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March 18, 2014

VIA HAND DELIVERY

Clerk, New Jersey Supreme Court
Hughes Justice Complex
25 West Market Street
P.O. Box 970
Trenton, New Jersey 08625

Re: **DeMarco v. Stoddard, et al.**
Supreme Court Docket No. 073949

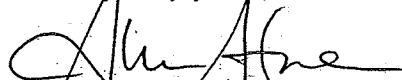
Dear Sir/Madam:

This firm represents proposed amicus curiae New Jersey Civil Justice Institute ("NJCJI"). Enclosed for filing please find an original and eight (8) copies of the Notice of Motion for Leave to Appear as Amicus Curiae, the Letter-Brief in support of the Motion, Certification of Marcus Rayner, Brief, and Certification of Service.

Also, enclosed please find our firm's check in the amount of \$30.00 to cover the requisite filing fee, and kindly return a copy of the "filed" documents to me in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter. Of course should you have any questions, please do not hesitate to contact me.

Very truly yours,


Shalom D. Stone

SDS:lk

Enclosures

cc: Todd J. Leon, Esq. (via Hand Delivery)
Michael D. Schottland, Esq. (via Hand Delivery)

Shalom D. Stone, Esq.
Attorney ID #033141987
BROWN MOSKOWITZ & KALLEN, P.C.
180 River Road
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(973) 376-0909
Attorneys for *Amicus Curiae*
New Jersey Civil Justice Institute

THOMAS DEMARCO and CYNTHIA
DEMARCO,

Plaintiffs,

V.
SEAN ROBERT STODDARD, D.P.M.,
Individually and t/a CENTER FOR
ADVANCED FOOT & ANKLE CARE,
INC.; JOHN and/or JANE DOE;
MANNY and/or FANNY MOE; SAM
and/or SUE SOE (fictitious
names representing an
individual or individuals,
corporation, partnership and/or
association and was a doctor,
intern, resident, nurse, and/or
other care specialist involved
in the treatment and/or care of
Thomas DeMarco); and MEDICAL
MALPRACTICE JOINT UNDERWRITING
ASSOCIATION OF RHODE ISLAND,

Defendants.

SUPREME COURT OF NEW JERSEY
Docket No. 073949

On Petition For Certification
from an Interlocutory Order of
the Superior Court, Appellate
Division

Sat Below:

Hon. Joseph L. Yannotti, P.J.A.D.
Hon. Victor Ashrafi, J.A.D.
Hon. Jerome M. St. John, J.A.D.
Superior Court,
Law Div., Ocean County
Hon. Mark A. Tronccone, J.S.C.

**NOTICE OF MOTION FOR LEAVE TO
APPEAR AS AMICUS CURIAE**

TO:

Mark Neary, Clerk
New Jersey Supreme Court
Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625

Todd J. Leon, Esq.
Hill Wallack, LLP
202 Carnegie Center
Princeton, NJ 08540
Attorneys for Defendant
Medical Malpractice Joint
Underwriting Association of Rhode Island

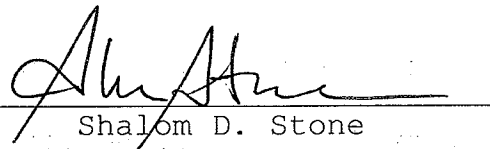
Michael D. Schottland, Esq.
Lomurro, Davison, Eastman & Munoz, P.A.
Monmouth Executive Center
100 Willow Brook Road
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Freehold, NJ 07728
Attorneys for Plaintiffs
Thomas DeMarco and Cynthia DeMarco

PLEASE TAKE NOTICE that the New Jersey Civil Justice
Institute ("NJCJI") hereby moves, pursuant to N.J. Ct. R. 1:13-
9, for leave to appear as amicus curiae in the above-captioned
matter. In support of that motion, NJCJI will rely on the
attached letter-brief and the Certification of Marcus Rayner.

