NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 17-2539

ALFRED DEGENNARO,
Appellant
v.
AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA;
GOVERNMENT EMPLOYEES INSURANCE COMPANY;
ASSURANT SPECIALTY PROPERTY

On Appeal from the United States District Court for the District of New Jersey (D.N.J. No. 3-16-cv-05274)
District Judge: Honorable Brian R. Martinotti,

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
April 10, 2018

Before: CHAGARES, VANASKIE and FISHER, Circuit Judges.
(Filed: June 8, 2018)

OPINION*

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*This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

FISHER, *Circuit Judge.*

Alfred DeGennaro, a member of the New Jersey bar proceeding pro se, appeals from the District Court's dismissal of his complaint alleging various statutory, contract, and tort claims against Defendants Government Employees Insurance Company ("GEICO"), Assurant Specialty Property, and American Bankers Insurance Company of Florida ("ABIC"). For the reasons that follow, we will affirm.

I.

In late 2013, DeGennaro contacted GEICO, his auto insurance carrier, seeking to obtain a $1 million umbrella liability policy. GEICO informed DeGennaro that he first needed to secure a renter's insurance policy for his home with a minimum personal liability coverage limit of $300,000 per occurrence. DeGennaro then sought and obtained such a renter's policy—issued by ABIC [1] —with $300,000 of personal liability coverage per occurrence, which allowed him to obtain the umbrella policy through GEICO.

DeGennaro later received a letter from GEICO about his umbrella policy, stating that he "may not

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[1] ABIC is a wholly-owned subsidiary of Interfinancial, Inc., which is a wholly owned subsidiary of defendant Assurant, Inc.

meet the required underlying liability limit of $300,000," and that he should review his policy to ensure he was "carrying the adequate limit" to avoid a "gap of coverage." [2] At the time, the declaration page accompanying DeGennaro's renter's policy with ABIC listed his personal liability coverage limit as $300,000 per occurrence. Less than a month later, however, DeGennaro received an amended declaration page from ABIC stating that his personal liability coverage limit had been reduced to $100,000 per occurrence. This was because DeGennaro was operating a business—his law practice —at his residence, which disqualified him from a $300,000 liability coverage limit under ABIC's then-existing underwriting guidelines. DeGennaro acknowledges receiving this amended declaration, which stated in bold lettering that it superseded the previous declaration page. To account for the reduction in coverage, DeGennaro's annual insurance premiums were correspondingly lowered from $24 to $8, and his credit card was refunded $16.

DeGennaro renewed his one-year renter's policy with ABIC on two occasions— each time the renewal declaration pages listed his personal liability coverage limit as only $100,000 per occurrence. On the second renewal, he noticed the potential issue and reached out to GEICO. He

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[2] Joint Appendix ("J.A.") 389, 39–40

learned that he had a $200,000 gap in coverage because his personal liability limit was $100,000 rather than $300,000. DeGennaro then reached out to ABIC and was notified that his policy had been reduced because he was operating a business on the premises. Because ABIC's underwriting policies had since changed, however, ABIC agreed to increase his liability limit $300,000 and charge him a new premium of $16.78 per year.

Not satisfied with this result, DeGennaro filed a consumer complaint with the New Jersey Department of Banking and Insurance ("NJDOBI") "to address the reduction of his comprehensive personal liability coverage from $300,000 to $100,000."[3] ABIC sent a letter to NJDOBI explaining that DeGennaro had initially been approved for a $300,000 policy because of a "system issue,"[4] but that his policy was reduced during the underwriting period because, under their guidelines at the time, he was ineligible for the $300,000 limit. The letter also noted that ABIC notified DeGennaro via email about the reduction in Coverage, that they refunded $16 to his credit card on file, and that if DeGennaro wished, they would "honor [a] request to increase the liability coverage to $300,000, back to the inception date of the policy," which would result in a corresponding increase in his premiums.[5] Because ABIC made

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[3] J.A. 47.
[4] J.A. 193.
[5] J.A. 194.

that offer, NJDOBI determined that the "matter has been favorably resolved,"[6] and it closed the matter.

Instead of paying the increased premium to have his renter's liability coverage increased retroactive to the inception date of the policy, DeGennaro cancelled his ABIC renter's insurance policy and his GEICO auto and umbrella policies. And although DeGennaro never made a claim under these policies while they were in effect, he filed a complaint in the District Court alleging various statutory, contract, and tort claims against Defendants, seeking $172.8 million in damages. DeGennaro's claims allege, *inter alia*, that the Defendants conspired to harm him by intentionally and deceitfully decreasing the limit on his policy, thereby causing him harm by forcing him to unknowingly carry additional risk due to the resulting gap in coverage. The Defendants each filed motions to dismiss the complaint under Rule 12(b)(6), which the District Court granted. DeGennaro appealed.

II.

The District Court had jurisdiction under 28 U.S.C. § 1332, and it dismissed DeGennaro's complaint without prejudice. Although such an order is generally "neither final nor appealable," it becomes so when the plaintiff "declares his

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[6] J.A. 149.

intention to stand on his complaint."[7] Because DeGennaro opts to stand on his complaint, we have appellate jurisdiction under 28 U.S.C. § 1291.

"[O]ur standard of review of a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) is plenary."[8] "We 'accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.'"[9] DeGennaro's claims alleging fraud, including his claims under New Jersey's Consumer Fraud Act (the "CFA"), N.J.S.A. § 56:8–1 et seq., are subject to the heightened pleading standard imposed by Federal Rule of Civil Procedure 9(b).[10] This requires a plaintiff to "state the circumstances of the alleged fraud with sufficient particularity to place the defendant on notice of the 'precise misconduct with which [it is] charged.'"[11]

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[7] *Borelli v. City of Reading*, 532 F.2d 950, 951–52 (3d Cir. 1976).

[8] *Bruni v. City of Pittsburgh*, 824 F.3d 353, 360 (3d Cir. 2016) (quoting Taliaferro v. Darby Twp. Zoning Bd., 458 F.3d 181, 188 (3d Cir. 2006)).

[9] *Byers v. Intuit, Inc.*, 600 F.3d 286, 291 (3d Cir. 2010) (*quoting Grammer v. John J. Kane Reg'l Centers-Glen Hazel*, 570 F.3d 520, 523 (3d Cir. 2009)).

[10] See, e.g., *Frederico v. Home Depot*, 507 F.3d 188, 202–03 (3d Cir. 2007) (applying Rule 9(b) standard to CFA claims).

[11] Id. at 200 (alteration in original) (quoting *Lum v. Bank of Am.*, 361 F.3d 217, 223–24 (3d Cir. 2004)).

III

DeGennaro alleges: (A) nine counts under the CFA; (B) a tortious interference with prospective economic advantage claim; (C) a common law fraud claim; (D) a breach of fiduciary duty claim; and (E) two breach of contract claims. We address these in turn.

A.

DeGennaro alleges nine counts under the CFA, which imposes liability on any person who uses: "any unconscionable commercial practice, deception, fraud, false omission of any material fact with intent that others rely upon such concealment, suppression or omission."[12] To state a claim under the CFA, a plaintiff needs to allege: "1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal relationship between the unlawful conduct and the ascertainable loss."[13] The District Court held that DeGennaro failed to sufficiently plead these elements. We concur. Even assuming any of Defendants' conduct was "unlawful,"[14] DeGennaro's claims still fail because

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[12] N.J.S.A. § 56:8-2

[13] *Bosland v. Warnock Dodge, Inc.*, 964 A.2d 741, 749 (N.J. 2009).

[14] DeGennaro fails to plead unlawful conduct because, inter alia, Defendants clearly put him on notice of the policy change through the initial revised declaration sheet, an email, accurate declaration sheets at renewal time, and even two notices indicating a possible coverage gap. Simply put, he fails

he fails to sufficiently plead an "ascertainable loss," which he frames as the loss associated with carrying additional risk.

The Supreme Court of New Jersey has stated that, in the CFA context, an ascertainable loss is "a definite, certain and measurable loss, rather than one that is merely theoretical."[15] An ascertainable loss "need not yet have been experienced as an out-of-pocket loss to the plaintiff," but it cannot be "hypothetical or illusory"-[t]he certainty implicit in the concept of ascertainable loss is that it is quantifiable or measurable."[16]

DeGennaro admits that his theory of loss—having to carry the "risk" associated with the gap in his coverage "is a damage of an incorporeal nature."[17] DeGennaro has not suffered any out-of-pocket costs, because he never made a claim under his policy, he never had to cover the gap in his coverage, and the $16 additional premium was returned to his account. Nonetheless, DeGennaro suggests that his "loss" is ascertainable under the

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to adequately plead any "affirmative act[], knowing omission[], [or] regulatory violation[]" as required under the CFA. *Cox v. Sears Roebuck & Co.*, 647 A.2d 454, 462 (N.J. 1994).

[15] *Bosland,* 964 A.2d at 749 (citing *Thiedemann v. Mercedes-Benz USA, LLC*, 872 A.2d 783, 793 (N.J. 2005)).

