION<br>Christopher Coon v. PMA Companies |
|--|--|

|   |   |   |
|---|---|---|
| CASE TYPE NUMBER<br>(See reverse side for listing)<br>801 | HURRICANE SANDY RELATED?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | IS THIS A PROFESSIONAL MALPRACTICE CASE?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                     |
|   |   | IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. |

|   |                             |
|---|-----------------------------|
| RELATED CASES PENDING?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | IF YES, LIST DOCKET NUMBERS |
|---|-----------------------------|

|   |   |   |
|---|---|---|
| DO YOU ANTICIPATE ADDING ANY PARTIES<br>(arising out of same transaction or occurrence)?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)<br>PMA COMPANIES | <input type="checkbox"/> NONE<br><input type="checkbox"/> 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?<br><input type="checkbox"/> Yes <input type="checkbox"/> No | IF YES, IS THAT RELATIONSHIP:<br><input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain)<br><input type="checkbox"/> FAMILIAL <input type="checkbox"/> 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?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION |
|--|---|

|   |                            |
|---|----------------------------|
| WILL AN INTERPRETER BE NEEDED?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | IF YES, FOR WHAT LANGUAGE? |
|---|----------------------------|

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*.

ATTORNEY SIGNATURE:



# 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 (coverage issues only)
- 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
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 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

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

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

### Multicounty Litigation (Track IV)

- |  |   |
|--|---|
| 266 HORMONE REPLACEMENT THERAPY (HRT)  | 288 PRUDENTIAL TORT LITIGATION                            |
| 271 ACCUTANE/ISOTRETINOIN              | 289 REGLAN  |
| 274 RISPERDAL/SEROQUEL/ZYPREXA         | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION                |
| 278 ZOMETA/AREZIA                      | 291 PELVIC MESH/GYNECARE                                  |
| 279 GADOLINIUM                         | 292 PELVIC MESH/BARD                                      |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION                      |
| 282 FOSAMAX                            | 295 ALLODERM REGENERATIVE TISSUE MATRIX                   |
| 284 NUVARING                           | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS       | 297 MIRENA CONTRACEPTIVE DEVICE                           |
| 286 LEVAQUIN                           | 601 ASBESTOS  |
| 287 YAZ/YASMIN/OCELLA                  | 623 PROPECIA  |

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  Putative Class Action  Title 59

RECEIVED / FILED  
Superior Court of New Jersey

JAN 31 2014

CIVIL ASSIGNMENT  
UNION COUNTY

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
505 Morris Avenue, Second Floor  
Springfield, NJ 07081  
Telephone No. (973) 379-4200  
Attorney I.D. No. Kenneth S. Javerbaum (232991966)  
Attorneys for Plaintiff, Christopher Coon

Plaintiff

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

CHRISTOPHER COON

Docket No.

UNNL-0397-14

vs.

CIVIL ACTION

Defendant

PMA COMPANIES.

NOTICE OF MOTION TO PROCEED  
SUMMARILY PURSUANT TO R.4:67-2(b)

TO: PMA COMPANIES  
330 Fellowship Road, Suite 200  
Mt. Laurel, NJ 08054

Timothy P. Burns, Esq.  
Robinson Burns, LLC  
586 East Main Street, Bridgewater, NJ 08807  
Attorney for PMA Companies

SIR/MADAM:

PLEASE TAKE NOTICE that on **Friday, March 28, 2014**, the undersigned attorneys for Plaintiff Christopher Coon shall apply before the above-named Court at the Union County Court House, Elizabeth, New Jersey, for an Order permitting this matter to proceed in a summary manner at a hearing date set by the Court pursuant to R.4:67-5; and

PLEASE TAKE FURTHER NOTICE that in support of the motion, Plaintiff shall rely upon the Affidavit of Counsel submitted pursuant to R.4:67-2(b); and



PLEASE TAKE FURTHER NOTICE that the Summons and Complaint in this matter has been served on Defendant, PMA Companies, together with these moving papers and a Certification of Service is annexed hereto; and

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 1:6-2, the undersigned waives oral argument and requests a ruling on the papers. A proposed form of Order is hereto annexed.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
Attorneys for Plaintiff

By:   
KENNETH S. JAVERBAUM

DATED: January 23, 2014

**CERTIFICATION**

I hereby certify that the original of the within Motion was filed with the Motions Clerk of the Union County Superior Court; and a copy forwarded to Defendant, PMA Companies at 330 Fellowship Road, Suite 200, Mt. Laurel, New Jersey 08054 and Timothy P. Burns, Esq., Robinson Burns, LLC, 586 East Main Street, Bridgewater, NJ 08807 via New Jersey Lawyer's Service.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
Attorneys for Plaintiff

By:   
KENNETH S. JAVERBAUM

DATED: January 23, 2014

(x) No Pre-Trial Conference, calendar call or trial date has been set.

