Not Reported in A.3d, 2011 WL 2935052 (N.J.Super.A.D.)
(Cite as: 2011 WL 2935052 (N.J.Super.A.D.))

Superior Court of New Jersey,
Appellate Division.
Carol **LINTAO**, Plaintiff–Respondent,
v.
Patricia **LIVINGSTON** and the County of Hudson, Defendants–Appellants.

Argued Sept. 22, 2010.
Decided July 22, 2011.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L–5801–06.
Cindy Nan Vogelman argued the cause for appellants (Chasan Leyner & Lamparello, attorneys; Ms. Vogelman, of counsel and on the brief; Robert E. Finn, on the briefs).

Adam M. Slater argued the cause for respondents (Mazie Slater Katz & Freeman, LLC, attorneys; Mr. Slater, of counsel and on the brief; Matthew R. Mendelsohn, on the brief).

Before Judges AXELRAD, R.B. COLEMAN, and LIHOTZ.

PER CURIAM.

*1 Defendants Patricia Livingston and County of Hudson appeal from various orders of the Law Division memorializing a jury verdict in favor of plaintiff, Carol Lintao, who was struck by a motor vehicle driven by Livingston and owned by the County. The jury allocated ninety-five percent of the liability to Livingston and five percent to plaintiff; determined that plaintiff had incurred medical expenses of $90,878; and awarded $2,000,000 for pain, suffering, disability, impairment and loss of enjoyment of life. The court molded the verdict and entered an order of judgment dated August 11, 2009, which was amended on September 11, 2009, to include prejudgment interest. A second order, dated September 11, 2009, denied defendants' motion for a new trial and to set aside the jury verdict, but granted a stay of enforcement of the judgment, conditioned on the posting of a supersedeas bond in an amount to be determined. Defendants' motion to set aside the order granting prejudgment interest and the imposition of a supersedeas bond was denied by order dated October 9, 2009, and this appeal was then filed.

On appeal, defendants argue the trial court committed reversible error by excluding a non-testifying physician's medical diagnosis contained within a hospital record and by excluding evidence of plaintiff's pre-existing medical conditions. They further argue that the trial court erred by shifting the burden onto them to prove the existence and impact of plaintiff's pre-existing medical conditions and by instructing the jury to that effect. Defendants also argue that public entities and public employees are immunized from prejudgment interest and are excepted from the posting of a supersedeas bond as a condition for a stay of the judgment.

We have carefully considered the arguments of the parties, the facts and the applicable law. We affirm the judgment memorialized and molding the jury's verdict on liability and damages; however, we reverse the September 11 and October 9 orders awarding prejudgment interest and requiring the posting of a supersedeas bond, to the extent the requirement to post the bond is not otherwise moot.

The following testimony and evidence was presented at trial. On February 9, 2006, plaintiff was struck while crossing the street by a six-person passenger van driven by Livingston and owned by Hudson County. The impact knocked plaintiff to the ground causing her to land on her buttocks, with her left arm stretched behind her. Livingston drove

plaintiff to the hospital, where plaintiff complained of a shooting pain in her left arm. An x-ray of her wrist revealed that it was fractured in two places. Plaintiff was released from the hospital the same day, without having reported any other problems; however, that night plaintiff's condition worsened. Whereas she had previously complained of pain only in her left arm and neck, the pain in her neck spread to her entire back and buttocks, where it was particularly painful.

***2** The next day, plaintiff went to her general care physician to evaluate a "big bruise" that had developed on her buttocks. Later the same day, plaintiff returned to the hospital for an evaluation of her neck, back, and buttocks and underwent x-rays of her coccyx, lumbosacral spine, and pelvis. The hospital records contain two contradictory reports concerning the x-rays taken during that visit. A radiologist, who did not testify at trial, read the x-rays and issued a report in which he concluded that "[t]he examination shows no evidence of abnormality of the coccyx." Records from the same visit reflect that the emergency room doctor diagnosed plaintiff with a fracture of the coccyx. The emergency room doctor also did not testify at trial.