[16] Thiedemann, 872 A.2d at 792–93; see also Cox, 647 A.2d at 464 (finding an "ascertainable loss" where contractor incorrectly renovated plaintiff's kitchen, even though plaintiff had not yet paid contractor, because the damage could be "calculated within a reasonable degree of certainty").

[17] *DeGennaro Br. 5.*

"benefit-of-the-bargain" theory, which "allows recovery for the difference between the price paid and the value . . . had the representations been true."[18] Under this theory, however, DeGennaro must still allege that "the difference in value between the product promised and the one received can be reasonably quantified," and the "[f]ailure to quantify this difference in value results in the dismissal of a claim."[19]

Even accepting DeGennaro's argument that he expected a $300,000 renter's policy, but wound up with a "$200,000 nightmare,"[20] he fails to quantify the difference in value associated with carrying additional risk. For example, he suggests that he "unknowingly carr[ied] the risk," which "would cause conservatively at least $400,000 [of loss] to the reasonable consumer," but also that a "jury should determine a value" associated with this loss.[21] DeGennaro also makes public policy arguments and presents hypothetical scenarios suggesting that although the "exposure to perilous circumstances is gone," the exposure to risk had a "real value" to him.[22] These convoluted arguments come nowhere close to pleading an ascertainable

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[18] *Correa v. Maggiore*, 482 A.2d 192, 197 (N.J. Super. Ct. App. Div. 1984).

[19] *Smajlaj v. Campbell Soup Co.*, 782 F. Supp. 2d 84, 99, 101 (D.N.J. 2011).

[20] DeGennaro Br. 43.

[21] DeGennaro Br. 42.

[22] DeGennaro Br. 30

loss under Rule 9(b)'s stringent pleading standard.

Additionally, ascertainable loss is not adequately pled for another reason. Courts adjudicating CFA claims have dismissed complaints for lack of ascertainable loss where a "defendant . . . takes action to ensure that the plaintiff sustains no out-of-pocket loss or loss of value prior to litigation."[23] Here, ABIC offered to increase DeGennaro's coverage limit—prior to any litigation—retroactive to the inception date of the policy.[24]

Lastly, DeGennaro makes a new CFA argument on appeal. Before the District Court, DeGennaro had also alleged that Defendants were strictly liable under the CFA for violating New Jersey Administrative Code § 11:1-20.2, which governs renewal, cancellation, and non-renewal of insurance policies. The District Court correctly noted that this section was inapplicable because ABIC never cancelled nor failed to renew the renter's policy. For the first time on appeal, DeGennaro alleges that the Defendants violated a different section, N.J.A.C. § 11:1-22.2(a)(1), which

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[23] See *D'Agostino v. Maldonado*, 78 A.3d 527, 543 (N.J. 2013).

[24] ABIC's willingness to increase the coverage limit retroactively is relevant because the policy was an "occurrence-based" policy. Under such a policy, a policyholder can make a claim after the policy period ends, provided the "occurrence" occurred during the policy period.

prohibits a mid-term decrease in coverage without approval from the Commissioner. He acknowledges that he never cited this statute in his complaint, but he "feels [his] allegations . . . were sufficient." DeGennaro Br. 2. DeGennaro is incorrect. *Spireas v. Comm'r of Internal Revenue*, 886 F.3d 315, 321 (3d Cir. 2018) ("Whether an argument remains fair game on appeal is determined by the 'degree of particularity' with which it was raised in the trial court, and parties must do so with 'exacting specificity,'" including by relying on "the same legal rule or standard.") (quoting *United States v. Joseph*, 730 F.3d 336, 339–42 (3d Cir. 2018)).[25] Accordingly, for all the reasons discussed, we affirm the dismissal of the CFA counts.

B.

Count Eight alleges tortious interference with prospective advantage based on DeGennaro's allegations that Defendants' actions resulted in him "not exercis[ing] his right to purchase suitable insurance policies . . . from other companies."[26] He

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[25] Aside from the waiver, "[n]othing" in the statute "shall be deemed to create any right or cause of action on behalf of any insured . . . ." N.J.A.C. § 11:1-22.5(b)(2)). And even if the claims were somehow cognizable, it is doubtful there would be any statutory violation because DeGennaro assented to the coverage reduction by accepting the updated policy and renewing it (twice). See *NN&R, Inc. v. One Beacon Ins. Grp.*, No. CIV. 03-5011 (JBS), 2006 WL 1765077, at *6 (D.N.J. June 26, 2006) (no violation where insured was on notice of policy change and acceded to it).

[26] J.A. 89–90.

argues that his claim is supported by the fact that he was later able to purchase a suitable policy from another insurance company after cancelling his policies with ABIC and GEICO. His claim fails for several reasons.

To state a claim for tortious interference with prospective advantage under New Jersey law, DeGennaro must allege:

> (1)[his] reasonable expectation of economic benefit or advantage, (2) the defendant's knowledge of that expectancy, (3) the defendants wrongful, intentional interference with that expectancy, (4) in the absence of interference, the reasonable probability that the plaintiff would have received the economic benefit, and (5) damages resulting from the defendant's interference [27]

A complaint must not only "demonstrate that a

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[27] *Fineman v. Armstrong World Indus., Inc.*, 980 F.2d 171, 186 (3d Cir. 1992) (citing *Printing Mart–Morristown v. Sharp Elecs. Corp.*, 563 A.2d 31, 37 (N.J. 1989)). This Court has noted other formulations of how to prevail on such a claim. See *Avaya Inc., RP v. Telecom Labs, Inc.*, 838 F.3d 354, 382 (3d Cir. 2016) (parsing out a three-part test). DeGennaro's claim fails regardless of which formulation we apply.

plaintiff was in 'pursuit' of business," but must also "allege facts claiming that the interference was done intentionally and with malice.'"[28] Here, DeGennaro does not allege what economic benefit he lost as a result of Defendants' alleged actions, nor any facts suggesting that any alleged actions were done intentionally or with malice. Moreover, as discussed supra, he has failed to properly allege any damages whatsoever —let alone damages resulting from the alleged "interference." The fact that DeGennaro later purchased insurance from another company that met his expectations (which ABIC also agreed to provide) does not rescue his claim.

C.

Count Nine alleges common law fraud against Defendants for the "fraudulent" sale of insurance, and for "surreptitiously, purposely, knowingly, deceitfully, and maliciously creating a $200,000 gap in liability coverage."[29] He suggests, on appeal, that he relied on the initial declaration page noting a $300,000 limit, which caused him to end his search for insurance coverage. "To state a claim for fraud under New Jersey law, [DeGennaro] must allege (1) a material misrepresentation of fact; (2) knowledge or belief by the defendant of its falsity; (3) intention that the other person rely on it; (4) reasonable reliance thereon by the other person;

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[28] *Printing Mart–Morristown*, 563 A.2d at 37.

[29] J.A. 91–92

and (5) resulting damage."[30] DeGennaro's complaint contains no specific facts supporting his bare allegations of fraud. DeGennaro also admits that he received a revised declaration page indicating that his limit had been reduced. Not only was he notified when the policy was changed, but this information was sent to him repeatedly when the policy was up for renewal. GEICO also repeatedly informed him of the potential gap in his coverage. DeGennaro pleads no facts suggesting that Defendants knew any statements were false, and as discussed supra, he suffered no damage or loss. This fraud claim—which is subject to Rule 9(b)'s stringent pleading standard—would not survive a Motion to Dismiss even under the normal pleading standard.

D.

Count Ten alleges "intentional" breach of contract. Before the District Court, however, DeGennaro conceded that no separate action exists under New Jersey law for "intentional" breach of contract. Accordingly, the District Court dismissed the claim. On appeal, DeGennaro suggests that this count should actually be styled "Breach of Good Faith in Contract,"and this Court should "clerically correct[]"his mistake.[31] We decline to do so.[32]

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[30] *Frederico*, 507 F.3rd at 200

[31] DeGennaro Br. 39.

[32] DeGennaro never sought to amend his complaint to assert this claim. Moreover, assuming this claim is for breach

Count Twelve alleges breach of contract on the basis that the Defendants created a gap in DeGennaro's liability coverage, which rendered the policies "deficient and unsuitable" and caused him to "unknowingly carry" the risk associated with the coverage gap.[33] "To prevail on a breach of contract claim under New Jersey law, a plaintiff must establish three elements: (1) the existence of a valid contract between the parties; (2) failure of the defendant to perform its obligations under the contract; and (3) a causal relationship between the breach and the plaintiff's alleged damages."[34] Like DeGennaro's other claims, this one fails because of his inability to plead damages. Moreover, the typical remedy in a breach of contract action is compensatory damages, which "put the innocent party into the position he or she would have achieved had the contract been completed."[35] Thus, even assuming ABIC breached the insurance contract, it offered to increase DeGennaro's coverage limit retroactive to the inception of the contract—thereby putting him in "as good a

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of the implied covenant of good faith and fair dealing, he has failed to plead sufficient facts to support such a claim.