DISCOVERY END DATE: 00/00/0000  
DATE OF PRETRIAL CONFERENCE                       
DATE OF CALENDAR CALL                       
DATE OF TRIAL: 00/00/0000

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
505 Morris Avenue, Second Floor  
Springfield, NJ 07081  
Telephone No. (973) 379-4200  
Attorney I.D. No. Kenneth S. Javerbaum (232991966)  
Attorneys for Plaintiff, Christopher Coon

\_\_\_\_\_  
Plaintiff

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

CHRISTOPHER COON

Docket No.

**UNN.L: 0391-14**  
**CIVIL ACTION**

vs.

Defendant

PMA COMPANIES.

ORDER

\_\_\_\_\_  
This matter having come before the Court upon the application of Javerbaum Wurgaft Hicks Kahn Wikstrom and Sinins, Attorneys for Plaintiff, for an Order permitting this matter to proceed in a summary manner at a hearing date set by the Court pursuant to R.4:67:5; and the Court having read the moving papers, and any papers filed in opposition thereto, and for good cause shown;

IT IS on this \_\_\_\_\_ day of \_\_\_\_\_, 2014

1. ORDERED that this matter is appropriate for summary disposition pursuant to R.4:67-1 and 2; and it is further

2. ORDERED that a hearing to decide this matter in a summary manner shall take place on \_\_\_\_\_; and it is further

3. ORDERED that a copy of this Order shall be served upon all parties within \_\_\_\_\_ days from the date hereof.

\_\_\_\_\_ OPPOSED

\_\_\_\_\_ UNOPPOSED

\_\_\_\_\_  
J.S.C.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
505 Morris Avenue, Second Floor  
Springfield, NJ 07081  
Telephone No. (973) 379-4200  
Attorney I.D. No. Kenneth S. Javerbaum (232991966)  
Attorneys for Plaintiff, Christopher Coon

\_\_\_\_\_  
Plaintiff

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

CHRISTOPHER COON

Docket No.

VS:

Defendant

PMA COMPANIES.

UNN-L: 0391-14  
CIVIL ACTION

AFFIDAVIT OF COUNSEL  
PURSUANT TO R.4:67-2(b)

\_\_\_\_\_  
KENNETH S. JAVERBAUM, duly sworn, upon his oath, deposes and says:

1. I am an attorney at law in the State of New Jersey and a partner in the law firm of Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins, P.C. In this capacity, I represent Plaintiff Christopher Coon.

2. I also represented Christopher Coon in the matter of Christopher and Leida Coon v. Dozier, Superior Court of New Jersey, Law Division, Union County, Docket No.: UNN-L-1572-09. I have personal knowledge of the facts and legal issues involved in both actions.

3. The matter of Coon v. Dozier, et al. arose out of a motor vehicle accident which took place on December 2, 2008. On that date, Police Officers from the municipalities of Newark, Elizabeth and Hillside engaged in a high-speed pursuit of Waleed Dozier, an individual suspected of committing an armed robbery. The police chase terminated at the

intersection of South Broad Street and U.S. Highway #1 when the vehicle operated by Waleed Dozier collided with or crashed into the vehicle operated by Plaintiff Christopher Coon. At the time of this tragic motor vehicle accident, Plaintiff was in the course of his employment as a Sheriff's Officer by Union County. Plaintiff suffered extraordinary personal injuries as a result of the accident, including brain damage.

4. As a result of the accident, Plaintiff instituted suit against the municipalities of Newark, Elizabeth and Hillside, as well as their respective police officers participating in the pursuit. Waleed Dozier was also a named defendant in the matter of Coon v. Dozier, et al.