Respectfully submitted,

Brown Moskowitz & Kallen, P.C.
Attorneys for *Amicus Curiae*
New Jersey Civil Justice Institute

By:


Shalom D. Stone

Dated: March 18, 2014

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* Also admitted in New York

† Also admitted in Maryland

Writer's email: ssstone@bmk-law.com

March 18, 2014

VIA HAND DELIVERY

Honorable Justices of the Supreme Court
c/o Mark Neary, Clerk
New Jersey Supreme Court
Hughes Justice Complex
25 West Market Street
P.O. Box 970
Trenton, New Jersey 08625

Re: DeMarco v. Stoddard, et al.
Supreme Court Docket No. 073949

Dear Honorable Justices:

This firm represents proposed amicus curiae, the New Jersey Civil Justice Institute ("NJCJI"). Please accept this letter-brief in support of NJCJI's motion for leave to appear as amicus curiae in the above-referenced case. In the event the motion is granted, a copy of NJCJI's proposed amicus brief is included with this motion. NJCJI respectfully requests that the Court grant its motion and consider NJCJI's amicus brief in the

Honorable Justices of the Supreme Court

March 18, 2014

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Court's review of this case, including the pending motion for leave to appeal.

NJCJI is a statewide, bipartisan group of individuals, business, and organizations dedicated to improving New Jersey's civil justice system. NJCJI currently has over 90 members. NJCJI advocates for reforms to ensure that New Jersey's civil justice system treats all parties fairly and discourages lawsuit abuse. NJCJI believes that a balanced civil justice system fosters public trust and motivates professionals, sole proprietors and businesses to provide safe and reliable products and services, while ensuring that truly injured people are compensated fairly for their losses. Such a system is critical to ensuring fair and open courts, maintaining and attracting jobs, and fostering economic growth in New Jersey. Certification of Marcus Rayner at ¶2.

This case concerns the liability of insurers when insurance policies are void and subject to rescission. The decision below requires a medical malpractice insurer to indemnify a doctor even though the medical malpractice insurance policy is void due to misrepresentations made by the doctor to the insurer.

NJCJI believes that this holding is contrary to existing law. First, for reasons unique to automobile insurance, New

Honorable Justices of the Supreme Court

March 18, 2014

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Jersey courts have frequently compelled automobile insurers to compensate injured third parties even when the insurance policy is void and subject to rescission. In this case, the court below held, without analysis or precedent, that those automobile insurance cases are equally applicable to medical malpractice insurance policies. That holding is flawed. The automobile insurance cases were shaped by a combination of factors unique to the automobile insurance field which cannot and should not be extended to medical malpractice insurance cases.

Second, if the decision below is allowed to stand, New Jersey medical malpractice insurers will be forced to raise their premiums -- already among the highest in the country. As a result, New Jersey's honest doctors will be compelled to subsidize New Jersey's dishonest doctors. Worse yet, these increased premiums are likely to cause physicians to leave New Jersey, or not practice in New Jersey to begin with. And unlike automobile insurance, where the statutorily mandated minimum coverage is \$15,000/\$30,000, the statutory minimum coverage for physicians is \$1 million.

Third, no New Jersey court has ever extended the automobile insurance line of cases to other forms of insurance. Indeed, this Court previously held that a mandatory legal malpractice

Honorable Justices of the Supreme Court

March 18, 2014

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insurance policy may be rescinded based on the insureds' misrepresentations.

By making a malpractice insurer liable in the face of an insured's defalcations, the court below undermines the public's trust in our system of justice, fosters cynicism and suspicion, drives up malpractice insurance costs for New Jersey's doctors, and inhibits economic growth.

Motions for leave to appear as amicus curiae are governed by R. 1:13-9, which states: "An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof." R. 1:13-9(a). The rule further provides that the motion shall be granted if the Court "is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby." Ibid.

NJCJI's interest in this case is well-founded, and its experience and expertise in representing the New Jersey business

Honorable Justices of the Supreme Court
March 18, 2014
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community warrants NJCJI's appearance as amicus curiae in this matter. NJCJI's participation will not unduly prejudice any party.

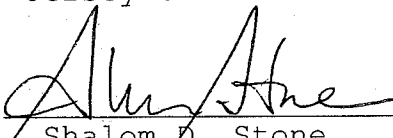
NJCJI respectfully submits that its participation via its proposed amicus brief will assist in the resolution of this case, and requests that its motion for leave to appear as amicus be granted.