[33] J.A. 95–96

[34] *Sheet Metal Workers Int'l Ass'n Local Union No. 27, AFL-CIO v. E.P. Donnelly, Inc.*, 737 F.3d 879, 900 (3d Cir. 2013) (citing *Coyle v. Englander's*, 488 A.2d 1083, 1088 (N.J. Super. Ct. App. Div. 1985)).

[35] *Totaro, Duffy, Cannova & Co., L.L.C. v. Lane, Middleton & Co., L.L.C.*, 921 A.2d 1100, 1107 (N.J. 2007).

position as . . . if performance had been rendered."[36]

E.

Count Eleven alleges that Defendants owed DeGennaro a "fiduciary duty because they were insuring him," which they breached by "surreptitiously, purposely knowingly, deceitfully, and maliciously creating a $200,000 gap in liability coverage."[37] An insurer only owes a fiduciary duty to an insured under "certain circumstances," such as when it is settling claims on behalf of the insured.[38] None of these circumstances are present here. Indeed, the complaint alleges the fiduciary duty is based on the fact that Defendants were insuring DeGennaro—and nothing more. No claim was ever made on the insurance policy, and thus Defendants never settled any claims on his behalf.

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[36] Id. at 1108 (quoting *Donovan v. Bachstadt*, 453 A.2d 160, 165 (N.J. 1982). DeGennaro's brief largely focuses on irrelevant theories of third-party contractual liability, presumably to suggest that GEICO can be held liable as a third-party beneficiary of the renter's policy that DeGennaro purchased from ABIC. GEICO, however, is not a third-party beneficiary of that policy, but even if it was, it cannot be held liable because there was no breach of contract for the reasons discussed in this section.

[37] J.A. 94–95.

[38] *Polito v. Cont'l Cas. Co.*, 689 F.2d 457, 462 (3d Cir. 1982) (abrogated on other grounds by *Carfagno v. Aetna Cas. & Sur. Co.*, 770 F. Supp. 245 (D.N.J. 1991)).

DeGennaro does not even address these shortcomings on appeal, merely declaring that by dismissing this count we would be taking an "extremely technical view of a fiduciary relationship."[39] But it is no mere technicality to observe that DeGennaro has failed to plead anything to suggest a fiduciary duty exists, let alone that Defendants breached such a duty.

IV.

For the foregoing reasons, we will affirm.

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[39] DeGennaro Br. 41

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ALFRED DEGENNARO, Plaintiff,	:	
v.	:	Civil Action No. 3:16-cv-5274-BRM-DEA
AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA; GOVERNMENT EMPLOYEES INSURANCE COMPANY; and ASSURANT SPECIALTY PROPERTY, Defendants,	:	OPINION

MARTINOTTI, DISTRICT JUDGE

Before this Court are Defendants American Bankers Insurance Company of Florida and Assurant Specialty Property's (collectively, "ABIC")

Motion to Dismiss (ECF No. 20) [1] and Government Employees Insurance Company's ("GEICO") (together with ABIC, "Defendants") Motion to Dismiss (ECF No. 21), both pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff Alfred DeGennaro ("Plaintiff") opposes the motions. (ECF Nos. 23-24.) Pursuant to Federal Rule of Civil Procedure 78(b), the Court did not hear oral argument. For the reasons set forth below, ABIC and GEICO's Motions to Dismiss are **GRANTED WITHOUT PREJUDICE**.

I. BACKGROUND

For the purposes of these motions to dismiss, the Court accepts the factual allegations in the Complaint as true and draws all inferences in the light most favorable to Plaintiff. See *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008). Further, the Court also considers any "document integral to or explicitly relied upon in the complaint." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (emphasis in original).

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[1] American Bankers Insurance Company of Florida is an indirect wholly-owned subsidiary of Assurant, Inc. (ECF No. 20-2 at 1 n.1.) Assurant Specialty Property is a brand name and service mark of Assurant, Inc. and not a legal entity. (*Id.*) Plaintiff acknowledges it named the wrong defendant and will amend the Complaint to add Assurant, Inc. (ECF No. 23 at 21.) Nonetheless, at this time, the Court will refer to both entities as ABIC.

Sometime in 2013, Plaintiff contacted GEICO, his automobile insurance carrier at the time, to discuss obtaining a comprehensive personal liability coverage policy and a one million dollar umbrella policy. (Compl. (ECF No. 1) ¶¶ 3, 5). "Plaintiff was told that in order to acquire the comprehensive personal liability coverage with an umbrella policy he would have to acquire a renter's insurance policy with $10,000 contents and a minimum of $300,000 comprehensive personal liability coverage." (Id. ¶ 4.) He was further informed that "if he purchased the aforesaid renter's policy he would then qualify for a [one] million dollar umbrella coverage policy" and that "it would cover his auto insurance as well as his renters insurance." (Id. ¶¶ 5-6).

In January 2014, Plaintiff secured a renter's policy issued by ABIC, policy number 2659730 (the "Renter's Policy"), with an initial policy period from January 31, 2014, to January 31, 2015. (Id. ¶ 7.) As required by GEICO, the policy consisted of $300,000 personal liability coverage per occurrence. (Id. ¶ 13.)

On January 21, 2014, Plaintiff received a letter from GEICO regarding his umbrella policy and thanking him for choosing GEICO. (Id. ¶ 8.) Specifically, the letter stated:

> After careful review of your policy we have determined that you "may not" meet the required underlying liability limit of $300,000 for each

> property you own, rent or rent too [sic] own. If you are not carrying the adequate limit, a gap of coverage could occur. In the case of a loss you would be personally responsible for the difference ....."Failure to meet may result in the cancellation of your umbrella policy[.]"

(*Id.* and ECF No. 21-6 at 1.) The letter further indicated Plaintiff should "review his basic homeowner's policy for compliance and that failure to meet the required underlying limits may result in the cancellation of his umbrella policy." (ECF No. 1 ¶ 9.) It also requested that Plaintiff "send a copy of [his] declaration page showing the required minimum limits." (*Id.*) On January 30, 2014, Plaintiff allegedly received an email from propertyquotes@geico.com "thanking him for choosing ABIC for his rental needs and explaining that his coverage would become effective on January 31, 2014 and included $10,000 personal property and $300,000 personal liability." (*Id.* ¶ 11.) On January 31, 2014, Plaintiff received an email from rentersmail@assurant.com "stating they were glad he chose Assurant and transmitting the full copy of his [R]enter's [P]olicy along with the [d]eclaration [p]age." (*Id.* ¶ 12.) The declaration page accompanying the Renter's Policy stated:

COVERAGE	AMOUNT OF COVERAGE	PREMIUM
PERSONAL PROPERTY	$10,000 LESS DEDUCTIBLE OF $500	$90.00
PERSONAL LIABILITY	$300,000 PER OCCURRENCE	$24.00
MEDICAL PAYMENTS	$500 PER PERSON	INCL
LOSS OF USE	$2,000 PER OCCURRENCE	INCL

(Ex. B to Certif. of Joseph T. Kelleher (ECF No. 20-3) at 10; see ECF No. 1 ¶ 13.) On February 3, 2014, Plaintiff allegedly sent GEICO a fax, referencing the January 21, 2014 letter, transmitting his Renter's Policy, and a fax confirmation was received. (ECF No. 1 ¶¶ 19-20.) Plaintiff alleges GEICO never responded to Plaintiff's fax. (Id. ¶ 26.)

On February 26, 2014, ABIC alleges it sent Plaintiff an amended declaration page reflecting that his personal liability was reduced to $100,000 per occurrence. (ABIC's Br. (ECF No. 20-2) at 6). Plaintiff alleges he never received the letter. (ECF No. 1 ¶ 54.) However, Plaintiff admits he received another email from rentersmail@assurant.com "stating they were glad he chose Assurant and claiming that they were transmitting the renter's

insurance policy." (Id. ¶ 21.) No policy was attached to the email, but a revised declaration page was attached, indicating Plaintiff's personal liability was now $100,000 per occurrence. (Id.) Specifically, the declaration page demonstrated:

COVERAGE	AMOUNT OF COVERAGE	PREMIUM
PERSONAL PROPERTY	$10,000 LESS DEDUCTIBLE OF $500	$90.00
PERSONAL LIABILITY	$300,000 PER OCCURRENCE	$24.00
MEDICAL PAYMENTS	$500 PER PERSON	INCL
LOSS OF USE	$2,000 PER OCCURRENCE	INCL

(Ex. C to ECF No. 20-3.) The declaration page also reflected a change in premium from $116 to $100, and provided Plaintiff a $16 credit. (ECF No. 1 ¶ 21.).

At the end of the policy term, sometime in November 2014, Plaintiff renewed the Renter's Policy for the period of January 31, 2015, to January 31, 2016. (Id. ¶ 30.) Like the amended declaration page sent to Plaintiff in February 2014, the renewal declaration page reflected a personal

liability coverage of $100,000 per occurrence. (Id.) On January 12, 2015, Plaintiff also received a confirmation email from Assurant listing "personal liability at $100,000 without the 'per occurrence' language." (Id. ¶ 32.)