5. Defendant PMA Companies was the Worker's Compensation Insurance Company for Plaintiff's employer, Union County, at the time of the December 2, 2008 accident described above.

6. Defendant PMA also provided automobile insurance to Union County employees, such as Plaintiff, who was operating a Union County owned vehicles at the time of the aforescribed motor vehicle accident. Said automobile insurance included underinsured motorist insurance (UMI) coverage in the amount of \$1,000,000.

7. In its role as automobile insurance carrier, Defendant PMA Companies intervened in the matter of Coon v. Dozier, et al. pursuant to Zieger v. General Accident Insurance Company, 144 N.J. 327 (1996).

8. The matter of Coon v. Dozier, et al. was recently tried before the Honorable Lisa F. Chrystal, J.S.C. and a jury for a six-week period. Counsel for Defendant PMA fully participated at trial.

9. On October 28, 2013, the jury rendered a verdict. No police officers defendants were found to be liable. Responsibility for the accident was allocated as follows: 90% to Defendant Waleed Dozier and 10% to Plaintiff Christopher Coon. The jury awarded damages in the amount of \$1,600,000, resulting in a net jury award to Plaintiff in the amount of \$1,440,000.

10. Waleed Dozier's vehicle had \$15,000 of insurance coverage from which to pay the award to Plaintiff. There was a total of \$1,000,000 in available UMI coverage from PMA Companies and \$500,000 from New Jersey Manufacturers Insurance Company (NJM), the carrier providing personal automobile insurance to Plaintiff. The available UMI coverage was ordered to be paid to Plaintiff on a *pro rata* basis as follows: 66 $\frac{2}{3}$ % by PMA Companies and 33 $\frac{1}{3}$ % by New Jersey Manufacturers Insurance Company. See copy of Order for Judgment in *Coon v. Dozier* annexed as **Exhibit "A"**.

11. In its capacity as Worker's Compensation insurer for Plaintiff's employer, Defendant PMA Companies has asserted a lien for medical expenses in the amount of \$475,507.24 and for indemnity expenses in the amount of \$78,970.00, or a total lien of \$368,901.49 as of November 4, 2013. See copy of November 5, 2013 e-mail from Joann Powell, Sr. Account Representative at PMA Companies annexed as **Exhibit "B"**.

12. To date, Plaintiff has not paid the asserted lien on the basis of the Appellate Division's recent decision in Dever v. New Jersey Manufacturers Insurance Company, Docket No.: A-3102-11T2 decided October 23, 2013, Plaintiff maintains that Defendant PMA Companies is not entitled to repayment of that portion of its lien related to medical expenses.

13. On November 4, 2013, I wrote to Joann Powell, Sr. Account Claims Representative of Defendant PMA Companies advising her of Plaintiff's position based upon the Dever decision. See copy of my November 4, 2013 to Joann Powell at PMA Companies annexed as **Exhibit "C"**.

14. To date, I have received no response from Defendant PMA Companies and, as a result, I have been forced to commence this action for a summary disposition of the only issue involved, i.e., Defendant's entitlement to repayment of any portion of its medical expense lien.

15. Pursuant to R.4:67-2(b) and R.1:6-6 I am attesting to all facts pertinent to this matter based on my personal knowledge of same. I have annexed copies of all documents pertinent to this action, and I ask that this matter be completely disposed of on this record by summary disposition and, accordingly, I am requesting that the Court fix a short date for the trial or hearing of this action.

16. On behalf of Plaintiff I further attest that there is no genuine issue as to any material fact and that the sole legal issue to be decided has been fully addressed by the Appellate Division's decision in Dever.

17. The factual scenario in Dever is similar to that in the case at bar. Plaintiff John K. Dever was an Atlantic City police officer who suffered injuries when his police vehicle was struck by a vehicle driven by Alice Turner, who ran a red light. Dever settled his claims against Turner who had a limited \$25,000 policy and then filed a claim for underinsured motorist insurance (UIM) with his own carrier, New Jersey Manufacturers Insurance Company (NJM), whose policy had \$500,000 UIM limits. Because Dever's injury was incurred in the course of his

employment, his worker's compensation carrier paid all his medical bills and placed a lien on Dever's recovery against the tortfeasor. Turner at the trial, the jury awarded Dever \$275,000. Following the verdict, Dever moved to have New Jersey Manufacturers pay \$8,482.11 in medical expenses and the trial judge granted the motion. The Appellate Division examined the applicable sections of our No-Fault Automobile Insurance and Worker's Compensation Laws to determine whether New Jersey Manufacturers, as UIM carrier, was responsible for Dever's medical expenses.

18. The Appellate Division noted that both Dever and Turner owned and operated motor vehicles registered and principally garaged in New Jersey and were covered under New Jersey no-fault insurance policies. Although Dever's injuries were compensable under his policy's PIP benefits, he did not seek medical expense payments under PIP. Instead, because he suffered his injuries in the course of his employment, he sought worker's compensation benefits pursuant to the Worker's Compensation Act, N.J.S.A. 34:15-1 to 127.

19. Reading the Statutes *in pari materia*, the Appellate Division reached the following conclusion with respect to the trial judge's ruling that New Jersey Manufacturers pay Dever's medical expenses:

Accordingly, we conclude the medical expenses incurred in plaintiff's work related accident are not payable from the UIM carrier. This results because an insured's recovery against his or her UIM carrier represents the "contractual substitute for a tort action against an uninsured motorist[,]" Colatrella, supra, 102 N.J. at 617, and because a New Jersey no-fault insured cannot recover medical expenses provided for under the PIP provisions from a tortfeasor's New Jersey no-fault policy. Thus, there is no recovery of medical benefits between New Jersey no-fault insureds.



Also, the Legislature has decreed workers' compensation insurance must be the primary source of payment for work-related automobile injuries, and the cost of the employee's medical expenses is born by the worker's compensation carrier not the PIP insurance carrier. Therefore, a Section 40 lien, which attaches only to permitted tortfeasor recoveries, cannot include medical expenses from a New Jersey no-fault insured; there is no right to recover such expenses. Patterson v. Adventure Trails, 364 N.J. Super. 444, 448-49 (Law Div. 2003). Allowing reimbursement to a workers' compensation carrier from an employee's UIM carrier is counter to be legislative intent of this express statutory reimbursement scheme.

The record is not clear as to whether the workers' compensation carrier invoked its lien against the \$25,000 recovery from Turner. We conclude such action would be inappropriate. Under these facts, plaintiff's medical expenses are the responsibility of the workers' compensation carrier and are not reimbursable by defendant. The trial court's decision is reversed and the order for defendant to pay \$8,482.11 representing plaintiff's medical bills is vacated. (Dever, pgs. 25-26).

20. For the reasons expressed in Dever, Defendant PMA is not entitled to a recovery of its medical expense lien in the instant action and, since there are no disputed facts related to this legal issue, summary disposition is appropriate.



KENNETH S. JAVERBAUM

DATED: January 23, 2014

STATE OF NEW JERSEY:

SS.:

COUNTY OF UNION :

I certify that on January 23<sup>rd</sup>, 2014, **KENNETH S. JAVERBAUM**, personally came before me and acknowledged under oath, to my satisfaction, that this person(or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his act and deed.

*Maria M. Toro*

NOTARY

**MARIA M. TORO**  
A Notary Public of New Jersey  
My Commission Expires July 19, 2017

**FILED**  
NOV 21 2013  
HON. LISA F. CHRYSTAL, J.S.C.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS, P.C.  
505 Morris Avenue, Second Floor  
Springfield, NJ 07081  
Telephone No. (973) 379-4200  
Attorneys for Plaintiff, Christopher Coon

\_\_\_\_\_  
Plaintiff(s) SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

CHRISTOPHER COON AND LEIDA COON, HIS WIFE. **RECEIVED** Filed No. UNN L-1572-09

vs. NOV - 8 2013 CIVIL ACTION

Defendant(s) LISA F. CHRYSTAL,  
J.S.C.  
WALEED T. DOZIER AND QIMMAH A. DOZIER, et als. ORDER FOR JUDGMENT

THIS MATTER, having come on for trial before the Honorable Lisa F. Chrystal, J.S.C. and a jury, which commenced on September 18, 2013 and resulted in a verdict on October 28, 2013, and the parties having been represented at trial as follows: for the Plaintiff Christopher Coon, Kenneth S. Javerbaum and Rubin M. Sinins (Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C.); for Plaintiff Leida Coon, Stephanie A. Mitterhoff, (Bramnick, Rodriguez, Mitterhoff, Grabas & Woodruff, LLC); for Defendants Xiomara Santiago, Folashade Oloyede and Ilidio Ferriera, Gary S. Lipshutz and Avion M. Benjamin (Newark Corporation Counsel, Newark Law Department); for Defendant Joseph Cocuzza, Stephen C. Cahir and Felicia G. Smith (Law Offices of William E. Staehle); and UM/UIM Carriers PMA Insurance Group ("PMA") and NJ Manufacturers Insurance Company ("NJM"), having intervened pursuant to Zirger v. General Acc. Ins. Co., and appearances by Timothy P. Burns (Robinson Burns, LLC) for

intervenor PMA; and for intervenor NJM, Jeffrey D. Noonan (Pomeroy Heller & Ley, LLC); and

The jury having found no willful misconduct on the part of Defendants Xiomara Santiago, Folashade Oloyede, Ilidio Ferriera and Joseph Cocuzza resulting in a verdict of no cause for action in favor of said defendants; and

The jury having found negligence on the part of Defendant Waleed Dozier, in whose interests intervenors PMA and NJM have appeared and defended; and

The jury having found negligence on the part of Plaintiff Christopher Coon; and

The jury having apportioned liability for the accident to be 90% as against Defendant Waleed Dozier and 10% as against Plaintiff Christopher Coon; and

The jury having awarded compensatory damages to the Plaintiff Christopher Coon in the amount of one million, six hundred thousand dollars (\$1,600,000.00) and, to the Plaintiff, *per quod*, Leida Coon, in the amount of one hundred thousand dollars (\$100,000.00); and

The parties having stipulated and agreed that the gross amount of the Workers' Compensation lien shall be added to any verdict, and said amount being five hundred forty thousand, two hundred forty-five dollars and twenty-two cents (\$540,245.22) consisting of seventy-eight thousand, nine hundred seventy dollars (\$78,970.00) for indemnity/temporary disability payments and four hundred sixty-one thousand, two hundred

seventy-five dollars and twenty-two cents (\$461,275.22) for medical expenses'; and

Intervenor PMA having applicable UM/UIM insurance policy limits of one million dollars (\$1,000,000.00), and intervenor NJM having applicable insurance policy limits of five hundred thousand dollars (\$500,000.00), such that the *pro rata* responsibility of intervenors PMA and NJM, to pay any verdict/judgment entered as against Defendant Waleed Dozier to be two-thirds (2/3) the responsibility of PMA and one-third (1/3) the responsibility of NJM; and

The pre-judgment interest from May 2, 2009 (6 months from the date of the accident) to October 28, 2013, the date of the verdict, on two million, sixteen thousand, two hundred twenty dollars and sixty cents (\$2,016,220.60), which constitutes Plaintiffs' damages together with the potential workers' compensation lien amounts, less 10% for Plaintiff Christopher Coon's comparative negligence, is two hundred eighty-nine thousand, five hundred thirty-four dollars and seventy-nine cents (\$289,534.79) together with per diem interest for 2013 of \$124.29;

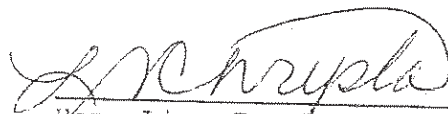
NOW THEREFORE, on this 21<sup>st</sup> day of November 2013, Judgment be and hereby is entered in favor of Plaintiffs Christopher Coon and Leida Coon, as against Defendant Waleed Dozier in the amount of two million, three hundred five thousand, seven hundred fifty-five dollars and thirty cents (\$2,305,755.30), representing Plaintiffs' damages, potential workers' compensation lien and pre-judgment interest with a proportionate allocation two million, two hundred two thousand, eight

---

\* Whether the medical expenses portion of workers' compensation payments is properly part of the lien is an open question which shall separately be presented to the Court.

hundred thirty-one and ten cents (\$2,202,831.10) allocated to Plaintiff Christopher Coon and one hundred two thousand, nine hundred twenty-four dollars and twenty-two cents (\$102,924.22) allocated to Plaintiff Leida Coon resulting in intervenors PMA and NJM, being responsible for UMI payments in the total amount of one million dollars (\$1,000,000.00), with responsibility for payment to be six hundred sixty-six thousand, six hundred sixty-six dollars and sixty-six cents (\$666,666.66) as to intervener PMA and three hundred thirty-three thousand, three hundred thirty-three dollars and thirty-four cents (\$333,333.34) as to intervener NJM; and

Post-judgment interest shall continue to accrue as against Defendant Waleed Dozier until payment from October 29, 2013 until the date of payment.



Hon. Lisa E. Chrystal, J.S.C.

**Maria Toro**

---

**From:** Kenneth S. Javerbaum  
**Sent:** Monday, November 04, 2013 10:30 AM  
**To:** Maria Toro  
**Subject:** FW: Christopher Coon vs. County of Union d/l: 12/2/08 W890833504  
**Attachments:** coonmedpmts.pdf; coonindpmts.pdf

KENNETH S. JAVERBAUM  
973-379-4200  
SPRINGFIELD OFFICE  
505 MORRIS AVENUE  
SPRINGFIELD, NJ 07081

**From:** [Joann Powell@pmagroup.com](mailto:Joann.Powell@pmagroup.com) [mailto:[Joann.Powell@pmagroup.com](mailto:Joann.Powell@pmagroup.com)]  
**Sent:** Monday, November 04, 2013 10:27 AM  
**To:** Kenneth S. Javerbaum  
**Cc:** Kenneth S. Javerbaum  
**Subject:** Christopher Coon vs. County of Union d/l: 12/2/08 W890833504

Our lien to date for medical is \$475,507.24 and indemnity \$78,970.00

Total:  $\$554,477.24 \times 2/3 = \$369,651.49 - \$750.00 = \$368,901.49$  Current Lien.

Please forward copy of settlement agreement as well.

Thank you.

Joann Powell  
Sr. Account Claims Rep.



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November 4, 2013

VIA E-MAIL & REGULAR MAIL  
[Ioann.Powell@pmagroup.com](mailto:Ioann.Powell@pmagroup.com)

Joann Powell, Sr. Account Claims Representative  
PMA Companies  
P. O. Box 5231  
Janesville, WI 53547-5231

Re: Claimant: Christopher Coon  
Insured: County of Union  
Claim No.: W890833504  
D/A: 12/2/2008

Dear Ms. Powell:

As your file will reflect, I am the attorney for Christopher Coon who, in his capacity as a Union County Sheriff's Officer, suffered extreme and traumatic injuries as a result of an incident occurring on December 2, 2008.

You will recall from our previous conversations that there is an outstanding Worker's Compensation Lien that you were unwilling to compromise pending the outcome of a trial against the potential Third-Party Tortfeasors who were various police officers employed by the City of Newark, City of Elizabeth and the Township of Hillside. In addition, a claim was also presented against Waleed Dozier who the police were pursuing at the time of the incident in which Mr. Dozier's vehicle collided with that occupied by that of Christopher Coon.

In addition to the involvement of PMA as Union County Worker's Compensation insurer, PMA also provided \$1,000,000 in UMI insurance coverage to the County. In this regard, it provided representation to and had counsel appear at trial "on behalf of the interest of Waleed Dozier pursuant to *Zirger v. General Accident Insurance Company*, 144 NJ 327 (1996)."





Joann Powell, Sr. Account Claims Representative  
PMA Companies  
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November 4, 2013

Re: Claimant: Christopher Coon  
Insured: County of Union  
Claim No.: W890833504  
D/A: 12/2/2008

On October 28, 2013, following a six (6) week trial, the jury rendered a verdict in this matter absolving all of the police officers of responsibility and allocating 90% of the responsibility to Waleed Dozier and 10% of responsibility to Christopher Coon and awarding damages in the amount of \$1,600,000 resulting in a net jury award in favor of Christopher Coon in the amount of \$1,440,000. It is my understanding from our last conversation, that you continue to assert a lien pursuant to N.J.S.A. 34:15-40 resulting from this event. As per your e-mail of November 4, 2013, (enclosed) your lien "for medical is \$475,507.24 and indemnity \$78,970.00" resulting in a total current lien of \$368,901.49.

With respect to your lien claims, I am enclosing herewith a copy of a recently decided opinion by the Appellate Division of the New Jersey Superior Court, Dever v. New Jersey Manufacturers Insurance Company, in which I will direct your specific attention to pages 18-26. In this opinion, the Appellate Division holds that because this incident occurred as a result of a motor vehicle accident that would otherwise be subject to PIP coverage, ". . . plaintiff's medical expenses are the responsibility of the Worker's Compensation carrier and not reimbursable. . ." I am transmitting a copy of this opinion to both yourself as well as to Patty Moore-Sutton, your colleague at PMA Insurance Company and I am also taking the opportunity to forward a copy of same to Timothy Burns who represented the interest of PMA Insurance Company in this matter as well as to Robert Barry, Esq. the Union County Counsel.

I would hope that in reviewing this opinion and seeking the advice of counsel, it would be clear to you that to the extent there remains any claim for Subrogation of medical expenses incurred as a result of this incident, the clarity of this opinion makes it undeniable that no such subrogation recovery exists for these medical expenses.

Accordingly, in order to avoid needless application to the Court, I would appreciate your reviewing this letter and advising me as to your confirmation of my understanding of this opinion that there is no repayment due to PMA for medical expenses incurred in this incident in accordance with Dever v. New Jersey Manufacturers Insurance Company.



Joann Powell, Sr. Account Claims Representative  
PMA Companies  
Page 3  
November 4, 2013

Re: Claimant: Christopher Coon  
Insured: County of Union  
Claim No.: W890833504  
D/A: 12/2/2008

I would appreciate your reviewing same and welcome you submitting it to counsel for review and guidance if you deem it necessary.

In the event we cannot agree on same, I intend to file an application before the Trial Judge upon notice to PMA as to the non-applicability of their claim for subrogation of medical expenses based upon the holding in Dever v. New Jersey Manufacturers Insurance Company.

I would, in any event, expect that you will advise me as to your position within 10 days of this date.

Very truly yours,

  
KENNETH S. JAVERBAUM

KSJ/mmt  
Enclosure

cc: Patty Moore-Sutton, PMA, Supervisor (w/enclosure) (Via Regular Mail)  
Timothy Burns, Esq. (w/enclosure) (Via NJ Lawyers Service)  
Robert Barry, Esq. (w/enclosure) (Via NJ Lawyers Service)

FEB 10 2014

UNION COUNTY SUPERIOR COURT  
7 BROAD STREET  
ELIZABETH NJ 07207

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (908) 659-4817  
COURT HOURS

DATE: FEBRUARY 06, 2014  
RE: COON VS PMA COMPANIES  
DOCKET: UNN L -000391\_14

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 1.

DISCOVERY IS 150 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

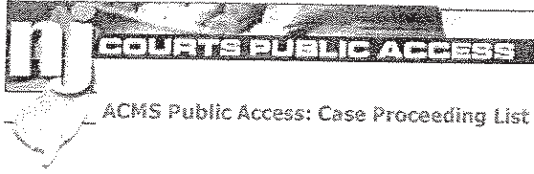
THE PRETRIAL JUDGE ASSIGNED IS: HON MARK P. CIARROCCA

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001  
AT: (908) 659-4820.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: KENNETH S. JAVERBAUM  
JAVERBAUM WURGAPF HICKS K W & S  
505 MORRIS AVENUE  
2ND FLOOR  
SPRINGFIELD NJ 07081



Page: 1

END OF LIST

| VENUE : STATEWIDE                  |                 | COURT : LAW CVL |              | DOCKET # : UNN L |              | 000391   |                   | 14  |      |
|------------------------------------|-----------------|-----------------|--------------|------------------|--------------|----------|-------------------|-----|------|
| CASE TITLE : COON VS PMA COMPANIES |                 |                 |              |                  |              |          |                   |     |      |
| PROCEEDING TYPE                    | MOTION DOC/TYPE | MOTION STATUS   | SESSION DATE | COURT ROOM       | PROCEED TIME | JUDGE ID | PROCEEDING STATUS | BY: | VIA: |
| MOTION HRG                         | 2 M99 PG        | HEARING         | 03 28 14     | 9-TWR            | 09 00        | MPC03    | PENDING           |     |      |

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 Session ID: BPIHA1 Case Count: 2  
 BUILD 2012.1.0.02.08 Timer Count down: 283