CONCLUSION

For these reasons, NJCJI respectfully requests that the Court grant NJCJI's motion for leave to appear as amicus and participate via the filing of the accompanying amicus brief.

Respectfully submitted,

BROWN MOSKOWITZ & KALLEN, P.C.
Attorneys for Proposed Amicus Curiae
New Jersey Civil Justice Institute

By: 
Shalom D. Stone

SDS:lk
Enclosure

Shalom D. Stone, Esq.
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180 River Road
Summit, New Jersey 07901
(973) 376-0909
Attorneys for *Amicus Curiae*
New Jersey Civil Justice Institute

THOMAS DEMARCO and CYNTHIA
DEMARCO,

Plaintiffs,

v.

SEAN ROBERT STODDARD, D.P.M.,
Individually and t/a CENTER FOR
ADVANCED FOOT & ANKLE CARE,
INC.; JOHN and/or JANE DOE;
MANNY and/or FANNY MOE; SAM
and/or SUE SOE (fictitious
names representing an
individual or individuals,
corporation, partnership and/or
association and was a doctor,
intern, resident, nurse, and/or
other care specialist involved
in the treatment and/or care of
Thomas DeMarco); and MEDICAL
MALPRACTICE JOINT UNDERWRITING
ASSOCIATION OF RHODE ISLAND,

Defendants.

SUPREME COURT OF NEW JERSEY

Docket No. 073949

Civil Action

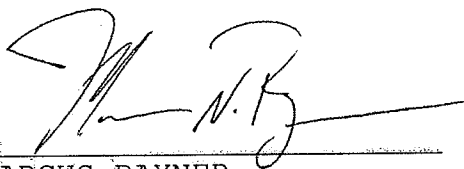
CERTIFICATION OF MARCUS RAYNER

Marcus Rayner, of full age, hereby certifies and says:

1. I have personal knowledge of the facts set forth below, and I submit this Certification in support of the motion of the New Jersey Civil Justice Institute ("NJCJI") for leave to appear as amicus curiae in the above-captioned case.

2. NJCJI is a statewide, bipartisan group of individuals, businesses, and organizations dedicated to improving New Jersey's civil justice system. NJCJI currently has over 90 members. NJCJI advocates for reforms to ensure that New Jersey's civil justice system treats all parties fairly and discourages lawsuit abuse. NJCJI believes that a balanced civil justice system fosters public trust and motivates professionals, sole proprietors, and businesses to provide safe and reliable products and services, while ensuring that truly injured people are compensated fairly for their losses. Such a system is critical to ensuring fair and open courts, maintaining and attracting jobs, and fostering economic growth in New Jersey.

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


MARCUS RAYNER

Dated: March 18, 2014

Shalom D. Stone, Esq.
Attorney ID #033141987
BROWN MOSKOWITZ & KALLEN, P.C.
180 River Road
Summit, New Jersey 07901
(973) 376-0909
Attorneys for *Amicus Curiae*
New Jersey Civil Justice Institute

THOMAS DEMARCO and CYNTHIA
DEMARCO,

Plaintiffs,

v.

SEAN ROBERT STODDARD, D.P.M.,
Individually and t/a CENTER FOR
ADVANCED FOOT & ANKLE CARE,
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MANNY and/or FANNY MOE; SAM
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in the treatment and/or care of
Thomas DeMarco); and MEDICAL
MALPRACTICE JOINT UNDERWRITING
ASSOCIATION OF RHODE ISLAND,

Defendants.

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Docket No. 073949

On Motion for Leave to Appeal
from an Interlocutory Order of
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Sat Below:

Hon. Joseph L. Yannotti, P.J.A.D.

Hon. Victor Ashrafi, J.A.D.

Hon. Jerome M. St. John, J.A.D.

Superior Court,

Law Div., Ocean County

Hon. Mark A. Troncone, J.S.C.