Plaintiff renewed his Renter's Policy for a third policy term in December of 2015, for the period of January 31, 2016, to January 31, 2017. (Id. ¶ 34.) The renewal declaration page reflected a personal liability coverage of $100,000 per occurrence. (Id.) Plaintiff also received a confirmation email from Assurant listing "personal liability at $100,000 without the 'per occurrence' language." (Id.)

This time, Plaintiff alleges he reviewed the paperwork and noticed "incongruities." (Id. ¶ 35.) Plaintiff contacted one of the Defendants to question the coverage and "was told that he had a $200,000 gap in coverage for which he would be personally liable."[2] (Id. ¶ 36.) On January 19, 2016, ABIC allegedly sent Plaintiff an email stating:

> Sorry it took so long for me to get back with you. The $300,000.00 liability was added, back when you purchased the policy. After the underwriters went over the

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[2] Plaintiff does not articulate which defendant he contacted in the record is unclear

> questionnaire and a business was ran [sic] on the premises the liability was canceled. At that time having a business on the premises where you live would have disqualified you from the liability of $300,000.00. That has since changed. You were refunded 16.00 back on 2/24/14 and a new declaration page was sent. When we last spoke I've increase [sic] the liability to $300,000.00 and your new premium is 16.78.
>
> I apologize for any inconvenience.

(Id. ¶ 37.)

On February 10, 2016, Plaintiff filed a complaint with the New Jersey Department of Banking and Insurance ("NJDOBI") "to address the reduction of his comprehensive personal liability coverage [in his Renter's Policy] from $300,000 to $100,000." (*Id.* ¶ 45.) NJDOBI investigated the matter. (*Id.*) As part of the investigation, ABIC submitted a letter to NJDOBI on March 8, 2016 responding to Plaintiff's complaint. (*Id.* ¶ 45-47.) The letter stated, in part:

> [Plaintiff] purchased his Renters Insurance policy RIN 2659730 through our [GEICO]

affiliate on January 30, 2014 with an effective date of January 31, 2014. Once the policy is issued, a policy package is sent to the insured.

. . . .

During the underwriting period, we determined that due to a system issue [Plaintiff's] policy was approved with $300,000 comprehensive personal liability. On February 24, 2014, based on our underwriting guidelines at the time the policy was purchased, [Plaintiff] did not qualify for the $300,000 limit because he conducted business at the insured location. A letter was emailed to [Plaintiff] at adlaw76@gmail.com informing him that his comprehensive personal liability coverage would be reduced from $300,000 to $100,00 and an update declaration page would be issued under separate cover . . . .

. . . .

On January 13, 2016, [Plaintiff] contacted out [sic] customer service department and inquired about the limit of his comprehensive personal liability coverage on his Renters. He was informed at that

> time that his limit was $100,000. [Plaintiff] was asked the qualifying questions in order to increase his comprehensive personal liability coverage to $300,000. The request was approved, the increase was processed and confirmation was sent to [Plaintiff.]
>
> At this time, we will honor [Plaintiff's] request to increase the liability coverage to $300,000, back to the inception date of the policy. This change will cause a change in premium from the inception of $16 for the first term and a prorated amount for the second term if he wishes to have the change processed.

(Ex. D to ECF No. 20-3.) After completing its investigation, the NJDOBI found:

> This is written in response to your request for assistance with your insurance concern.
>
> The company has provided this Department with the requested information regarding the matter you wished addressed. In response to your

> inquiry, GEICO[3] Insurance records indicate you purchased a Renters Insurance policy RIN 2659730 on January 30, 2014 with an effective date of January 31, 2014. You were mailed a policy package that includes a cover letter that state that it is for new renter's insurance protection, underwritten by [ABIC]. During the underwriting period, records show GEICO determined that due to a system error your policy was approved with insurance underwriting guidelines at the time your policy was purchased, you did not qualify for the $300,000 limit because you conducted business at the insured location. A letter was emailed to you at adlaw76@gmail.com informing you that your comprehensive personal liability coverage would be reduced from $300,000 to $100,000 and an updated declaration page would be issued under a separate cover. GEICO will be put on notice for this error. At this

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[3] Throughout the letter, NJDBOI mistakenly refers to GEICO instead of ABIC as the party who issued the Renter's Policy.

> time, due to the error made GEICO will honor your request to increase the liability coverage to $300,000, back to the inception date of the policy. This change will cause a change in premium from the inception of $16 for the first term and a prorated amount for the second term if you wish to have the change processed. After considering all the information available to us, it appears that the matter has been favorably resolved.
>
> In view of the information provided, unless advised to the contrary, we will consider the matter resolved and close our file. Thank you for contacting us.

(Ex. A to ECF No. 20-3 and ECF No. 1 at 64.) Plaintiff admits "Defendants corrected the gap in coverage." (ECF No. 1 ¶ 80.)

Instead of paying the additional premium to increase the per occurrence personal liability limit of the Rental's Policy, Plaintiff cancelled both his Renter's Policy and umbrella policy. (*Id.*) Notably, Plaintiff never made a claim under the Renter's Policy or umbrella policy. (*Id.* ¶¶ 152-53.)

Nonetheless, on August 30, 2016, Plaintiff filed a Complaint asserting fourteen counts: (1) a New Jersey Consumer Fraud Act ("CFA") violation against ABIC regarding the "changing terms" of the

Renter's Policy (Count One); (2) a CFA strict liability claim against GEICO regarding the "changing terms" of the Renter's Policy (Count Two); (3) a CFA strict liability claim against GEICO regarding the "changing terms" of the Renter's Policy (Count Three); (4) a CFA violation against ABIC regarding the "selling" of the Renter's Policy (Count Four); (5) a deceitful and unconscionable CFA violation against GEICO regarding the "selling" of the Renter's Policy (Count Five); (6) a CFA violation against GEICO regarding the "selling" of the Renter's Policy (Count Six); (7) a CFA violation against Defendants regarding the "selling" of the GEICO umbrella and automobile insurance policies (Count Seven); (8) a tortious interference with prospective economic advantage claim against Defendants (Count Eight); (9) a common law fraud claim against Defendants (Count Nine); (10) an intentional breach of contract claim against Defendants (Count Ten); (11) a breach of a fiduciary duty claim against Defendants (Count Eleven); (12) a breach of contract claim against Defendants (Count Twelve); (13) a CFA strict liability claim against Defendants regarding the "changing terms" of all insurance policies (Count Thirteen); and (14) a CFA strict liability claim against Defendants regarding "changing terms" of "issued policies" (Count Fourteen). (See id. ¶¶ 82-204.) Plaintiff seeks $172,800,000 in damages. (Id. at 41.)

On November 10, 2016, in lieu of filing an answer, Defendants filed separate motions to

dismiss. (ECF Nos. 20-21.) Plaintiff opposes the motions. (ECF Nos. 23-24.)[4]

II. LEGAL STANDARD

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a district court is "required to accept as true all factual allegations in the complaint and draw all inferences in the facts alleged in the light most favorable to the [plaintiff]." *Phillips*, 515 F.3d at 228. "[A] complaint attacked by a . . . motion to dismiss does not need detailed factual allegations." *Bell Atl. v. Twombly*, 550 U.S. 544, 555 (2007). However, the Plaintiff's "obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan*, 478 U.S. at 286. Instead, assuming the factual allegations in the complaint are true, those "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on

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[4] Plaintiff's briefs in opposition are nearly identical.

its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for misconduct alleged." Id. This "plausibility standard" requires the complaint allege "more than a sheer possibility that a defendant has acted unlawfully," but it "is not akin to a 'probability requirement.'" Id. (citing *Twombly*, 550 U.S. at 556). "Detailed factual allegations" are not required, but "more than 'an unadorned, the defendant-harmed-me accusation" must be pled; it must include "factual enhancements" and not just conclusory statements or a recitation of the elements of a cause of action. Id. (citing *Twombly*, 550 U.S. at 555, 557).

"Determining whether a complaint states a plausible claim for relief [is] . . . a context specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" Id. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

While as a general rule, a court many not consider anything beyond the four corners of the complaint on a motion to dismiss pursuant to 12(b)(6), the Third Circuit has held "a court may consider certain narrowly defined types of material without converting the motion to dismiss [to one for

summary judgment pursuant under Rule 56]." *In re Rockefeller Ctr. Props. Sec. Litig.*, 184 F.3d 280, 287 (3d Cir.1999). Specifically, courts may consider any "'document integral to or explicitly relied upon in the complaint . . . .'" In re *Burlington Coat Factory Sec. Litig.*, 114 F.3d at 1426 (emphasis in original).

Additionally, fraud based claims are subject to a heightened pleading standard, requiring a plaintiff to "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). The level of particularity required is sufficient details to put the defendant on notice of the "precise misconduct with which [it is] charged." *Frederico v. Home Depot*, 507 F.3d 188, 200 (3d Cir. 2007) (citation omitted). At a minimum, Rule 9(b) requires a plaintiff to allege the "essential factual background that would accompany the first paragraph of any newspaper story—that is, the 'who, what, when, where and how' of the events at issue." *In re Suprema Specialties, Inc. Sec. Litig.*, 438 F.3d 256, 276-77 (3d Cir. 2006) (citation omitted). The heightened pleading standard set forth in Rule 9(b) applies to Plaintiff's CFA and common law fraud claims. *Dewey v. Volkswagen AG,* 558 F. Supp. 2d 505, 524 (D.N.J. 2008) (applying Rule 9(b) to CFA and common law fraud claims).