Plaintiff continued to experience pain in her coccyx. She had difficulty with bowel movements, intercourse, and walking. On March 29, 2006, plaintiff underwent a lumbar MRI, which revealed an acute fracture of her coccyx and damage to the disks in her spine. An evaluating physician later told plaintiff that a coccygectomy was necessary to relieve her pain in her peroneal area and rectum. The coccygectomy dramatically relieved her pain, but made a normal bowel movement impossible without using laxatives.

In October 2006, plaintiff sought treatment for sexual dysfunction, specifically discomfort during intercourse and an inability to have an orgasm. On December 1, 2006, plaintiff filed her personal injury suit against defendants.[FN1]

FN1. Plaintiff's husband Noriel joined in the action and asserted a per quod claim. That claim was voluntarily dismissed before trial.

In February 2007, plaintiff became pregnant and on November 1, 2007, gave birth to her fifth child without complications. On February 6, 2008, plaintiff was evaluated by Dr. Victor Borden, an obstetrician/gynecologist retained by defendants. Plaintiff told Dr. Borden that she suffered from lower back, hip, and groin pain; decreased sensation and pain in her left hand; spasms in her back, neck, and lower spine; and significant problems with intercourse, including inability to achieve orgasm and vaginal numbness. After a physical examination and review of her medical records, Dr. Borden concluded that "[plaintiff's] complaints of pelvic pain, in my opinion, cannot be associated with her accident of February 2006. She had a delivery after that date and had she suffered significant pudendal nerve damage in any form, that would certainly have caused significant pain during the delivery process in 2007."

On February 18, 2009, plaintiff was evaluated by Dr. Steven Fiske, an internist and gastroenterologist. Dr. Fiske concluded in his report that plaintiff suffered from pelvic floor dysfunction caused by pudendal nerve damage. He noted that the most common cause of pudendal nerve damage is childbirth, though plaintiff's problems surfaced after the accident. He added that "one could draw a reasonable conclusion that the injury she sustained and the resultant coccygeal surgery were also responsible for her current complaints." Later, Dr. Fiske amended his report to state that the presence of pudendal nerve dysfunction most likely resulted from five vaginal deliveries rather than a specific incident of the coccygeal bone fracture.

***3** At trial, plaintiff and her experts contended that as a result of the accident, plaintiff suffered permanent loss of normal function of: (1) her pudendal nerve, (2) sexual and intestinal function, (3) the cervical spine and C–8 nerve root, (4) the lumbar spine, and (5) her left wrist. Considerable

expert medical testimony was introduced to describe the extent of plaintiff's injuries, as well as to establish that those injuries were caused by the February 9, 2006 accident.

The jury returned its verdict in favor of plaintiff, and this appeal ensued.

I.

Defendants argue that the trial court erred by prohibiting cross-examination related to plaintiff's pre-existing medical conditions. Defendants concede the court allowed cross-examination related to plaintiff's history of scoliosis, pelvic obliquity, and one short leg, but contend it erred in prohibiting cross-examination related to plaintiff's prior medical history of pelvic inflammatory disease, ovarian cysts, and laparoscopic procedures, and by later instructing the jury to disregard plaintiff's pre-accident medical history. Plaintiff responds that the trial court properly excluded evidence of plaintiff's prior conditions because defendants failed to present any expert testimony establishing that the pre-existing conditions had any role whatsoever in causing or exacerbating the injuries for which plaintiff sought compensation.

During the defense's cross-examination of plaintiff, who was the first witness called,[FN2] plaintiff's counsel objected on the theory that evidence of plaintiff's prior medical conditions occurring in her back, legs, and pelvic area should be barred under *N.J.R.E.* 403. Counsel argued that defendants' expert had never opined that any of those prior medical conditions contributed at all to plaintiff's present complaints and symptoms.

> FN2. The trial court had previously denied plaintiff's motion to bar reference to her pre-existing medical conditions. It did so upon a finding that both of defendants' medical experts, in their expert reports, "refer [red] to prior medical conditions ... and opine[d] that they may in fact be contributing factors to her condition."

N.J.R.E. 403 provides that the trial court may exclude otherwise relevant evidence "if its probative value is substantially outweighed by the risk of ... undue prejudice, confusion of issues, or misleading the jury[.]" *N.J.R.E.* 403(a). In addressing the admissibility of evidence of pre-existing injuries in a negligence case, the Supreme Court has stated:

> the test of admissibility is one of possibility rather than probability and that if each prior accident *could* have caused the injury, the testimony as to that accident is relevant and admissible provided, of course, there is competent proof from which it could be found that the injury was thus attributable to the earlier event.
>
> [*Paxton v. Misiuk,* 34 *N.J.* 453, 461 (1961).]

Thus, "[a] party seeking to present evidence of a prior injury or condition relating to an issue of medical causation must show that the evidence has some 'logical relationship to the issue in the case .' " *Allendorf v. Kaiserman Enters.,* 266 *N.J.Super.* 662, 672 (App.Div.1993) (quoting *Paxton, supra,* 34 *N.J.* at 460). "[T]his logical relationship must be established by appropriate expert medical opinion." *Ibid. See also Green v. N.J. Mfrs. Ins. Co.,* 160 *N.J.* 480, 494 (1999) (noting that while a plaintiff "may be cross-examined as to prior injuries[,]" there must be "some proof" of a connection between the evidence sought to be elicited and the relevant medical conditions).

***4** "The trial court is granted broad discretion in determining both the relevance of evidence to be presented and whether its probative value is substantially outweighed by its prejudicial nature." *Green, supra,* 160 *N.J.* at 492. Thus, "we will not reverse decisions pursuant to *N.J.R.E.* 403 'unless it can be shown that the trial court palpably abused its discretion, that is, that its finding was so wide of the mark that a manifest denial of justice resulted.' " *Tarr v. Bob Ciasulli's Mack Auto Mall, Inc.,* 390 *N.J.Super.* 557, 563 (App.Div.2007) (quoting *Green, supra,* 160 *N.J.* at 492), *aff'd on other grounds,* 194 *N.J.* 212 (2008). Even where a trial

court exercises mistaken discretion in refusing to admit evidence, "[a]ny error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result[.]" *R* .2:10–2.

We find the trial court's evidentiary ruling supported by adequate, substantial evidence in the record. Evidence of plaintiff's pre-existing medical conditions had little probative value, if any, because none of the experts reported those conditions contributed to the injuries for which plaintiff sought compensation. For example, when Dr. Fiske took the stand, he was questioned whether the records he received documenting plaintiff's pre-existing medical conditions were of any significance in reaching his opinion. He replied that they were not.

Evidence of a prior injury or condition is only relevant if there is competent proof from which it could be found that the present injury was thus attributable to the earlier event or condition. *Paxton, supra,* 34 *N.J.* at 461. Since the record does not show defendants' experts offered competent proof of plaintiff's pre-existing medical conditions causing or contributing to the injuries about which she complains in this action, we refuse to disturb the trial court's evidentiary ruling.

Moreover, if admitted, this evidence was overtly prejudicial because the pre-existing medical conditions affected plaintiff's back and pelvic region. This information could have caused the jury to erroneously infer, without the guidance of an expert testimony, that plaintiff's pre-existing conditions contributed to her injuries.

Defendants argue they should have been permitted to cross-examine plaintiff and her experts regarding the nature, extent and effect of her pre-existing medical conditions in order to attempt to limit their liability. Defendants rely on *Paxton* and *Dalton v. Gesser,* 72 *N.J.Super.* 100, 114–15 (App.Div.1962) for the proposition that when there is a question of whether a pre-existing injury or medical condition contributed to the injury for which a plaintiff seeks compensation, a defendant must be allowed to cross-examine the plaintiff and the plaintiff's experts about the pre-existing injuries.

We reject defendants' broad argument that cross-examination of a plaintiff's prior injuries is always proper. The Court in *Paxton* clearly acknowledged "evidence of prior injuries in the absence of a logical relationship to the issue in the case should be excluded." *Paxton, supra,* 34 *N.J.* at 460. Defendants never established, nor sought to establish, a logical relationship between the pre-existing conditions and plaintiff's injuries for which she sought compensation. At trial, defense counsel argued that plaintiff's pre-existing medical conditions were necessary to impeach plaintiff's experts:

> ***5** I'm trying to attack the credibility of [plaintiff's] experts who have ... not reviewed these records. I want to lay the foundation with this witness so that I can ask the experts that are going to testify in the coming days ["]did you know that [plaintiff] had these procedures, did you know that she was in the hospital two times and had pelvic inflammatory disease, did you know these things, doctor, before you rendered an opinion before this jury saying that it was caused by this accident["?] I'm not trying to apportion anything. I don't believe these injuries exist.

It is obviously the desire of counsel to merely place before the jury the existence of prior conditions, without showing them to have a bearing on the injuries plaintiff claimed were caused by the subject accident. Such an invitation to speculate was properly precluded.

II.

Defendants argue that the trial court improperly shifted the burden of proof to them to establish that plaintiff's injuries were caused in part by her pre-existing medical conditions. We recognize that it is a defendant's prerogative to raise the issue of aggravation, and that "every defendant, in response to

an allegation that his negligence has caused injury, possesses the right of demonstrating by competent evidence that that injury 'could' have been caused, wholly or partly, by an earlier accident or by a pre-existing condition." *Davidson v. Slater,* 189 *N.J.* 166, 187 (2007). However, in this case, defendants and their expert witnesses were unable, or unwilling, to present competent evidence showing plaintiff's pre-existing conditions were responsible for her pain and disabilities. The trial court asked defense counsel whether defendants' experts made such a connection in their expert reports, defense counsel initially responded that "Dr. Borden and Dr. Fiske in their reports reviewed all of [plaintiff's medical] records, [and] have told you that they are pre-existing conditions that they believe could cause some of these problems."

Upon further questioning, however, defense counsel admitted that the defense experts never specifically concluded that plaintiff's laparoscopy had any relationship to her present problems. Plaintiff's counsel thereafter argued that neither of plaintiff's medical experts had in fact concluded that *any* of plaintiff's pre-existing medical conditions had any effect on the injuries for which she sought compensation. To that end, plaintiff's counsel cited the deposition testimony of Dr. Borden, in which the doctor admitted that in his opinion, none of plaintiff's pre-February 2006 medical conditions had any effect on her permanent injuries. Where the plaintiff has not pled the aggravation of a pre-existing injury, the defendant bears the burden of proof, by "demonstrating" or "persuad[ing] the jury, that a pre-existing injury or condition was a contributing cause of injury." *Ibid.* Without a proffer from the defendants to that effect, we will not assume the existence of expert testimony capable of providing a rationale basis for apportioning fault to plaintiff's pre-existing conditions.

III.

***6** Defendants argue the trial court improperly instructed the jury that defendants bore the burden of proof to establish that the plaintiff's injuries were due to pre-existing medical conditions. In reviewing defendants' argument we recognize "[l]itigants are not entitled to perfect trials, only trials free of prejudicial error." *Maleki v. Atl. Gastroenterology Assocs.,* 407 *N.J.Super.* 123, 128 (App.Div.2009). Thus, as we examine whether mistakes in the jury charge require intervention, the relevant inquiry is "whether the charge, 'considered as a whole, adequately conveys the law and is unlikely to confuse or mislead the jury, even though part of the charge, standing alone, might be incorrect.' " *Ibid.* (quoting *Fischer v. Canario,* 143 *N.J.* 235, 254 (1996)).

We find the jury instruction to be without error, as the defendants did bear the burden to prove plaintiff's injuries resulted from pre-existing conditions which they were unable to prove through their experts' testimony. *Davidson, supra,* 189 *N .J.* at 187. Further, the instruction about defendants' burden was communicated to the jury within the context of a curative instruction meant to correct defense counsel's reference to inadmissible evidence; the jury was otherwise instructed that plaintiff generally bore the burden of proving causation.

IV.

Defendants next argue that the trial court erred by excluding the contents of the February 10, 2006 radiology report because it was admissible under the business record exception to the hearsay rule, *N.J.R.E.* 803(c)(6) and 808. According to defendants, a radiologist's interpretation of x-ray films "is a diagnosis of the type which normally possesses the 'circumstantial probability of trustworthiness' warranting entry into evidence under the business records exception." Plaintiff argues that the trial court properly applied applicable law in excluding the report because, under *Nowacki v. Community Medical Center,* 279 *N.J.Super.* 276, 282–83 (App.Div.), *certif. denied,* 141 *N.J.* 95 (1995), and *Brun v. Cardoso,* 390 *N.J.Super.* 409, 421–22 (2006), the trial court was entitled to exclude the medical opinion of a non-testifying radiologist contained in a hospital record where the interpretation of the medical record is complex, and it concerned

a central issue in the case.

A trial court's evidentiary rulings are accorded substantial deference and will not be disturbed on appeal absent a finding that the court abused its discretion in admitting or excluding evidence. *Benevenga v. Digregorio,* 325 *N.J.Super.* 27, 32 (App.Div.1999), *certif. denied,* 163 *N.J.* 79 (2000). As defendants note, *N.J.R.E.* 803(c)(6) carves out an exception to the hearsay bar of *N.J.R.E.* 802 for records of regularly conducted activities and provides:

> A statement contained in a writing or other record of acts, events, conditions, and, subject to *Rule* 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

*7 However, *N.J.R.E.* 808, entitled "Expert Opinion Included in a Hearsay Statement Admissible Under an Exception," provides:

> Expert opinion which is included in an admissible hearsay statement shall be excluded if the declarant has not been produced as a witness unless the trial judge finds that the circumstances involved in rendering the opinion, including the motive, duty, and interest of the declarant, whether litigation was contemplated by the declarant, the complexity of the subject matter, and the likelihood of accuracy of the opinion, tend to establish its trustworthiness.

Although physical findings contained within a business record may be admitted into evidence under the business records exception, admissibility can be circumscribed by "the degree of complexity of the procedures utilized in formulating the conclusions expressed in the [expert's] report." *State v. Matulewicz,* 101 *N.J.* 27, 30 (1985). Thus, "medical opinions in hospital records should not be admitted under the business records exception where the opponent will be deprived of an opportunity to cross-examine the declarant on a critical issue such as the basis for the diagnosis or cause of the condition in question." *Nowacki, supra,* 279 *N.J.Super.* at 282–83.

In *Brun,* we held that an MRI report containing a diagnosis may not be admitted into evidence as a business record without accompanying testimony from a physician qualified to read the films. *Supra,* 390 *N.J.Super.* at 422. The court based its decision in part on the fact that MRI diagnosis is a difficult, complex, and nuanced process. The court was persuaded by the fact that three physicians came to different conclusions reading the plaintiff's MRIs. *Ibid.* The court also recognized that "admitting [a radiologist's] MRI report without calling him as a witness would deprive defendant of the ability to cross-examine the author of the report on the central issue of the case, namely plaintiff's herniation, in contravention of *Nowacki.* In those circumstances, [the radiologist's] report was, on objection, inadmissible hearsay." *Ibid.*

Defendants argue that *Brun* and *Nowacki* are distinguishable, because both of those cases concerned the admission of medical diagnoses based on readings of MRIs, and not x-rays, which are simpler, citing *Webber v. McCormick,* 63 *N.J.Super.* 409, 416 (App.Div.1960), which states:

> There is no reason to treat an X-ray technician's report any differently than an intake report or temperature chart. The [hospital's] radiologist presumably makes his reports in the regular course of business, and they are attended with the same guarantee of impartiality and reliability as entries made by internes [sic] or nurses.

Defendants also cite *Falcone v. New Jersey Bell Telephone Co.,* 98 *N.J.Super.* 138, 148 (App.Div.1967), *certif. denied,* 51 *N.J.* 190 (1968), a case in which the court held that

> the reasoning which justifies the admission of laboratory and X-ray reports contained in a hospital record equally supports the admissibility of a medical diagnosis made by the treating physician. Such a diagnosis is no more than the opinion of a scientific expert (here a doctor of medicine) who has examined the patient, heard his statement and observed his symptoms.

***8** These cases indicate that a diagnostic report accompanying an x-ray should ordinarily be admitted as a business record.

However, defense counsel concedes that the February 10, 2006 radiologist's report was central to the case, because if it could be used to establish that plaintiff's coccyx was not fractured on the day after the accident, it would "break[ ] the chain of causation attributable to defendants." At the same time, it cannot be denied that, due to the poor quality of the February 10 x-ray, there was a genuine dispute as to whether it could support a diagnosis of "no fracture." Thus, a diagnosis derived from the February 10 x-ray, given its poor quality, would not possess the "circumstantial probability of trustworthiness" that justifies the business records exception, *see Mahoney v. Minsky,* 39 *N.J.* 208, 218 (1963). Therefore, the rationale of *Webber, supra,* 63 *N.J.Super.* at 416, which is based on the reliability of x-rays generally, does not apply to a diagnosis derived from the February 10 x-ray.

Most importantly, *N.J.R.E.* 808 explicitly conditions the admissibility of a diagnosis within a business record on the "likelihood of accuracy of the opinion[.]" Because the radiologist and emergency room doctor arrived at conflicting diagnoses after treating plaintiff on the same day and because plaintiff's expert witness questioned the readability of the February 10 x-ray, we do not find the radiologists diagnosis of "no fracture" exhibits a "likelihood of accuracy."

Once plaintiff's expert challenged the readability of the February 10 x-ray, the question of whether the film was capable of supporting a diagnosis of "no fracture" became a critical issue in this case. By seeking to admit the radiologist's interpretation through the business records exception, without testimony, defense counsel attempted to present opinion testimony, shielded from cross-examination. Defendants could have presented an expert to read the February 10 x-ray at trial and opine that the plaintiff had not suffered a fractured coccyx as of that date. Defendants were either unable to find an expert to provide that opinion or chose not to subject an expert to cross-examination on that issue.

Under such circumstances, we do not conclude that the trial court abused its discretion. Accordingly, we will not disturb the trial court's ruling. *Benevenga, supra,* 325 *N.J.Super.* at 32.

V.

Defendants contend that the trial court's award of prejudgment interest violated the plain language of the Tort Claims Act, *N.J.S .A.* 59:1–1 to 14–4, (the Act). During the September 11, 2009 motion hearing, plaintiff conceded that defendants are protected from paying prejudgment interest under the Act, but argued that defendant's insurance carrier, which would pay the balance of the verdict beyond Hudson's $350,000 self-insured limit retention, is not protected by the Act. Thus, according to plaintiff, the insurance carrier should be required to pay prejudgment interest on its "share" of the verdict. Without any further elaboration, the trial court adopted that reasoning in granting plaintiff's motion for prejudgment interest. In addition, the trial court later denied defendants' motion for reconsideration of the prejudgment interest ruling, finding that "the arguments that we're hearing today are essentially a rehash of what was heard the first time around."

***9** "Generally, the awarding of prejudgment interest is subject to the trial judge's broad discretion in accordance with principles of equity." *Musto v. Vidas,* 333 *N.J.Super.* 52, 74 (App.Div.), *certif. denied,* 165 *N.J.* 607 (2000). "We will defer to the trial judge's exercise of discretion involving prejudgment interest unless it represents a manifest

denial of justice." *Ibid.* However, the trial court's interpretation of law is not accorded any special deference. *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan,* 140 *N.J.* 366, 378 (1995). Here, the Act expressly provides that "[n]o interest shall accrue prior to the entry of judgment against a public entity or public employee." *N.J.S.A.* 59:9–2(a). Thus, "the Act ... precludes recovery against governmental entities for prejudgment interest[.]" *Ayers v. Jackson,* 106 *N.J.* 557, 575 (1987); *Maynard v. Mine Hill Twp.,* 244 *N.J.Super.* 298, 303 (App.Div .1990) (The Act "specifically prohibits prejudgment interest against government tortfeasors.").

Plaintiff asserts that the "policy [of the Act] is not served by granting a free pass to a private insurance company to the extent the insurance company pays part or all of a judgment against a public entity from its own private funds." Plaintiff also contends that *Muschette v. Gateway Insurance Company* supports its argument that the application of the Act depends upon the status of the entity who pays the judgment, and not the entity who is judged liable. 149 *N.J.Super.* 89, 95 (App.Div.1977), *aff'd,* 76 *N.J.* 560 (1978), *superseded by statute on other grounds, as noted in Capelli v. Twin City Fire Ins. Co.,* 209 *N.J.Super.* 552, 555 (App.Div.1986).

In *Muschette,* the named defendant was a private insurance company, which became insolvent. Hence, its affairs were being administered by the New Jersey Property–Liability Insurance Guaranty Association (the Association), pursuant to its statutory authorization. *Supra,* 149 *N.J.Super.* at 91 n. 1. Throughout the opinion, the panel referred to the named defendant insurance company as "defendant" and to the Association as "the Association ." *Ibid.* The panel ultimately found *N.J.S.A.* 59:9–2(a) inapplicable because the "defendant clearly [was] not a 'public entity;' rather, defendant [was] a 'private' nonprofit unincorporated legal entity." *Id.* at 95.

We do not regard *Muschette* as authority to ignore the unambiguous language of the Act, which precludes the accrual of prejudgment interest where the judgment is "against" a public entity or public employee. *N.J.S.A.* 59:9–2(a). The language is clear that the Act operates to bar the accrual of interest where the defendant is a public entity or employee; it makes no distinction as to the identity of the payor. *Ibid.* Accordingly, we reverse the trial court's award of prejudgment interest. *Manalapan, supra,* 140 *N.J.* at 378.

VI.

***10** Defendants also argue that the trial court committed reversible error by conditioning a stay upon the posting of a supersedeas bond, in violation of the plain language of *Rule* 2:9–6(b). We agree. Plaintiff contends that the trial court's ruling furthered the public interest by protecting public assets, urging that

> in light of the current economic climate[,] the entry of a stay in the absence of a bond would be grossly unfair to the plaintiff[;] the insurance company could go out of business[,] leaving the plaintiff to collect from Hudson County something that would be ... disadvantageous ... both to the plaintiff and to Hudson County.
>
> Such an argument is incredibly speculative.

Rule 2:9–6(b) provides:

> When an appeal is taken or certification is sought by the State or any political subdivision thereof or any of their respective officers or agencies or by the direction of any of the principal departments of the State and the operation or enforcement of a judgment or order is stayed, no bond, obligation or other security shall be required from the appellant.

Plaintiff does not deny that defendants fall within the class of appellants excepted by *Rule* 2:9–6(b). The rule is so plainly applicable that further discussion in a written opinion is not warranted. *R.* 2:11–3(e)(1)(E). We reverse the trial court's mistaken interpretation of an unambiguous court

rule that excepts public entities and public employees from posting a supersedeas bond.

Affirmed in part, reversed in part.

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