BRIEF OF *AMICUS CURIAE* NEW JERSEY CIVIL JUSTICE INSTITUTE

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PRELIMINARY STATEMENT

Under long-standing New Jersey law, an insurance policy is void when it was procured by means of material misrepresentations made by the insured to the insurer. Although New Jersey courts have frequently compelled automobile insurers to compensate injured third parties despite the insurance policy being void, that line of cases is unique to automobile insurance law.

Specifically, New Jersey courts have recognized that New Jersey drivers, who are required by law to be insured, reasonably expect other drivers to be similarly insured. And the New Jersey legislature has enacted a mandate -- unique to automobile insurance -- prohibiting rescission below the statutory minimum insurance coverage (\$15,000/\$30,000). Although neither concept applies to medical malpractice insurance, the court below held, without analysis or precedent, that the automobile insurance cases are applicable to medical malpractice insurance policies, where the statutory minimum insurance coverage is \$1 million.

If the decision below is allowed to stand, New Jersey medical malpractice insurers will be forced to raise premiums -- already among the highest in the country -- driving physicians away from our State.

Moreover, the decision below implies that the automobile insurance line of cases may be freely applied to all other areas where insurance is mandatory, but that far-reaching premise is not supported by the automobile insurance cases. Indeed, the only time New Jersey courts have addressed this issue in a context other than an automobile insurance policy, this Court held that a legal malpractice insurance policy may be rescinded based on the insureds' misrepresentations. First American Title Ins. Co. v. Lawson, 177 N.J. 125, 136-137 (2003). The court below misconstrued the holding in Lawson.

New Jersey Civil Justice Institute ("NJCJI") is a statewide, bipartisan group of individuals, businesses, and organizations dedicated to improving New Jersey's civil justice system. Certification of Marcus Rayner at ¶2. NJCJI strongly believes that the decision below represents a new and dangerous incursion upon established principles of insurance law, and ill-serves the business and economic interests of the citizens of this State. NJCJI therefore respectfully urges this Court to grant the motion for leave to appeal, and reverse the interlocutory order entered below.

ARGUMENT

POINT I

THE APPELLATE DIVISION ERRED IN
HOLDING THAT AN INSURER'S
OBLIGATIONS WITH RESPECT TO
RESCINDED AUTOMOBILE POLICIES IS
EQUALLY APPLICABLE TO RESCINDED
MEDICAL MALPRACTICE INSURANCE
POLICIES.

Automobile insurance policies occupy a distinctive place in New Jersey law. For reasons unique to automobile insurance, New Jersey courts have frequently compelled automobile insurers to compensate injured third parties even when the insurance policy is void and subject to rescission. In this case, the court below held, without analysis or precedent, that those automobile insurance cases are equally applicable to medical malpractice insurance policies. That holding is flawed.¹

Under long-standing New Jersey law, an insurance policy is void when it was procured by means of material misrepresentations made by the insured to the insurer.

¹ Even the Appellate Division judges below were unsure whether their holding had any firm foundation, acknowledging that they "suspect" that New Jersey would protect innocent third-party patients, because analogous case law so "suggests." DeMarco v. Stoddard, ___ N.J. Super. ___ (App. Div. 2014) (slip op. at 14) ("We have no statutes or cases directly on point to inform us, but we **suspect** that both New Jersey and Rhode Island would protect the interests of innocent third parties. Analogous case law of both states **suggests** that both would restrict the rescission remedy available to insurance carriers in order to provide some protection to innocent third parties....") (emphases added).

The law is well settled that equitable fraud provides a basis for a party to rescind a contract.... Rescission voids the contract *ab initio*, meaning that it is considered "null from the beginning" and treated as if it does not exist for any purpose. *Black's Law Dictionary* 1568 (7th ed. 1999). Within the context of an insurance contract, a representation by the insured, whether contained in the policy itself or in the application for insurance, will support the forfeiture of the insured's rights under the policy if it is untruthful, material to the particular risk assumed by the insurer, and actually and reasonably relied upon by the insurer in the issuance of the policy.

First American Title Ins. Co. v. Lawson, 177 N.J. 125, 136-137 (2003) (citations and quotations omitted). The Appellate Division's holding that a medical malpractice insurer must nonetheless indemnify a doctor, against a patient's claim, has no basis in New Jersey's automobile insurance cases.

Automobile accident cases are unique. In nearly all such cases, both the plaintiffs and the defendants are consumers covered by an automobile insurance policy. And, because of New Jersey's no-fault insurance system, injured parties are often entitled to at least some compensation from their own automobile insurance policies. As a result, New Jerseyans have come to expect that, come what may, if they are injured traversing New Jersey's roadways, their injuries will be covered by automobile insurance. More specifically, because all drivers must carry automobile insurance, the party injured in an automobile accident reasonably expects that his counterpart will have

insurance. See, e.g., N.J. Mfrs. Ins. Co. v. Varjabedian, 391 N.J. Super. 253, 258-259 (App. Div. 2007).

The relationship between New Jersey's doctors and patients lacks this mutuality. While New Jersey doctors carry medical malpractice insurance, most New Jersey patients are not doctors themselves, and are generally unaware that New Jersey requires their doctors to carry such insurance. Absent such knowledge, the patients have no expectation that their doctors are insured, and do not rely on that insurance when they visit their doctor. Thus, the reliance-and-expectation foundation for the automobile insurance cases is absent in the medical malpractice insurance arena.

Automobile insurance cases also differ from medical malpractice cases for another reason. The automobile insurance line of cases reflects a specific legislative directive. N.J.S.A. 39:6-48(a). Under §48(a), the liability of an automobile insurer is fixed when the accident occurs. Id. ("The liability of a company under a motor vehicle liability policy shall become absolute when loss or damage covered by the policy occurs ... Upon the recovery of a final judgment against a person for the loss or damage[,], if the judgment debtor was at the accrual of the cause of action insured against liability therefor under a motor vehicle liability policy, the judgment creditor shall be entitled to have the insurance money applied

to the satisfaction of the judgment."). The insurer cannot retroactively cancel the policy. Id. ("No such policy shall be canceled or annulled ..."); Varjabedian, 391 N.J. Super. at 256 ("Under N.J.S.A. 39:6-48(a), once its insured has become responsible for damages to third-party judgment creditors, an insurer is precluded from retroactively 'cancel[ing]' or 'annul[ing]' an automobile liability policy based upon prior misrepresentations or fraud of its insured.").

The legislative policy announced in §48(a), therefore, is an important part of the foundation for the automobile insurance cases. See Varjabedian, 391 N.J. Super. at 256 ("Based in part upon the non-cancellation provisions of N.J.S.A. 39:6-48, we have held that a carrier is not entitled to retroactively void a policy after its insured becomes liable to an innocent third party for damages. Rather, the insurer's policy is reduced to the minimum limits prescribed by statute."); N.J.S.A. 39:6-48(a) ("if the policy provides for limits in excess of the limits designated in this section[,] the insurance carrier may plead against the judgment creditor, with respect to the amount of the excess limits of liability[,] any defenses which it may be entitled to plead against the insured").

No such legislative policy exists in the medical malpractice insurance field. As far as the New Jersey legislature is concerned, medical malpractice insurance policies

may be retroactively cancelled by the insurer based on the prior misrepresentations of the insured physician.

Judicially extending the legislature's non-rescission mandate from automobile insurance to other forms of insurance -- without legislative direction -- is a dangerous exercise. In deciding that there should be a minimum level of non-rescindable automobile insurance, the New Jersey legislature understood that the statutory minimum for automobile insurance was relatively modest: \$15,000/\$30,000. But the statutory minimum coverage for other forms of insurance is not quite so modest. Physicians, for example, are required to carry a \$1 million malpractice policy. See N.J.S.A. 45:9-19.17(1)(a).

The holding below was based on the narrow fact that both automobile insurance and medical malpractice insurance are mandated by New Jersey law. DeMarco v. Stoddard, ___ N.J. Super. ___ (App. Div. 2014) (slip op. at 18) ("In the same way as the general public that uses our roadways, [(citation omitted)], medical patients can reasonably assume New Jersey doctors are complying with the law and carrying compulsory malpractice insurance."). But as demonstrated above, the historical basis for the automobile insurance cases has not been just the mandatory nature of automobile insurance. Rather, the automobile insurance cases were shaped by a combination of factors unique to the automobile insurance field which cannot

and should not be extended to medical malpractice insurance cases.

The NJCJI therefore respectfully requests that this Court grant the motion for leave to appeal and reverse the interlocutory order entered below.

POINT II

**THE DECISION BELOW WOULD
SIGNIFICANTLY INCREASE MEDICAL
MALPRACTICE PREMIUMS IN NEW
JERSEY.**

The underwriting process permits an insurer to evaluate risks. When an insured lies on an insurance application, the insurer inevitably underestimates the resulting risks and the corresponding premium. If an insurer is prohibited from voiding such a policy, the insurer will inevitably be compelled to raise the premium rates of all of its insureds.

If the decision below is allowed to stand, New Jersey medical malpractice insurers will be forced to raise their premiums -- already among the highest in the country. As a result, New Jersey's honest doctors will be compelled to subsidize New Jersey's dishonest doctors. Worse yet, this additional premium pressure is likely to cause more physicians to leave New Jersey, or not practice in New Jersey to begin with.

Of course, New Jersey's automobile insurers face a similar concern, spreading the loss of dishonest automobile policyholders among New Jersey's honest automobile policyholders. But as noted above, the potential losses of the automobile insurers -- and therefore honest automobile policyholders -- is limited by the statutory minimum automobile coverage of \$15,000/\$30,000. The statutory minimum coverage for physicians, however, is \$1 million. Thus, in the medical malpractice insurance arena, the potential for economic disruption is far greater than in the automobile insurance arena.

NJCJI therefore respectfully requests that this Court grant the motion for leave to appeal to ensure that these broad public policy concerns are considered before medical malpractice insurers are forced to raise premiums for New Jersey's honest doctors.

POINT III

**NEW JERSEY COURTS HAVE NEVER
BEFORE EXTENDED THE PRINCIPLE OF
THE AUTOMOBILE INSURANCE CASES TO
OTHER FORMS OF INSURANCE.**

As discussed above, the automobile insurance line of cases flows from both a legislative mandate and from the expectation of New Jerseyans that other drivers will have automobile insurance, just as they do and must. Neither concept is applicable to other forms of insurance, and as a consequence, no

New Jersey court has ever extended the automobile insurance line of cases to other forms of insurance.

Significantly, this Court has addressed this issue in the context of a mandatory legal malpractice insurance policy and, contrary to the view of the Appellate Division here, this Court held that such a policy may be rescinded based on the insureds' misrepresentations. Lawson, 177 N.J. 125.

This Court's holding in Lawson was three-fold: One, the malpractice insurance policy was rescinded with respect to the attorneys who made the misrepresentations on the insurance application, even as to claims made by innocent third parties. Two, the policy was rescinded as to the law firm -- because the defalcating attorney was the firm's managing partner -- even as to claims by innocent third parties. Three, the policy was not rescinded as to a third attorney who was not involved in the wrongdoing. Id. at 140-143.²

The Appellate Division argues without foundation that the holding in Lawson hinged on the fact that the innocent claimants were not the law firm's clients but title companies -- the firm's clients' subrogors. DeMarco v. Stoddard, ___ N.J. Super.

² As the Appellate Division correctly noted, this Court referenced both mandatory insurance and protection of the firm's clients -- but solely in the context of that third holding, concerning the faultless insured. DeMarco v. Stoddard, ___ N.J. Super. ___ (slip op. at 17), citing Lawson, 177 N.J. at 143. Neither mandatory insurance nor protection of the firm's clients stopped this Court from rescinding the policy as to the defalcating insureds.

___ (slip op. at 17) ("A noteworthy distinction between Lawson and this case is that the innocent clients of the wrongdoing lawyers had already recovered their losses from the title insurance companies. The claims against the malpractice carrier were not brought by the law firm's clients but by the title insurance companies that were seeking to pass on their liability on the risks to the malpractice carrier."). There is no suggestion in the Lawson opinion, however, that this Court's holding was premised on that distinction. Moreover, the Appellate Division fails to explain why the title companies -- as subrogors of the law firm's clients -- are any less "innocent" third parties than the firm's clients.

In sum, the only time New Jersey courts have addressed this issue in a context other than an automobile insurance policy, this Court held that a compulsory legal malpractice insurance policy may be rescinded based on the insureds' misrepresentations. Lawson, 177 N.J. 125.

To be sure, other forms of insurance are mandated by New Jersey law. See, e.g., N.J.S.A. 34:15-79(a) (workers' compensation insurance).³ The decision below more than suggests that the automobile insurance line of cases will be freely

³ Indeed, some insurance is mandated by federal law. See, e.g., 49 C.F.R. §387.7, §387.9 (HAZMAT transportation). What will New Jersey courts do when a New Jersey citizen sues a defendant whose **federally** mandated insurance policy has been justifiably rescinded?

applied to all other areas where insurance is mandatory. Thus, if the decision below is allowed to stand, it would impact the State's many employers and workers' compensation insurance carriers. NJCJI respectfully requests that this Court grant the motion for leave to appeal to review the wisdom of such a novel and far-reaching policy.

Moreover, this Court should grant the motion for leave to appeal and reverse the decision below because, contrary to the Appellate Division's opinion, it is not supported by the automobile insurance cases, and it is contrary to this Court's decision rescinding the malpractice insurance policy in Lawson.

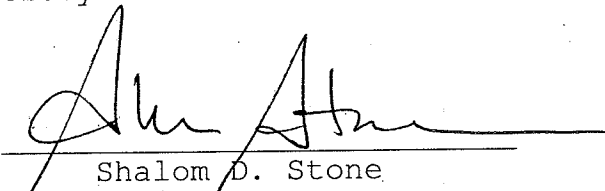
CONCLUSION

A medical malpractice insurance policy is properly voided under New Jersey law when the insured doctor makes numerous and repeated misrepresentations in the application to the insurer. When such a policy is voided, there is no reasoned basis in New Jersey law to require the insurer to indemnify the doctor with respect to a medical malpractice claim. For all of the reasons set forth above, the line of cases dealing with automobile insurance policies is *sui generis*, and should not be extended to medical malpractice insurance policies. New Jersey Civil Justice Institute therefore respectfully urges this Court to grant the motion for leave to appeal, and reverse the interlocutory order entered below.

Respectfully submitted,

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Attorneys for *Amicus Curiae*
New Jersey Civil Justice Institute

By:



Shalom D. Stone

Dated: March 18, 2014.

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THOMAS DEMARCO and CYNTHIA
DEMARCO,

Plaintiffs,

v.

SEAN ROBERT STODDARD, D.P.M.,
Individually and t/a CENTER FOR
ADVANCED FOOT & ANKLE CARE,
INC.; JOHN and/or JANE DOE;
MANNY and/or FANNY MOE; SAM
and/or SUE SOE (fictitious
names representing an
individual or individuals,
corporation, partnership and/or
association and was a doctor,
intern, resident, nurse, and/or
other care specialist involved
in the treatment and/or care of
Thomas DeMarco); and MEDICAL
MALPRACTICE JOINT UNDERWRITING
ASSOCIATION OF RHODE ISLAND,

Defendants.

SUPREME COURT OF NEW JERSEY

Docket No. 073949

Civil Action

CERTIFICATION OF SERVICE

I, Liz Kimble, of full age, hereby certify as follows:

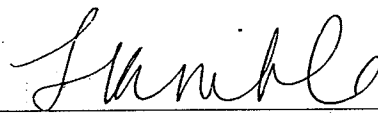
1. I am not a party to this action, and am employed
at the law firm of Brown Moskowitz & Kallen, P.C., 180
River Road, Summit, New Jersey, 07901.

2. I have today caused to be served, via hand delivery, two copies of the New Jersey Civil Justice Institute's (i) Motion for Leave to Participate as Amicus Curiae, (ii) letter-brief in support of the Motion for Leave to Participate as Amicus Curiae, (iii) Certification of Marcus Rayner, and (iv) Brief of Amicus Curiae New Jersey Civil Justice Institute, on each of the following individuals, at the following addresses:

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Medical Malpractice Joint
Underwriting Association of Rhode Island

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



LIZ KIMBLE

Dated: March 18, 2014