III. DECISION

A. CFA (Counts One, Two, Three, Four, Five, Six, Seven, Thirteen, and Fourteen)

Nine of the fourteen counts in Plaintiff's Complaint are claims against Defendants for violations of the CFA. Counts One and Four are CFA violations against ABIC; Counts Two, Three, Five, and Six are CFA violations against GEICO, and Counts Seven, Thirteen, and Fourteen are CFA violations against all Defendants. (*See* ECF No. 1 ¶¶ 82-204.) Defendants argue none of these counts state a claim against Defendants under the CFA. (ECF No. 20-2 at 15 and GEICO's Br. (ECF No. 21-1) at 19.) Specifically, ABIC argues Plaintiff "fails to plead any facts demonstrating that any of Defendants engaged in any affirmative act or intentional omission that constitutes an unconscionable or deceptive practice or that they violated any regulation enacted under the CFA." (ECF No. 20-2 at 16.) It further argues Plaintiff did not ascertain a loss. (*Id.* at 20-23.) GEICO argues the Complaint fails to allege any "unlawful practice" performed by GEICO. (ECF No. 211 at 20.) GEICO further argues Plaintiff did not ascertain a loss as a result of an unlawful practice. (*Id.* at 29.) Plaintiff argues he has sufficiently pled CFA causes of action. Specifically, he argues he sustained an ascertainable loss because he was exposed to "peril." (ECF No. 23 at 4-17 and ECF No. 24 at 4-17.)

The CFA states, in pertinent part:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice; . . . .

N.J.S.A. § 56:8-2. Courts have interpreted this section to require the following three elements to state a cause of action under the CFA: "1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal relationship between the unlawful conduct and the ascertainable loss." *Bosland v. Warnock Dodge, Inc.*, 197 N.J. 543, 557 (2009) (citing *Int'l Union of Operating Eng'rs Local No. 68 Welfare Fund v. Merck & Co., Inc.*, 192 N.J. 372, 389 (2007)).

An "unlawful practice" is defined as:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby . .

N.J.S.A. 56:8-2. "The [CFA] creates three categories of unlawful practices: affirmative acts, knowing omissions, and violations of state regulations." *Maniscalco v. Brother Int'l Corp.* (USA), 627 F. Supp. 2d 494, 499 (D.N.J. 2009) (quoting *Vukovich v. Haifa*, No. 03-737, 2007 WL 655597, *9 (D.N.J. Feb 27, 2007) (citing Cox v. Sears Roebuck & Co., 138 N.J. 2, 17 (1994))). Affirmative acts require no showing of intent on behalf of the defendant. See *Cox*, 138 N.J. at 17; *Fenwick v. Kay Am. Jeep, Inc.*, 72 N.J. 372, 378 (1977). "Thus, a defendant who makes an affirmative misrepresentation is liable even in the absence of knowledge of the falsity of the misrepresentation, negligence or the intent to

deceive." *Vukovich*, 2007 WL 655597, at *9 (citation omitted). "In contrast, when the alleged consumer fraud consists of an omission, a plaintiff must show that the defendant acted with knowledge, thereby making intent an essential element of the fraud." Id.

"The third category of unlawful acts consists of violations of specific regulations promulgated under the [CFA]." *Cox*, 138 N.J. at 18-19. "In those instances, intent is not an element of the unlawful practice, and the regulations impose strict liability for such violations." Id. (citation omitted). Unlawful acts expressly regulated by other statutes, regulations, or rules not promulgated under the CFA can give rise to a CFA claim. See *Henderson v. Hertz Corp.*, No. L-6937-03, 2005 WL 4127090, at *5 (N.J. Super. Ct. App. Div. June 22, 2006); *Lemelledo v. Beneficial Mgmt. Corp. of Am.*, 150 N.J. 255, 266-73 (1997). However, the CFA does not create strict liability for violations of other statutes, regulations, or rules not promulgated under the CFA. See *Henderson*, 2005 WL 4127090, at *5.

An "ascertainable loss" is one that is "quantifiable or measurable." *Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234, 248. (2005). A "plaintiff must suffer a definite, certain and measurable loss, rather than one that is merely theoretical." *Bosland*, 197 N.J. at 558. However, New Jersey courts have found that "if the defendant or a non-party takes action to ensure that plaintiff sustains no out-of-pocket loss or loss

of value prior to litigation, then plaintiff's CFA claim may fail." *D'Agostino v. Maldonado*, 216 N.J. 168, 194 (2013); see *Thiedemann*, 183 N.J. at 251-52 (finding no ascertainable loss when defendant repaired defect in accordance with terms of warranty); *Meshinsky v. Nichols Yach Sales, Inc.*, 110 N.J. 464, 468, 475 (1988) (finding no ascertainable loss because defendant repaid bank loan). In *Thiedemann*, the court dismissed CFA claims against the manufacturer of an automobile, who sold automobiles with defective fuel gauges, for lack of an ascertainable loss. *Thiedemann*, 183 N.J. at 251. When the gauge defect was discovered, the manufacturer repaired the issues at no cost to the consumer, pursuant to the warranty of sale. Id. at 241-42. While the plaintiffs experienced difficulties with stalled engines and depleted gas tanks before the repairs, and were concerned about potential negative perceptions about their vehicles on future resale, they presented no out-of-pocket expenses or other "objectively verifiable damages" arising out of the circumstances. Id. at 242.

Courts support alleged damages based on an out-of-pocket theory or a benefit of the bargain theory. See *Smajlaj v. Campbell Soup Co.*, 782 F. Supp. 2d 84, 99-103 (D.N.J.2011); *Thiedemann*, 183 N.J. at 248. "An out-of-pocket-loss theory will suffice only if the product received was essentially worthless." *Mladenov v. Wegmans Food Mkts., Inc.*, 124 F. Supp. 3d 360, 374 (D.N.J. 2015). "A benefit-of-the-bargain theory requires that the consumer be misled into buying a product that is ultimately

worth less than the product that was promised." Id. (citation omitted).

Additionally, plaintiffs must set forth allegations sufficient to show those losses are causally connected to defendant's alleged conduct. *Bosland*, 197 N.J. at 557. It is not sufficient to make conclusory or broad-brush allegations regarding defendant's conduct; plaintiff must specifically plead those facts. *Torres-Hernandez*, No. 3:08-CV-1057-FLW, 2008 WL 5381227, at *7 (D.N.J. Dec. 17, 2008). This requires, for example, pleading when and to whom the alleged fraudulent statements were made. See *Dewey*, 558 F. Supp. 2d at 527.

The Court finds Plaintiff has failed to plead any facts demonstrating Defendants engaged in an unlawful conduct in violation of the CFA. Plaintiff's Complaint alleges nine counts of CFA violations against Defendants. All counts relate to the same fact pattern, the "selling" and "changing terms" of the Renter's Policy, but fall in all three categories of unlawful practices. (See ECF No. 1 ¶¶ 82-204.) He alleges Defendants affirmatively changed his policy terms with intent to deceit him, omitted to tell him about the change in the terms, and that Defendants violated state regulations. (Id.) Accordingly, the Court evaluates each of the claims and finds Plaintiff fails to state a claim for each.

As to ABIC, Plaintiff alleges ABIC's "violated the applicable regulations and/or laws regarding notice, changing terms and/or cancellation of the aforesaid two renter's polices" and "violation of said

applicable laws and/or regulations constitutes strict liability" under the CFA. (Id. ¶ 87-88, 192-93, 200-02 (Counts One, Thirteen, and Fourteen).) Specifically, he alleges ABIC failed to comply with the New Jersey Administrative Code, section 11:1-20.2, governing notices of renewal, cancelation, and non-renewal of commercial and homeowner's insurance policies. (Id. ¶ 62.) Plaintiff further argues reduction of the personal liability coverage in February 2014 was "surreptitious[], improper[], knowing[], deceitful[], illegal, and malicious[] . . . with the intent of leaving Plaintiff without knowledge of a gap of $200,000 in each policy for each of the two years for which he was personally liable." (Id. ¶¶ 112, 137 (Counts Four and Seven).)

Plaintiff offers no factual allegations to support his bare conclusions that ABIC acted deceitfully either through an affirmative act or through an omission. Indeed, the Complaint reflects the opposite. Although Plaintiff initially sought and secured a Renter's Policy consisting of $300,000 personal liability coverage per occurrence in January 2014, id. ¶ 13, and ABIC changed that policy a month later, Plaintiff has failed to prove the affirmative act of changing the policy was deceitful or that ABIC omitted to tell Plaintiff of the change in terms.

On February 26, 2014, ABIC alleges it sent Plaintiff an amended declaration page reflecting that his personal liability was reduced to $100,000 per occurrence. (ECF No. 20-2 at 6). Plaintiff alleges he never received the letter; and for the

purposes of this motion the Court accepts that statement as true. (ECF No. 1 ¶ 54.) Nevertheless, Plaintiff admits he received an email from rentersmail@assurant.com attaching a revised declaration page, indicating Plaintiff's personal liability was reduced to $100,000 per occurrence. (Id. ¶ 21.) The declaration page reflected a change in premium from $116 to $100, and provided Plaintiff with a $16 credit. (Id.) Further, toward the end of the first policy term, sometime in November 2014, Plaintiff renewed the Renter's Policy for the period of January 31, 2015 to January 31, 2016. (Id. ¶ 30.) Like the amended declaration page sent to Plaintiff in February 2014, the renewal declaration page reflected a personal liability coverage of $100,000 per occurrence, not $300,000. (Id.) On January 12, 2015, Plaintiff also received a confirmation email from Assurant listing "personal liability at $100,000 without the 'per occurrence' language." (Id. ¶ 32.) Finally, sometime in December 2015, Plaintiff renewed his policy for a third policy term from January 31, 2016 to January 31, 2017. (Id. ¶ 34.) Similarly, the renewal declaration page reflected a personal liability coverage of $100,000 per occurrence. (Id.) Plaintiff also received a confirmation email from Assurant listing "personal liability at $100,000 without the 'per occurrence' language." (Id.)

Contrary to Plaintiff's allegations that Defendants acted deceitfully "with the intent of leaving Plaintiff without knowledge of a gap of $200,000 in each policy for each of the two years,"

the Complaint demonstrates otherwise. Plaintiff was clearly put on notice that his personal liability coverage was reduced. (Id. ¶ 21 and Ex. C to ECF No. 20-3.) Plaintiff's argument the February 2014 email from rentersmail@assurant.com, attaching a revised declaration page and indicating Plaintiff's personal liability was reduced to $100,000 per occurrence, was "extremely misleading" because Plaintiff had just obtained the $300,000 per occurrence policy a month before is unpersuasive. (ECF No. 1 ¶ 23.) The declaration page attached to the email clearly and unambiguously put him on notice of a policy change and explicitly reflected personal liability at $100,000 per occurrence. Lastly, the fact that Plaintiff did not acknowledge the correspondences sent by ABIC until his third renewal is of no effect.

This Court also finds Plaintiff has not pled ABIC acted unlawfully pursuant to the CFA by violating state regulations. Plaintiff argues ABIC should be strictly liable pursuant to the CFA because it violated New Jersey Administrative Code, Section 11:1-20.2. (Id. ¶ 62.) New Jersey Administrative Code, Section 11:1-20.2 states in pertinent part:

> (a) No policy shall be nonrenewed upon its expiration date unless a valid written notice of nonrenewal has been mailed or delivered to the insured in accordance with the provisions of this subchapter.

For the purpose of this subchapter, policies not having a fixed expiration date shall be deemed to expire annually on the anniversary of their inception.

. . . .

(d) No cancellation, other than a cancellation based upon nonpayment of premium or for moral hazard as defined in (f) below, shall be valid unless notice is mailed or
delivered by the insurer to the insured, and to any person entitled to notice under the policy, not more than 120 days nor less than 30 days prior to the effective date of such cancellation except, however, that failure to send such notice to any designated mortgagee or loss payee shall invalidate the cancellation only as to the mortgagee's or loss payee's interest.

(e) A policy shall not be cancelled for nonpayment of premium unless the insurer, at least 10 days prior to the effective cancellation date, has mailed or delivered to the insured notice as required in this subchapter of the amount of premium due and the due date. The notice shall clearly state the effect of nonpayment by the

due date. No cancellation for nonpayment of premium shall be effective if payment of the amount due is made prior to the effective date set forth in the notice.

(f) A policy shall not be cancelled for moral hazard unless the insurer, at least 10 days prior to the effective termination date, has mailed or delivered to the insured notice as required in this subchapter and the basis for termination conforms to the [] definitions of moral hazard

. . . .

(g) No nonrenewal or cancellation shall be valid unless the notice contains the standard or reason upon which the termination is premised and specifies in detail the factual basis upon which the insurer relies.

(h) All notices of nonrenewal and cancellation, except those for nonpayment of premium, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention advising the insured that the insured may file a written complaint about the cancellation or nonrenewal with the

New Jersey Department of Banking and Insurance, Division of Enforcement and Consumer Protection, PO Box 325, Trenton, New Jersey 08625–0325. The statement also shall advise the insured to contact the Department of Banking and Insurance immediately, in the event he or she wishes to file a complaint.

(i) No nonrenewal or cancellation shall be valid unless notice thereof is sent;

1. By certified mail; or

2. By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice.

. . . .

(m) Each notice of renewal or nonrenewal by an insurer authorized to transact medical malpractice liability insurance in this State for a medical malpractice liability policy shall comply with the requirements applicable to such notices set forth in

> (a) through (l) above, except that such notices shall be mailed or delivered by the insurer to the insured not less than 60 days prior to the expiration of the policy.

N.J.A.C. 11:1-20.2. First, this regulation deals exclusively with the cancellation or non-renewal of policies. Here, it is uncontested that the Renter's Policy was renewed three times. Further, at no time did ABIC cancel or fail to renew the Renter's Policy. Because this regulation does not discuss the changing of policy terms, the Court finds Plaintiff has not sufficiently pled ABIC violated New Jersey Administrative Code, Section 11:1-20.2.

Further, the CFA only allows for strict liability when a defendant violates "specific regulations promulgated under the [CFA]." *Cox*, 138 N.J. at 18-19. Unlawful acts expressly regulated by other statutes, regulations, or rules can give rise to a CFA claim, but do not impose strict liability. See *Henderson*, 2005 WL 4127090, at *5; *Lemelledo*, 150 N.J. at 266-73.

Plaintiff's CFA claims against GEICO fail for similar reasons. As to GEICO, Plaintiff alleges GEICO

> knew of and cooperated with [] ABIC in the violation of applicable regulations and/or laws concerning notice, changing terms, and/or cancellation of two renter's policies

> causing the $200,000 gap between the renter's policies and the umbrella polices each of the two years.

(ECF No. 1 ¶ 97 and see ¶¶ 192-94 (Counts Two and Thirteen).) He further alleges, in the alternative, that

> even if [GEICO] was unaware that [] ABIC . . violated the applicable regulations and/or laws regarding notice, changing terms and/or and cancellation of the two renter's policy, due to [GEICO] requiring the Plaintiff to purchase the policies through [] ABIC and the strategic partnership between these [] Defendants, [GEICO] is also strictly liable under the CFA for the violation of the two renter's policies.

(Id. ¶ 103 and see ¶¶ 201-02 (Counts Three and fourteen). Further, he argues GEICO

> knew of and cooperated with [] ABIC [] in surreptitiously, improperly, purposefully, knowingly, deceitfully, maliciously, and illegally changing the terms of the renter's policies by decreasing the $300,000 in liability coverage to $100,000, with the intent of leaving the Plaintiff without

> knowledge of a gap of $200,000 in each policy for each of the two years for which he was personally liable.

(Id. ¶ 124 and see ¶ 137 (Counts Five and Seven).) Even if GEICO

> did not cooperate and was not aware that [] ABIC . . . were surreptitiously, improperly, knowingly, deceitfully, maliciously and illegally changing the terms of the renter's policy, because [GEICO] required that Plaintiff acquire his underlying coverage from [] ABIC, and due to its relationship with [ABIC], [GEICO] is also liable under the CFA for each of the violations regarding each of the policies for each of the two years.

(Id. ¶ 129 (Count Six).) Since Plaintiff alleges GEICO cooperated with ABIC to violate regulations and deceit him in selling and changing the terms of the Renter's Policy, all claims against GEICO rely on whether or not ABIC's conduct was unlawful under the CFA. Because the Court finds Plaintiff's allegations as to ABIC's unlawful conduct fail to meet both the CFA and Federal Rule of Civil Procedure 9(b)'s requirement, Plaintiff's allegations as to GEICO also fail.

Even if the Court found Plaintiff's facts were pled with sufficient particularity to demonstrate Defendants acted unlawfully in violation of the

CFA, it finds Plaintiff has failed to plead an "ascertainable loss." An "ascertainable loss" is one that is "quantifiable or measurable," *Thiedemann*, 183 N.J. at 248, and "definite, certain and measurable [], rather than one that is merely theoretical." *Bosland*, 197 N.J. at 558. Here, Plaintiff admits he never made a claim under the renter's or umbrella policy, was never denied coverage, or forced to cover any gap in coverage. (Id. ¶¶ 152-53.) Instead, he argues he sustained an "ascertainable loss" because he was exposed to "peril" due to the reduction of the liability limits of the ABIC Renter's Policy (ECF No. 23 at 417 and ECF No. 24 at 4-17.) His exposure to peril is not "quantifiable or measurable" pursuant to the CFA.

Even if the gap in coverage constituted an ascertainable loss, which the Court finds it does not, New Jersey courts have found that "if the defendant or a non-party takes action to ensure the plaintiff sustains no out-of-pocket loss or loss of value prior to litigation, then plaintiff's CFA claim may fail." *D'Agostino*, 216 N.J. at 194; see Thiedemann, 183 N.J. at 251-52 (finding no ascertainable loss when defendant repaired defect in accordance with terms of warranty); *Meshinsky*, 110 N.J. at 468 (finding no ascertainable loss because defendant repaid bank loan). Here, Plaintiff admits "Defendants corrected the gap in coverage." (ECF No. 1 ¶ 80.) In fact, ABIC agreed to increase the liability coverage to $300,000 per occurrence "back to the inception date of the policy"

so long as Plaintiff paid the $16 premium. (Ex. D to ECF No. 20-3.) Further, the Renter's Policy

> is an "occurrence"-based policy, which applies so long as the "occurrence" at issue takes place during the period in which the policy is in effect, regardless of whether the claim against the insured as a result of the "occurrence" is made after the policy ends. Thus, if in the future, a claim is made against Plaintiff based on an "occurrence" that took place when the ABIC policy was in place, ABIC would owe coverage for that claim, and so long as [Plaintiff] pays the additional premium, the ABIC policy would provide liability coverage up to $300,000 per "occurrence".

(GEICO Reply Br. (ECF No. 25) at 7 n.3.) Because ABIC agreed to correct the gap in coverage back to the inception date of the policy prior to litigation, Plaintiff has not suffered an ascertainable loss. Plaintiff's cancellation of the policy, instead of accepting ABIC's offer is of no consequence. Accordingly, the Court finds the above allegations fail to meet both the CFA and Federal Rule of Civil Procedure 9(b)'s particularity requirement and GRANTS ABIC and GEICO's Motions to Dismiss all CFA claims (Counts One, Two, Three, Four,

Five, Six, Seven, Thirteen, and Fourteen) **WITHOUT PREJUDICE.**

B. Common Law Fraud (Count Nine)

Count Nine of Plaintiff's Complaint alleges a claim against Defendants for "fraudulent sale of automobile, umbrella and renter's insurance." (ECF No. 1 ¶¶ 157-67.) Specifically, Plaintiff alleges:

> 163) Though the [GEICO] auto insurance policy still carried the umbrella coverage, the coverage was still flawed because to carry the auto insurance, the Plaintiff was forced to unknowingly carry $200,000 exposure of personal liability on the renters/umbrella side of his coverage during each of the two years rendering the automobile polices and umbrella policies deficient.
>
> 164) In fact, these automobile, umbrella and renters policies were deceitfully sold because Defendants . . . were surreptitiously, purposefully, knowingly, deceitfully, and maliciously creating a $200,000 gap in liability coverage between the renters policy and umbrella policy per year for the two years.

> 165)Defendants represented that they were providing Plaintiff proper, apt, and suitable insurance coverage to induce him to purchase the policies.
>
> 166) Plaintiff relied on the representation when he purchased the policies to his detriment.

(Id. ¶¶ 163-66.) ABIC argues Plaintiff fails to allege a "misrepresentation of fact" "creating or hiding th[e $200,000] gap." (ECF No. 20-2 at 23-24). GEICO argues Plaintiff "fails to identify the specific misrepresentations made by GEICO, the date, time, or place the representations were made, or who made them." (ECF No. 21-1 at 36-37.) GEICO further alleges Count Nine "does not explain how Plaintiff relied on the representations by GEICO and how that reliance caused Plaintiff to sustain damages." (Id.)

To state a claim for fraud under New Jersey law, a plaintiff must allege "(1) [the defendant made] a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) [the defendant had] an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." *Triffin v. Automatic Data Processing, Inc.*, 394 N.J. Super. 237, 246 (App. Div. 2007) (citing *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 610 (1997)).

Plaintiff makes only a conclusory allegation that Defendants committed fraud in selling and changing the terms of the policy, without alleging any specific facts regarding the elements of this fraud claim. Plaintiff pleads no facts demonstrating Defendants misrepresented any facts; that Defendants knew the representation was false; or that Plaintiff was injured as a result. Although Plaintiff initially sought and secured a Renter's Policy consisting of $300,000 personal liability coverage per occurrence in January 2014 (ECF No.1 ¶ 13) and ABIC changed that policy a month later, Plaintiff has failed to prove ABIC or GEICO misrepresented any facts. Plaintiff was clearly put on notice that his personal liability coverage was reduced. (Id. ¶ 21 and Ex. C to ECF No. 203.) The declaration page attached to ABIC's February 2014 email clearly put him on notice of a policy change and unambiguously reflected personal liability at $100,000 per occurrence. (Id.) Even if the Court accepts Plaintiff's argument that ABIC originally misrepresented the Renter's Policy would cover $300,000 per occurrence, Plaintiff has failed to allege facts demonstrating ABIC or GEICO knew the representation was false. Lastly, Plaintiff has failed to plead he suffered damages as a result of the $200,000 gap. Here, Plaintiff admits he never made a claim under the renter's or umbrella policy, was never denied coverage, or forced to cover any gap in coverage. (ECF No. 1 ¶¶ 152-53.) As such, Plaintiff has failed to state a claim against Defendants for fraud, particularly under the

heightened pleading standard of Rule 9(b). Accordingly, Defendants' Motions to Dismiss Plaintiff's common law fraud claim (Count Nine) are **GRANTED WITHOUT PREJUDICE**.

C. Tortious Interference with Prospective Economic Advantage (Count Eight)

Count Eight of Plaintiff's Complaint alleges "[d]ue to [] Defendants [sic] surreptitious, knowing, deceitful, malicious and illegal conduct, Plaintiff did not exercise his right to purchase suitable insurance policies (automobile, renters, and umbrella) from other companies for a two year period which would have provided him the proper protection." (ECF No. 1 ¶ 152.) ABIC argues Plaintiff's claim "fails because it offers only conclusory allegations that lack any of the specificity required to adequately plead [a tortious inference] claim." (ECF No. 20-2 at 25.) Specifically, Plaintiff's Complaint "does not identify any alternative insurance carrier with whom [Plaintiff] had a prospective relationship, nor does it allege any action [Plaintiff] took in pursuit of a relationship with an alternative insurance carrier." (Id. at 26.) GEICO contends Plaintiff's Complaint does not plead any of the elements required of a tortious interference claim. (ECF No. 21-1 at 35.) Specifically, GEICO argues the Complaint "fails to allege that Plaintiff made any effort to purchase insurance from other insurers, that he would have been able to purchase the insurance had he made

these efforts, or that GEICO was aware that Plaintiff was attempting to obtain this other insurance and that it intentionally interfered with Plaintiff's attempt to purchase the insurance and did so maliciously." (Id.) The Court agrees with Defendants.

To state a claim for tortious interference with prospective economic advantage, a plaintiff must allege:

> a plaintiff's reasonable expectation of economic benefit or advantage, (2) the defendant's knowledge of that expectancy, (3) the defendant's wrongful, intentional interference with that expectancy, (4) in the absence of interference, the reasonable probability that the plaintiff would have received the anticipated economic benefit, and (5) damages resulting from the defendant's interference.

Fineman v. Armstrong World Indus., Inc., 980 F.2d 171, 186 (3d Cir. 1992) (citing *Printing Mart–Morristown v. Sharp Elec. Corp.*, 116 N.J. 739, 751 (1989)). "A complaint must demonstrate that a plaintiff was in 'pursuit' of business" and "that the interference was done intentionally and with 'malice.'" Printing Mart–Morristown, 116 N.J. at 751. "Even at the pleading stage, a plaintiff may not rest a claim . . . on a mere hope that additional

contracts or customers would have been forthcoming . . . . The complaint must allege facts that . . . would give rise to a reasonable probability that particular anticipated contracts would have been entered into." *Novartis Pharm. Corp. v. Bausch & Lomb, Inc.*, No. 07-5945 (JAG), 2008 WL 4911868, at *7 (D.N.J. Nov. 13, 2008) (quoting *Advanced Power Sys., Inc. v. Hi-Tech Sys., Inc.*, 801 F. Supp. 1450, 1459 (E.D. Pa. 1992)).

Here, Plaintiff fails to articulate what particular economic advantage or contract he lost as a result of Defendants alleged interference. Plaintiff does not identify one insurance carrier, company, or other entity, with whom he currently does business, or would have done business with but for Defendants alleged interference. Further, Plaintiff's Complaint does not allege any specific contract or economic advantage lost by virtue of Defendants alleged interference. Plaintiff must plead an injury that is more concrete than his "right to purchase suitable insurance policies" from unknown or hypothetical insurance carriers. Accordingly, Defendants' Motions to Dismiss Plaintiff's tortious interference with prospective economic advantage claim (Count Eight) are **GRANTED WITHOUT PREJUDICE.**

D. Breach of Fiduciary Duty (Count Eleven)

Count Eleven of Plaintiff's Complaint alleges "Defendants owed Plaintiff a fiduciary duty

because they were insuring him" and that Defendants breached that duty "surreptitiously, purposefully, knowingly, deceitfully, and maliciously creating a $200,000 gap in liability coverage between the renter's policy and umbrella policy per year for the [] two years . . . thereby intentionally breaching their fiduciary obligations under each of the eight (8) contracts of insurance." (ECF No. 1 ¶¶ 178-79.) ABIC argues Plaintiff's "claim for breach of a fiduciary duty (Count Eleven) fails because [Plaintiff] has not alleged facts sufficient to demonstrate the existence of a fiduciary duty." (ECF No. 20-2 at 29.) GEICO argues Plaintiff has failed to allege "special circumstances" giving rise to a fiduciary duty. (ECF No. 21-1 at 39.)

Under New Jersey law, an insurer owes its insured a fiduciary duty only under certain circumstances. *Polito v. Cont'l Cos. Co.*, 689 F.2d 457, 462 (3d Cir. 1982). The New Jersey Supreme Court has found an insurer acting as an agent to the insured when settling claims owes a fiduciary duty. See *Lieberman v. Emp'rs Ins. of Wausau*, 84 N.J. 325, 336 (2007). "[A]n insurance company owes a duty of good faith to its insured in processing a first-party claim." *Pickett v. Lloyd's*, 131 N.J. 457, 467 (1993). Thus, absent "special circumstances" a claim for fiduciary duty cannot survive. *Reddick v. Allstate N.J. Ins. Co.,* No. 11-365 (KSH), 2011 WL 6339688, at *7 (D.N.J. Dec. 16, 2011) (citations omitted) ("[A]bsent a special relationship, parties operating in the normal contractual posture, not as

principal and agent, are typically not in a fiduciary relationship.").

Here, the Complaint does not allege anything to suggest the relationship between Plaintiff and Defendants exceeds an ordinary contractual relationship. Plaintiff's basis for finding a fiduciary relationship is essentially that he was insured by the Defendants. (ECF No. 1 ¶ 178.) Indeed, neither Plaintiff nor a third-party has made a claim under the renter's or umbrella policy. (Id. ¶¶ 152-53.) Therefore, Plaintiff and Defendants never had the occasion to enter into a fiduciary relationship. Further, as to GEICO, Plaintiff's Complaint takes issue with the Renter's Policy, the policy that caused the $200,000 gap, and it is uncontested GEICO did not issue that policy. Therefore, GEICO could not have breached a fiduciary duty. As such, Defendants' Motions to Dismiss Plaintiff's breach of fiduciary duty claim (Count Eleven) are **GRANTED WITHOUT PREJUDICE.**

E. Breach of Contract (Counts Ten and Twelve)

Count Ten of Plaintiff's Complaint is for "intentional breach of contract." (ECF No. 1 at 57.) Defendants argue New Jersey law does not recognize a separate cause of action for "intentional" breach of contract. (ECF No. 20-2 at 32 n.20 and ECF No. 21-1 at 37.) Because Plaintiff concedes there is no cause of action for intentional breach of contract in New Jersey, this Court

GRANTS Defendants' Motions to Dismiss Count Ten. (ECF No. 23 at 28 and ECF No. 24 at 28-29 ("Plaintiff concedes that in New Jersey law there is no action for intentional breach of contract.").)

Count Twelve of Plaintiff's Complaint is for breach of contract as to all Defendants. (ECF No. 1 at 59-60.) Specifically, Plaintiff alleges:

> 182) Defendants . . . created a $200,000 gap in liability coverage between the renter's policy and umbrella policy per year for the two years thereby breaching their obligations under the contract.
>
> 183) Though the [GEICO] auto insurance policy still carried the umbrella coverage, the coverage of the auto and umbrella policies were still flawed because to carry the auto insurance, [] Plaintiff was forced to unknowingly carry $200,000 exposure of personal liability due to a $200,000 gap in the liability coverage on the renters/umbrella side of his coverage for each of the two years rendering the automobile policies and umbrella policies deficient.
>
> 184) In providing deficient and unsuitable insurance policies because of the $200,000 gap in coverage for the two successive years of January 2014-15 and January 2015-2016, the

> defendants committed breach of the eight contracts of insurance (4 automobile, 2 renters and 2 umbrella).
>
> 185) Plaintiff paid full premiums for the eight policies with deficient coverage and also was exposed to risk.

(ECF No. 1 ¶¶ 182-85.) ABIC argues Plaintiff fails to allege the gap in coverage was a breach of any term of his insurance policies and Plaintiff fails to plead any damages arising from any alleged breach of the insurance contracts. (ECF No. 20-2 at 32-33.) GEICO argues "since GEICO was not a party to the ABIC Renters policy, Plaintiff may not maintain a cause of action against GEICO for breach of the policy." (ECF No. 21-1 at 37.) "Nor may Plaintiff maintain a breach of contract claim against GEICO Auto policies or under the GEICO Umbrella policies, since Plaintiff does not allege that GEICO breached any terms or conditions to these policies." (Id. at 38.)

"A party alleging a breach of contract satisfies its pleading requirement if it alleges (1) a contract; (2) a breach of that contract; (3) damages flowing therefrom; and (4) that the party performed its own contractual duties." *Video Pipeline, Inc. v. Buena Vista Home Entm't, Inc.*, 210 F. Supp. 2d 552, 561 (D.N.J. 2002) (citations omitted). Because this Court previously found Plaintiff has failed to plead damages from the $200,000 gap in coverage, it **GRANTS** Defendants' Motions to Dismiss Count

Twelve **WITHOUT PREJUDICE**, and need not address the remaining breach of contract elements.

IV. CONCLUSION

For the reasons set forth above, Defendants' Motions to Dismiss are **GRANTED WITHOUT PREJUDICE**.

Date: June 22, 2017

/s/ Brian R. Martinotti
HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

CONSTITUTIONAL, STATUTORY PROVISIONS AND RULES INVOLVED

New Jersey Consumer Fraud Act 56: 8-1 et. seq.

The New Jersey Consumer Fraud Act Provides in Pertinent Part at N.J.S.A. 56:8-2:

> 56 :8-2. Fraud, etc., in connection with sale or advertisement of merchandise or real estate as unlawful practice:
>
> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice; provided, however, that nothing herein contained shall apply to the owner or publisher of newspapers, magazines,

> publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher, or operator has no knowledge of the intent, design or purpose of the advertiser.
>
> L.1960, c. 39, p. 138, s. 2. Amended by L.1967, c. 301, s. 2, eff. Feb. 15, 1968; L.1971, c. 247, s. 1, eff. June 29, 1971; L.1975, c. 294, s. 1, eff. Jan. 19, 1976.

The Fifth Amendment of the United States Constitution

The Fifth Amendment of the United States Constitution Provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;

> nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

In Pertinent Part:

> "nor be deprived of life, liberty, or property, without due process of law"

Federal Rule Civil Procedure Rule 9. Pleading Special Matters

Rule 9 (b) regarding pleading special matters provides:

Rule 9. Pleading Special Matters:

> (b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

N.J.A.C. § 11:1-22.2 Prohibitions provides in pertinent part:

(a) The following acts or practices are specifically prohibited with respect to those policies subject to the provisions of this subchapter:

1. Effecting or attempting to effect a mid-term premium increase and/or a reduction in the amount or type of coverage provided under the policy unless prior written approval therefor has been obtained from the Commissioner.

N.J.A.C. § 11:1-22.5 Penalties:

(a) In addition to any other penalty authorized by law, the Commissioner may, after notice and a hearing, impose penalties as prescribed by N.J.S.A. 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-7 and 11, 17:30C-1 et seq., 17:32-1 et seq. and 17:33-2.

(b) As an alternative or in addition to the penalties set forth in (a) above, the Commissioner, where he deems such action will further the purposes of this subchapter, may require immediate reinstatement without lapse of any policy which has been nonrenewed or cancelled in violation of the provisions of this subchapter.

> 1. The Commissioner shall not order any reinstatement more than one year after the effective date of the nonrenewal or cancellation, provided, however, that the one year period shall be tolled during the course of any administrative proceedings initiated by the Department and any subsequent judicial review of those proceedings.
>
> 2. Nothing herein shall be deemed to create any right or cause of action on behalf of any insured to enforce the penalties set forth in this subsection.

N.J.A.C. § 11:1-20.2 Renewal, nonrenewal and cancellation notice requirements.

N.J.A.C. § 11:1-20.2 provides in pertinent parts:

> (a) No policy shall be nonrenewed upon its expiration date unless a valid written notice or nonrenewal has been mailed or delivered to the insured in accordance with the provisions of this subchapter. For the purpose of this subchapter, policies not having a fixed expiration date shall be deemed to expire annually on the anniversary of their inception.

(b) Except as provided in N.J.A.C. 11:1-20.2(m) with respect to medical malpractice liability insurance policies, no notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured not more than 120 days nor less than 30 days prior to the expiration of the policy.

(i) No nonrenewal or cancellation shall be valid unless notice thereof is sent;

1. By certified mail; or

2. By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice.