PRIME PROPERTY & CASUALTY INSURANCE, INC., Plaintiff, vs. NV SERVICE INC.; NV BUS SERVICE INC.; FUJI LINE INC.; QUICK TRANSIT MANAGEMENT AGENCY LLC; THREE ACE'S TRANSPORTATION INC.; B.K.T.E. EXPRESS CO. LLC; FUJI EXPRESS, INC.; ADEL SAADALLA; MARCO MENDOZA-BASTIDAS; VALENTIN LOPEZ-CULAJAY; DAYANARA ANTUNEZ; and/or JOHN DOES 1-10 (fictitious persons and/or entities) AND JOHN/JANE DOES 1-10, Defendant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No.: A-001783-24 – T4 Civil Action On Appeal from: Superior Court of New Jersey Law Division, Bergen County Docket No.: BER-L-4500-24 Sat Below: Hon. Gregg A. Padovano, J.S.C.

DEFENDANTS-APPELLANTS' BRIEF IN SUPPORT OF APPEAL

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PRELIMINARY STATEMENT

The issue on appeal before this Court is whether the trial court erred in its determination, upon summary judgment, as to the level of liability insurance coverage required on a commercial autobus in which two passengers were seriously injured. Appellate review is *de novo*.

Defendants-appellants (hereinafter "injured party defendants") contend that the trial court erred in its determination that under a New Jersey statute, last visited in 1972, the minimum level of liability insurance required on a commercial autobus with a passenger capacity of twenty-five (25) is "$25,000 per occurrence." If correct, this would mean that for the accident the two injured parties would share $25,000 in compensation for their injuries together with any other passengers on the bus – an absurd result. The injured parties contended below that the statute, N.J.S.A. 48:4-47, relied upon by the plaintiff insurer and accepted by the trial court, was amended by virtue of New Jersey's adoption of the federal financial responsibility standard upon the enactment of N.J.S.A. 39:5B-32 in 1986 and N.J.A.C. 13:60-2.1 in 1987. The federal standard was $5.0 million per occurrence. The trial court agreed that New Jersey adopted the federal financial responsibility standard but concluded that the federal standard only applied to "for-hire motor carriers transporting passengers in interstate or foreign commerce." The court did not explain how the State could "adopt the federal standard" for New Jersey but then

apply the adopted standard only to interstate commerce rendering the State adoption of the standard a nullity. Should this Court reverse the trial court and determine that the federal financial responsibility standard applies, the balance of the legal issues will be rendered academic.

The injured parties also argued that the insurer was required to extend coverage to the operator of the autobus as a permissive user, a statutory obligation determined by the Supreme Court since 1960 but ignored by the insurer in the covering language of its policy. The Supreme Court has dictated that an insurer must afford the full policy limit, here $5.0 million, when the insurer fails to abide established precedent. Huggins v. Aquilar, 246 N.J. 75, 92 (2021). Notwithstanding the dictates of Huggins, the trial court held that Prime was required to meet only what the court viewed as the minimum State standard of $25,000.

Finally, the injured parties argued in the alternative that they should be permitted discovery to determine (1) whether Prime properly reserved its rights; (2) whether Prime's assertion of late notice was legal; and (3) whether the subject autobus was also used in interstate commerce such that it would be required to meet the federal financial responsibility standard. The injured parties were not afforded the opportunity to take discovery because the insurer moved for summary judgment immediately after the suit was commenced. While noting that the deposition of the

bus operator had already been taken (in the underlying personal injury cases), the court denied the request for discovery.

PROCEDURAL HISTORY

The plaintiff, Prime Property & Casualty Insurance, Inc. (hereinafter "Prime"), filed this declaratory judgment action on August 2, 2024. (Ja37) Plaintiff filed a First Amended Complaint on September 17, 2024. (Ja115) The insurer sought an adjudication as to coverage afforded for an accident involving an autobus insured by it. (Ja115) Joined as defendants were parties identified as insureds or potential insureds under the Prime policy, specifically, N.V. Service, Inc.; N.V. Bus Service, Inc.; owners of the bus; and Fuji Line Inc.; Quick Transit Management Agency LLC; Three Ace's Transportation Inc.; B.K.T.E. Express Co., LLC; Fuji Express, Inc. (the "Fuji Parties"); operator of the bus line, and Adel Saadalla. (Ja115) In the action, Prime sought an adjudication that it did not afford coverage for an accident that occurred on July 8, 2021 involving a bus owned and/or operated by one or more of the aforementioned defendants. (Ja115) Also joined in the action were Valentin Lopez-Culajay and Dayanara Antunez who were injured in the accident of July 8, 2021 and joined in the action as "interested parties" pursuant to N.J.S.A. 2A:16-51 et seq. They had filed suit for their injuries and their actions were pending in the Superior Court of New Jersey, Hudson County. (Ja118 and JA119) Finally, also joined in the action was Marco Mendoza-Bastidas, the driver of the subject bus at the time of the accident. (Ja115)

On December 13, 2024, an Answer and Counterclaim for Declaratory Judgment was filed on behalf of defendants, Valentin Lopez-Culajay and Dayanara Antunez. (Ja136)

On December 19, 2024, an Answer and Counterclaim was filed on behalf of the co-defendants, Fuji Line Inc., Quick Transit Management Agency, LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc., and Adel Saadalla ("Fuji Parties"). (Ja153)

On October 25, 2024 Prime moved for summary judgment seeking an adjudication that it did not afford insurance coverage to NV Service, Inc., NV Bus Service, Fuji Line Inc., Quick Transit Management Agency LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc., Adel Saadalla and/or Marco Mendoza-Bastidas for the claims, causes of action and damages arising from the subject bus accident and asserted in the underlying Lopez-Culajay and Antunez actions filed in the Superior Court. (Ja182) Prime further sought an Order that it owed no duty or obligation under the MCS-90 Endorsement or federal minimum financial responsibility laws to pay any judgment recovered by any claimant resulting from the accident. (Ja182) Finally, Prime sought an Order that Fuji Express, Fuji Line Inc., Quick Transit Management, Three Ace's, B.K.T.E. Express and Adel Saadalla were obligated under the Personal Guaranty and Indemnity Agreement to indemnify and hold Prime harmless for costs, attorney's

fees, expenses, settlement proceeds or other funds expended or deemed owing by reason of the accident. (Ja182)

By way of cross-motion for summary judgment filed on December 13, 2024, defendants Valentin Lopez-Culajay and Dayanara Antunez sought an Order declaring and adjudging that insurance coverage extended under the Prime insurance policy to the named insureds and permissive users arising out of the use the subject motor vehicle involved in the accident and further, for an adjudication that the limit of liability under the plaintiff Prime's policy for the subject accident was $5.0 million. (Ja240) Alternatively, the injured parties sought denial of Prime's motion for summary judgment to permit discovery as to Prime's coverage obligations to the autobus operator as a permissive user and Prime's named insureds as interstate motor carriers. Defendants/injured parties' Responses to Prime's Statement of Material Facts were filed on December 13, 2024. (Ja246)

On December 20, 2024 the Fuji Parties submitted their responses to Prime's Statement of Undisputed Material Facts and Brief in opposition to plaintiff Prime's motion for summary judgment and in further support of defendants Valentin Lopez-Culajay and Dayanara Antunez's Cross-Motion. (Ja251)

Oral argument was heard before the Hon. Gregg A. Padovano, J.S.C. on January 3, 2025.[1] On January 27, 2025 Judge Padovano issued an Order and Opinion granting Prime's motion for summary judgment declaring that the Fuji Parties and Mendoza-Bastidas were afforded the minimum liability limits of $25,000 per occurrence for the Lopez-Culajay and Antunez claims asserted in their pending actions in the Superior Court. (Ja17 and Ja32) The Order further provided that Prime was entitled to be reimbursed by the Fuji Parties and Saadalla for any payment it makes on account of the claims, causes of action and damages in the pending actions. (Ja17 and Ja33) The Order further provided that the cross-motion for summary judgment filed on behalf of the injured parties seeking to establish a limit of liability of $5.0 million was denied. (Ja17 and Ja33)

Defendants Valentin Lopez-Culajay and Dayanara Antunez filed a Notice of Appeal on February 18, 2025. (Ja1) The Fuji Parties and Adel Saadalla filed a Notice of Appeal on March 12, 2025 under Docket No. A-002034-24. (Ja309)

[1] "1T" references transcript of oral argument on cross-motions for summary judgment heard by Judge Padovano on January 3, 2025.

STATEMENT OF FACTS

On July 8, 2021 Valentin Lopez Culajay and Dayanara Antunez were passengers in a 2003 Ford E-450 Bus operated by Marco Mendoza-Bastidas (Ja119). The bus had a passenger capacity of twenty-five (25) inclusive of the driver. (Ja259) At or near the intersection of Lafayette and Anderson Avenues in Cliffside Park, New Jersey, Lopez-Culajay and Antunez were injured as a result of the operation of the vehicle by Mendoza-Bastidas. (Ja119)

On July 19, 2022, Lopez-Culajay and Antunez commenced a lawsuit in the Superior Court of New Jersey captioned Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc., et al. under Docket No. HUD-L-002379-22. (Ja118) On July 3, 2023 Lopez-Culajay and Antunez commenced a second lawsuit captioned Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc., et al., in the Superior Court of New Jersey under Docket No. HUD-L-002368-23. (Ja119) NV Service Inc. and NV Bus Service Inc., owners of the bus, as well as Fuji Line, Inc., Quick Transit Management Agency LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc., operators of the bus line, Adel Saadalla, principal of the bus lines, and Marco Mendoza-Bastidas, the bus driver, were named in the second Culajay and Antunez lawsuit as defendants. (Ja119)

Due demand was made by Fuji Parties as well as Marco Mendoza-Bastidas for insurance coverage under a policy of insurance issued by plaintiff Prime Property

& Casualty Insurance, Inc. (hereinafter "Prime"). (Ja128) By letter dated October 20, 2021, Andrew D. Wright, Esq. on behalf of Prime wrote to Fuji Express and Marco Mendoza-Bastidas and advised them that no insurance coverage was available under the express terms of the Prime policy, however, Prime advised it would continue to handle the claim pursuant to a reservation of its rights as set forth in the letter. (Ja279) The letter did not advise that Fuji Express and Mendoza-Bastidas had a right to accept or reject Prime's offer to handle the claims arising out of the July 8, 2021 accident while reserving its rights. (Ja279) On March 2, 2023, Mr. Wright, on behalf of Prime, wrote to LaBarbiera and Martinez, Esqs., counsel for Valentin Lopez-Culajay and Dayanara Antunez, advising that Prime had reserved its rights. (Ja289).

The Prime policy was issued in New Jersey to the named insureds, Fuji Line, Inc., Quick Transit Management Agency LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc. and Adel Saadalla. (Ja59) That policy on the Declarations Pages reflected a limit of liability for bodily injury of $5.0 million. (Ja60) The Insuring Agreement extended coverage only if an Insured Auto is operated by an Approved Driver at the time of the accident (Ja62). The Scheduled Drivers Endorsement on the policy by its terms provided that acceptance by the insurer of a driver was "subject to underwriting approval." (Ja87) The insurer maintained that Mendoza-Bastidas did not qualify as an approved driver because he

had been cited for a moving violation on September 2, 2019 and his license was suspended on November 13, 2019. (Ja128) Prime also contended that the insureds did not provide notice of the accident until August 20, 2021, a month after the accident occurred in violation of the Prime policy requirement that Fuji give Prime "immediate written notices, as soon as possible and in no event later than 72 hours, of any incident, event, occurrence, loss or accident that may give rise to a claim." (Ja129)

The Prime policy included a provision captioned "B. Liability Exclusions" that provided as follows:

> B. Liability Exclusions
>
> In the event that any of the exclusions stated in this Policy are found by a court of law to be unenforceable or in contradiction to applicable law in regards to a specific Claim, the invalid provision is to be interpreted as providing the minimum insurance coverage required under the financial responsibilities laws, in place of the invalid exclusion, for such Claim. (Ja64)

No liability exclusion in the Prime policy was in issue as the basis to deny insurance coverage for the subject accident. (Ja115)

The Prime policy by its express terms purported to place the responsibility upon the policyholder and its retained broker, not the insurer, for determining the insurance required for federal or local laws. (Ja75) The policy provided:

H. This Policy has been issued to the Insured in response to a request for coverage from the Insured, and its retained broker, if applicable. Various optional insurance has been offered to Insured by Insurer, including different types of insurance and different limits of liability, and Insured and its broker have expressly selected the type and amount of coverage desired. As such, Insured, and its retained broker if applicable, are solely responsible for determining the type and amount of insurance needed for Insured's operations and the amount of insurance required by any federal or local laws which may apply to Insured's specific operations. In no event shall Insurer be responsible for determining the type and amount of insurance required by federal or local laws which may apply to Insured's specific operations, and Insurer makes no warranty that this Policy complies with all laws that may apply to Insured's various business operations. In the event any court, arbitrator or regulatory agency reforms or revises this Policy to comply with laws applicable to the type or amount of insurance required by Insured's specific operations, Insured and its broker shall indemnify and hold Insurer harmless from any increased limit of liability or other exposure created by such reformation or revision, including attorney fees and costs arising therefrom. (Ja75)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN ITS CONSTRUCTION OF N.J.S.A. 39:5B-32 AND N.J.A.C. 13:60-2.1 IN FAILING TO CONCLUDE THAT NEW JERSEY HAD ADOPTED BY REFERENCE THE FEDERAL FINANCIAL RESPONSIBILITY STANDARD UNDER 49 U.S.C. §387 (Ja31-Ja32)

The injured parties maintained before the trial court that New Jersey, by statute and regulation, had adopted by reference the federal financial responsibility standard of $5.0 million for autobuses with a seating capacity of sixteen (16) or more passengers.[2] The Appellate Division in Rafanello v. Taylor-Esquivel, 465 N.J. Super. 304, 316-317 (App. Div. 2020) had already determined that New Jersey had adopted the federal standards for commercial motor vehicles exceeding 10,000 pounds, gross vehicle weight. Citing Rafanello, Judge Padovano expressly agreed that pursuant to N.J.S.A. 39:5B-32 and N.J.A.C. 13:60-2.1, New Jersey had adopted the federal standards by virtue of its participation in the Motor Carrier Assistance Program, 49 U.S.C. §31102(c)(1). (Ja31-Ja32) However, the trial court erroneously concluded that the federal standard under 49 U.S.C. §387 for autobuses applied "in interstate or foreign commerce," and therefore would not apply to intrastate transportation. (Ja32) It appears that the court did not appreciate the implications of

[2] The trial court in its Opinion erroneously referred to the subject bus as having a passenger capacity of fifteen (15) (at p. 4 of 18) (Ja19). Indisputably the bus had a capacity of twenty-five (25) passengers inclusive of the driver. (See ¶6 Certification of Adel Saadallah) (Ja259)

New Jersey's "adoption by reference" of the federal standards nor the implications of Rafanello as a binding precedent. Because the plaintiff insurer maintains that the federal standards do not apply, the injured parties will address the error of the trial court as well as the erroneous position of the plaintiff insurer.

The Federal Motor Carrier Safety Act, 49 U.S.C. §13100, regulates commercial motor vehicles including interstate passenger bus transportation. The Act defines "motor carrier," in part, as a "person providing motor vehicle transportation for compensation," and the term "transportation" as including "motor vehicles related to movement of passengers." 49 U.S.C. §13102. The term "commercial motor vehicle" is defined, in part, in the statute as a "self-propelled vehicle used on highways in commerce principally to transport passengers if the vehicle is designed to transport more than ten (10) passengers." 49 U.S.C. §31101. For autobuses with a seating capacity of sixteen (16) or more passengers, including the driver, the level of financial responsibility is $5.0 million. 49 U.S.C. §31138 and 49 C.F.R. 387.33.

The Federal Motor Carrier Safety Act is authorized to develop and enforce effective, compatible, and cost-beneficial regulations and practices for motor carriers, commercial motor vehicles, and driver safety. 49 U.S.C. §31100. The Act's regulations "prescribe minimum standards for commercial motor vehicles." 49 U.S.C. §31136. Subparagraph Q of 49 U.S.C. §31102 ensures that the states will

cooperate in the enforcement of financial responsibility requirements under §13906, §31138 and §31139 and regulations under those sections." As indicated, 49 C.F.R. 387.33 establishes liability limits of $5.0 Million for autobuses with a passenger capacity of sixteen (16) or more including the driver.

Pursuant to 49 U.S.C. §31102, the Motor Carrier Safety Assistance Program was created. Subparagraph (c)(1) of the statute creates a federal grant program that provides financial assistance to states to reduce the number and severity of accidents and hazardous material incidents involving commercial motor vehicles. 49 C.F.R. §350.101(a) and 49 U.S.C. §31102. A state participating in the Motor Carrier Safety Assistance Program agrees to adopt and enforce commercial motor vehicle safety "regulations, standards, and orders that are compatible with the regulations, standards, and orders of the Federal government." 49 U.S.C. §31102(c)(1). Thus, a state participating in the Motor Carrier Safety Assistance Program must enforce laws and regulations that meet the minimum standards set by the Federal Motor Carrier Safety Act regulations or risk losing Motor Carrier Assistance Program funding. 49 U.S.C. §§31114 and 31311(a)(1). See, Parker v. Fulton, 2023 U.S. Dist. LEXIS 44345, 2023 WL 2535. (Ja298)

New Jersey chose to participate in the Federal Motor Carrier Safety Assistance Program when it adopted N.J.S.A. 39:5B-32 in 1986. The statute provides that the Superintendent of the State Police shall adopt "rules and regulations

concerning the qualifications of interstate motor carrier operators and vehicles, which shall substantially conform with the requirements established pursuant to §§401 and 404 of the 'Surface Transportation Assistance Act of 1982.'" The statute expressly references an exception for hours of service for commercial motor vehicles designed to transport sixteen (16) or more passengers including the driver. Importantly, the exception leaves no question but that the statute is referencing passenger buses. Further, the statute at paragraph e. expressly references the federal regulation, 49 C.F.R. Part 387, governing financial responsibility requirements for commercial motor vehicles operating in interstate commerce including autobuses with a passenger capacity of 16 or more including the driver.

Pursuant to N.J.S.A. 39:5B-32, the Superintendent of the State Police adopted N.J.A.C. 13:60-2.1 in 1987. The regulation adopted the Federal Motor Carrier Safety Regulations, including 49 C.F.R. Part 387 referencing "minimum levels of financial responsibility for motor carriers." As indicated, Part 387.33 establishes the limits at $5.0 million for autobuses with a passenger capacity of sixteen (16) or more. The New Jersey regulation expressly modified the definition of "commercial motor vehicle" in the federal regulations by defining "commercial motor vehicle" as meaning "any self-propelled or towed motor vehicle used on a highway in *intrastate commerce to transport passengers* or property when the vehicle: . . . ii. designed or used to transport more than eight passengers (including the driver) for compensation.

(Emphasis added) See also, Volume 39, Issue 11 Proposed Re-adoption with Amendments, N.J.A.C. 13:60 and Subchapter 2 Adoption and Incorporation by Reference of Federal Motor Carrier Regulations and Appendices to Federal Motor Carrier Safety Regulations. The regulation's express reference and redefinition of "commercial motor vehicle" to include autobuses with a capacity of 8 passengers for compensation reflects the intent to encompass autobuses.

The Superintendent of the State Police adopted additional regulations dealing with definitions and general requirements. N.J.A.C. 13:60-1.3 references the term "intrastate commerce" and defines it as meaning "trade, traffic, or transportation in this State which is not interstate commerce." Subparagraph (d) of the regulation provided as follows:

> (d) Wherever the term "interstate" is used in the Federal Motor Carrier Regulations, adopted and incorporated by reference, herein, and all supplements and amendments thereto, it shall for the purpose of this chapter, mean or include both "interstate" and "intrastate" transportation in commerce and those vehicles used or operated wholly within a municipality or a municipality's commercial zone except where stated otherwise.

Finally, subparagraph (g) of the adopted regulation provides as follows:

> (g) The provisions and requirements of these regulations as well as the Federal Motor Carrier Safety Regulations adopted and incorporated, by reference, herein, and all supplements and amendments thereto, and made a part hereof as if set forth in full, are applicable to all motor vehicles, as defined in this chapter, engaged in transportation in interstate and intrastate commerce or operating in interstate and intrastate commerce or used or

> operated wholly within a municipality or a municipality's commercial zone, as well as motor vehicles engaged in transportation of hazardous material(s) in a quantity requiring hazardous material(s) placarding or displaying hazardous material(s) placarding unless specifically otherwise.

Therefore, subparagraph (d) of N.J.A.C. 30:60-1.3 expressly provides that the term "interstate" used in the Federal Motor Carrier Safety Regulations shall mean or include "both interstate and intrastate transportation in commerce . . . ." Without question, N.J.A.C. 13:60-2.1 defines "commercial motor vehicle" to include a self-propelled motor vehicle used on a highway in *intrastate commerce to transport passengers* when the vehicle "is designed or used to transport more than eight (8) passengers (including the driver) for compensation."

The Appellate Division in Rafanello had already concluded that, in fact, New Jersey had adopted the federal financial responsibility standards. 465 N.J. Super. at 316-317. Thus, it is impossible to reconcile the trial court's recognition of the holding in Rafanello applying federal standards to commercial motor carriers (above 10,000 pounds) with its holding that the federal standards as to autobuses do not apply. The trial court referenced the federal standards as to autobuses applying to "interstate or foreign commerce." Of course they do because they are federal standards, but when they are "adopted by reference" by a state, they become state standards. The New Jersey statute and regulations apply to "motor carrier operators and vehicles," which would include autobuses. The federal statutes and regulations

likewise apply to "commercial motor vehicles" defined, in part, as self-propelled vehicles used "on highways to transport passengers or cargo." 49 U.S.C. §31101. There is simply no question as to New Jersey's adoption of the federal financial responsibility standards for commercial motor vehicles whether those vehicles be motor vehicles carrying cargo or autobuses.

Here, the autobus the injured parties were occupying at the time of the accident had a passenger capacity of twenty-five (25) inclusive of the driver. Thus, while the plaintiff insurer maintains that New Jersey did not adopt federal standards and regulations for the transportation of passengers in an autobus, the unambiguous language of the federal and state statutes and regulations are to the contrary. New Jersey has adopted the federal standards and applied those standards to *intrastate* transportation of commercial motor vehicles, including autobuses with a passenger capacity of sixteen (16) or more including the driver. Those standards include financial responsibility for such autobuses of $5.0 million. Prime suggests, without citation or basis, that because the New Jersey Legislature adopted a separate statutory insurance scheme for autobuses, the federal motor carrier regulations do not apply. On the contrary, the Legislature adopted the federal standards, including the financial responsibility standards with the passage of N.J.S.A. 39:5B-32 and the adoption of N.J.A.C. 13:60-2.1. The statute and the regulations clearly reflect New Jersey's decision to adopt the federal motor carrier standards, including financial

responsibility standards. There simply is no support for Prime's suggestion that the State carved out a "separate statutory scheme for autobuses." On the contrary, N.J.S.A. 48:4-47 establishing financial responsibility standards for autobuses was last amended in 1972. Certainly the Legislature well recognized the statute's applicability to autobuses in 1985 when it enacted N.J.S.A. 39:5B-32 directing the Superintendent of the State Police to adopt the federal motor carrier standards, including the federal financial responsibility standards (49 C.F.R. 387) expressly referenced in paragraph e. of the statute.

N.J.S.A. 39:5B-32, enacted in 1985 to be effective in 1986, authorizing the Superintendent of the State Police to issue regulations adopting the federal standards, including financial responsibility standards for autobuses, is not inconsistent with N.J.S.A. 48:4-47 last amended in 1972 treating financial responsibility for autobuses. N.J.S.A. 48:4-47 established a minimum responsibility standard for autobuses with a passenger capacity of 21 nor more than 30 of $25,000 and a maximum liability of $400,000 while N.J.S.A. 39:5B-32 by adoption of the federal standard (49 C.F.R. 387.33T) increased the financial responsibility for autobuses with a passenger capacity of 16 or more to $5.0 million. In effect, N.J.S.A. 39:6B-32 by adopting the federal financial responsibility standard amended N.J.S.A. 48:4-47 increasing the financial responsibility requirements for autobuses operated in New Jersey. See, Raubar v. Raubar, 315 N.J. Super. 353 (Ch. Div. 1998) (holding

that when the purposes of two statutes appear to conflict with one another, and legislative history is silent as to the possible conflict, the court generally assumes that the latter statute constitutes an amendment of the earlier statute, particularly when the latter specifically concerns a certain subject).

The trial court erred in its conclusion that federal financial responsibility standards governing autobuses (with a passenger capacity of 16 inclusive of the driver) were not adopted by reference by New Jersey with the enactment of N.J.S.A. 39:5B-32 and adoption of N.J.A.C. 13:60-2.1. The autobus on which the injured parties on July 8, 2021 were passengers had a 25 passenger capacity inclusive of the driver. As such, pursuant to New Jersey law, by virtue of adoption of 49 C.F.R. 387, the minimum financial responsibility for liability arising out of the operation of the subject autobus was $5.0 million.

Should this Court agree with the injured parties' argument in this Point that New Jersey has adopted the federal financial responsibility standard for autobuses with a capacity of 16 or more inclusive of the driver pursuant to N.J.S.A. 39:5B-32 and N.J.A.C. 13:60-2.1, then the required limit of liability on the Prime policy for the subject accident is $5.0 million. This Court need go no further as the Prime policy reflects a policy limit of $5.0 million and must be enforced to meet the minimum requirements of the law. Pursuant to N.J.S.A. 39:6B-1, the autobus operator, Marco Mendoza-Bastidas, and the Fuji entities will be afforded coverage

as a matter of law under the policy. On the other hand, should this Court reject the injured parties' argument in this Point, then their alternative arguments in Point II and III are ripe for consideration.

POINT II

MARCO MENDOZA-BASTIDAS QUALIFIES AS A PERMISSIVE USER OF THE SUBJECT BUS AND IS, THEREFORE, AFFORDED LIABILITY COVERAGE UNDER THE PRIME POLICY TO THE STATED LIMIT OF LIABILITY OF $5.0 MILLION (Ja31)

Should this Court determine that the New Jersey minimum limit of liability for an autobus with a capacity of twenty-five (25) passengers inclusive of the driver is the same as the federal standard of $5.0 million, then the issue raised in Point II is academic. Should the Court determine that the limit is less than $5.0 million, then this Court must determine whether Marco Mendoza-Bastidas, the operator of the autobus, is entitled to the $5.0 million limit as reflected on the Declarations of the Prime policy.

More than fifty (50) years ago, New Jersey adopted compulsory motor vehicle insurance. N.J.S.A. 39:6B-1 requires owners of motor vehicles registered and/or principally garaged in New Jersey to purchase and maintain automobile insurance coverage for liability arising out of the ownership, maintenance, use or operation of the vehicles. Insurance coverage must extend not just to the owner of the motor vehicle but also to permissive users, including operators, of the motor vehicle. Here, Prime issued a policy of insurance covering the subject autobus on which the injured parties were passengers when the accident occurred on July 8, 2021. The policy purports to preclude coverage to Mendoza-Bastidas as the driver of the bus as a permissive user. The provision contravenes decades of established New Jersey law

mandating the extension of insurance coverage to permissive users. Accordingly, the Prime policy must be reformed to provide that coverage extends to the operator, Marco Mendoza-Bastidas, for the subject accident to the policy's stated limit of liability of $5.0 Million.[3]

N.J.S.A. 39:6B-1 instituting compulsory motor vehicle insurance took effect on January 1, 1973. But, the statute was preceded by N.J.S.A. 39:6-46, a motor vehicle security-responsibility law providing that a motor vehicle liability policy offered as proof of financial responsibility must extend coverage "to the insured named therein and any other person using or responsible for the use of any such motor vehicle with the express or implied consent of the insured . . . ." As early as 1960 in Matits v. Nationwide Mut. Ins. Co., 33 N.J. 488 (1960), the Supreme Court ruled that insurance coverage under a motor vehicle policy must extend to any permittee who had "initial permission to use the automobile." 33 N.J. at pp. 496-497. In 1966, the Supreme Court reiterated its decision from Matits in Selected Risk Ins. Co. v. Zullo, 48 N.J. 362 (1966). Again, the Supreme Court ruled that a permissive user of a motor vehicle must be afforded coverage under the omnibus provisions of the policy. In 1968, in Willis v. Security Ins. Group., 53 N.J. 260

[3] Indisputably, the Fuji Parties, as bus line operators, and NV Service Inc., as bus owner, granted permission to Mendoza-Bastidas to operate the bus. As such, he and the parties liable for his operation are all permissive users and afforded coverage to the $5.0 million limit of liability.

(1969), the Supreme Court affirmed the decision of Judge Wick reported at 105 N.J. Super. 410 (Ch. Div. 1968), holding that permissive users of motor vehicles were required to be covered under the omnibus provisions of the policy per N.J.S.A. 39:6-46(a). In accord with the interpretations of the prior financial responsibility statute, the Supreme Court has construed N.J.S.A. 39:6B-1 consistently holding that permissive users of a motor vehicle must be afforded coverage. Ryder/P.I.E. Nationwide v. Harbor Bay Corp., 119 N.J. 402 (1990); Potenzone v. Annin Flag Co., 191 N.J. 147 (2007); Proformance Ins. Co. v. Jones, 185 N.J. 406 (2005); Rutgers Cas. Ins. Co. v. Collins, 158 N.J. 542 (1999); State Farm Mut. Auto Ins. Co. v. Estate of Simmons, 84 N.J. 28 (1980); Verriest v. INA Underwriters Ins. Co., 142 N.J. 401 (1995); Martusus v. Tartamosa, 150 N.J. 148 (1997) and Huggins v. Aquilar, 246 N.J. 75 (2021).

Therefore, it is clear that under New Jersey law Prime cannot preclude coverage under its policy for the permissive user, Marco Mendoza-Bastidas. He must be afforded coverage and the policy reformed to so provide.

The extension of coverage to Mendoza leads to the question: What limit of liability should extend to Mr. Mendoza-Bastidas? As noted in Point I, the minimum limit of liability under Federal and New Jersey law for operation of a bus with sixteen (16) or more passengers inclusive of the driver is $5.0 million. The stated limit on the Prime policy is $5.0 Million. But, Prime contends that it is only required to

extend limits of $25,000 pursuant to N.J.S.A. 48:4-47. For purposes of this Point, the issue is whether or not Mr. Mendoza-Bastidas as a permissive user is entitled to (a) the stated limit on the policy of $5.0 million, or (b) should Prime's argument be accepted, the limit of $25,000.

The New Jersey Supreme Court addressed the issue of whether a permissive user, upon reformation of a policy, is entitled to the full policy limit or the limit established by the financial responsibility law in three cases. In Huggins v. Aquilar, 246 N.J. 75 (2021), the Court addressed the considerations in determining whether to apply the stated limit on the policy or that of the minimum financial responsibility law after reviewing the Court's decisions in Proformance Ins. Co. v. Jones, 185 N.J. 406 (2005) and Potenzone v. Annin Flag Company, 191 N.J. 147 (2007). In these cases, the Court examined whether the insurer issuing the automobile policy should have reasonably expected that the full policy limit for an accident involving a permissive user was required. In Proformance, the Court under the circumstances there, holding a "business pursuits" exclusion invalid, concluded that minimum mandatory limits applied, not the full policy limits. When the issue of coverage for a permissive user engaged in loading and unloading arose once again in Potenzone, the Court concluded that the full policy limit should apply in light of the fact that sixteen (16) years had passed since the Ryder/P.I.E. loading and unloading decision and the insurer should have recognized its obligation to a permissive user. In

Huggins because of facially divergent prior opinions the Supreme Court applied the minimum financial responsibility statute.

Here, the first decision mandating coverage for a permissive user and the applicability of our State's financial responsibility law was in Matits in 1960. As indicated above, the case law addressing the issue of the extension of coverage to permissive users has been consistent in its applicability for now more than sixty-five (65) years. It cannot be seriously argued by Prime that it was unaware that its provision limiting coverage to "approved drivers," thereby excluding unapproved drivers, was void and unenforceable under New Jersey's compulsory motor vehicle law. The insurer simply chose to ignore the statute and the legions of cases mandating the extension of coverage to permissive users. This is exactly why in Potenzone the Supreme Court held that the insurer should be required to pay the stated policy limit in the Declarations. The law should not countenance an insurer's blatant disregard of the law mandating the extension of coverage to all permissive users. Accordingly, the policy should simply be read to include coverage for permissive users with the full $5.0 million limit.

In its Insuring Agreement the Prime policy expressly limited coverage to "Approved Driver[s]" as did the Scheduled Drivers Endorsement. It was pursuant to these provisions that Prime denied coverage to the autobus operator, Marco Mendoza-Bastidas. If these provisions are invalid as in contravention of New Jersey

law, specifically, N.J.S.A. 39:6B-1, then the policy must be reformed to include Mendoza-Bastidas as an insured as a permissive user. There is no provision of the Prime policy providing for the limit of liability to "step down" to the minimum level of the New Jersey financial responsibility law (assuming the level is not $5.0 million). The policy does provide that the limit will step down if a liability *exclusion* is found by a court of law to be unenforceable or in contradiction to applicable law. Prime policy Section I – Liability Coverage, B. Liability Exclusions. (Ja64) But, the legal defect in the Prime policy lay in its failure to extend coverage to permissive users in the Insuring Agreement, not an exclusion in the Liability Exclusions. Thus, once the policy is reformed to include permissive users as insureds, the only limit of liability provision in the policy applicable is that stated in the Declarations –$5.0 million.

Finally, it should be noted that Prime was not ignorant of the law with respect to Federal and State financial responsibility laws. Prime is licensed by the State of New Jersey Department of Banking and Insurance as an "admitted" company. As an admitted company, it is subject to state oversight and must meet regulatory requirements. It is deemed to be aware of the statutes and case law mandating the extension of coverage to permissive users. Beyond the requirements of an admitted company, Prime itself in the Recitals section of the Personal Guarantee and

Indemnity Agreement expressly referenced the Federal and State Financial Responsibility Laws.

In the Recitals section of the Personal Guarantee and Indemnity Agreement, the contract states, in part, as follows:

> Despite these limitations, Prime may be obligated to pay certain claims pursuant to Federal or State Financial Responsibility laws . . . or other similar regulations (collectively, "Financial Responsibility" laws). Even where Prime is required to make payments for such claims, it is the intent and understanding of the insured that such claims are considered "Non-Covered Claims" and they are subject to this agreement (if the Policy is limited to vehicles, drivers and/or cargo specifically scheduled on the policy). (¶ 1 of Personal Guarantee and Indemnity Agreement Recitals) (Ja107)

Further, in the Recitals, the contract states, in part, once again:

> The Insured has the responsibility to reimburse Prime for any Non-Covered Claim which Prime must pay as a result of any Financial Responsibility Law. (¶ 3 of the Personal Guarantee and Indemnity Agreement Recitals) (Ja107)

Once again, in the Recitals, the agreement states:

> The Insured intends to prevent the occurrence of Non-Covered Claims that would expose Prime to any obligations under any Financial Responsibility Laws. (¶ 4 of the Personal Guarantee and Indemnity Agreement Recitals) (Ja107)

Finally, Prime in the policy itself sought to distance itself from the obligations of federal and state financial responsibility laws purporting to place that

responsibility on the policyholders and the retained broker. See Prime policy, Section V – Limits of Liability, Par. H. (Ja75)

Given Prime's stated knowledge of the implications of this State's financial responsibility laws, it is in no position to suggest that it was "surprised" to find that it was obligated to extend coverage to permissive users. All it had to do was check New Jersey law to find that it clearly and explicitly required the extension of coverage to permissive users. Certainly Prime should not be afforded the "benefit" of a reduced limit of liability under New Jersey's financial responsibility laws in the face of a policy it issued in clear contravention of those laws. Prime should be held to the same standard as any insurer writing motor vehicle insurance in the State of New Jersey. If the obligation to extend coverage to permissive users has been clear for more than sixty-five (65) years, Prime should not be permitted to suggest ignorance of those laws. Under the rules established by the Supreme Court, Prime should be held to the full limit of liability of $5.0 Million just as the insurer in Potenzone.

The trial court never addressed the issue of Prime's failure to meet the minimum requirements of this State's financial responsibility laws by failing to extend coverage to permissive users. Indeed, the court imposed those laws upon Prime and held that it must afford coverage to the Fuji parties and Mendoza-Bastidas

to what it perceived the minimum limit, but it never addressed whether the $5.0 million face amount in the Declarations should apply.

POINT III

THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO DENY THE PRIME MOTION TO PERMIT DISCOVERY (Ja32)

Should this Court agree with the arguments presented in Points I and II and conclude that Prime must extend coverage to a limit of $5.0 million, then the issue of discovery in Point III will be rendered moot. If the Court rejects those arguments, then due consideration of Point III is required.

The within declaratory judgment action was commenced on August 2, 2024. The defendants-appellants Lopez-Culajay and Antunez filed their Answer and Counterclaim on December 13, 2024. By then Prime had already moved for summary judgment on October 25, 2024 contending that no coverage extended under the policy because Marco Mendoza-Bastidas was not an "approved driver," because of "late notice" of the accident, and if the New Jersey autobus financial responsibility law applied, Prime was only required to extend $25,000 per occurrence per N.J.S.A. 48:4-47. Prime was aware of the coverage issues for more than two years at the time it filed its declaratory judgment action and motion. It was further aware that no discovery whatsoever had been taken. There had been no discovery as to whether Prime properly reserved its rights in defending the several corporate defendants as well as Marco Mendoza-Bastidas. There had been no discovery as to the relationship between NV Service, Inc. and/or the NV Bus Service, Inc. and the several DOT authorized companies. There had been no

discovery as to the purported "late notice" defense. The trial court referenced the deposition of Marco Mendoza-Bastidas, but that had been taken in the underlying personal injury case, not the within declaratory judgment insurance case.

A. Potential Interstate Use of Bus

The bus involved in the accident was owned by NV Service Inc., but was operated by one or more of the Fuji Parties, DOT authorized motor carriers insured by Prime. The legal relationship between the owner of the bus and the DOT authorized motor carriers was unknown. Was the bus leased to the DOT motor carriers? What were the terms? Did the lease comply with federal law? Did the bus carry the DOT number of one or more of the DOT authorized carriers? Was the bus ever used in interstate commerce? How frequently?

In Cox v. Bond Transportation, Inc., 53 N.J. 186 (1969), the Supreme Court considered the liability of a franchised interstate motor carrier who engaged an owner-operator of a tractor intending to have him transport goods for it on public highways in interstate commerce. The motor carrier contended that at the time of the accident, the driver was not engaged in interstate commerce. But, the New Jersey Supreme Court rejected the position holding:

> When a lessor-operator is engaged by a franchised carrier to drive his equipment in the carrier's business, and the carrier qualifies or invests him with authority to engage him in "authorized" transportation by giving him the decals or signs required by the Commission to show such transportation, *prima*

> *facie* the arrangement is within and subject to Section 1057.4 of the regulations [ICC Regulations].

53 N.J. at 203.

Here, one of the DOT authorized companies was responsible for the operation of the subject bus. Indeed, while the bus was operated at the time of the accident on an intrastate basis, the DOT authorized company responsible for the bus's operation may have had the authority to utilize the bus on an interstate basis. See also, Moore v. Nayer, 321 N.J. Super. 419 (App. Div. 1999) certif. granted 162 N.J. 132, appeal dismissed, 164 N.J. 187 (holding hiring of motor vehicle by DOT authorized motor carrier and used in interstate commerce deemed to be a lease for purposes of federal statutes and regulations). Discovery was required to determine the legal relationship between NV Service and the DOT authorized motor carriers and the history of use of the subject vehicle, and whether the vehicle had the potential to be used in interstate commerce.

B. Reservation of Rights

The law is clear in New Jersey with respect to an insurance company's obligation to properly reserve its rights should it choose to provide for the insured's defense while maintaining its right to deny coverage. Merchants Ind. Corp. of New York v. Eggleston, 37 N.J. 114, 127 (1962); accord, Griggs v. Bertram, 88 N.J. 347 (1982). An insurance company is in a conflict of interest in defending an insured while maintaining its right to deny coverage. In order to control the defense while

reserving its rights, it has to inform the insured as to the potential conflict and obtain the insured's consent to defend while reserving its rights. Here, the parties could not determine what action was taken by Prime with respect to reserving its rights. Discovery was necessary. Accordingly, under no circumstances should Prime's affirmative motion for summary judgment been granted.

C. Late Notice

Prime contended that its policy required "immediate written notice, as soon as possible and in no event no later than 72 hours, of any incident, event, occurrence, loss or accident, which might give rise to a claim covered by this policy." Prime argued that the accident occurred on July 8, 2021 and that it was not informed of the accident until August 20, 2021. Under New Jersey law, an insurance company must establish ***appreciable prejudice*** to deny coverage based upon late notice. Cooper v. Government Employees Ins. Co., 51 N.J. 86 (1968). Here, the parties were permitted no discovery with respect to the asserted "late notice" claim by Prime.

Here, Prime moved for summary judgment on October 25, 2024 in the face of a scheduled trial date in the underlying personal injury action filed more than two years earlier. No consideration was rendered to the fact that Prime waited until the "last minute" to seek a coverage determination. The injured parties filed their Answer on December 13, 2024 while the Fuji parties filed their Answer on December 19, 2024. Yes, Prime technically was within time to file its motion as the

defendants had been served with the pleadings. Faced with the pending motion, the injured parties were confronted with the decision whether to engage in the idle gesture of serving discovery only to be met with Prime's argument that discovery was being served as a ruse to defeat the motion, or opting to argue the need for discovery and the areas of inquiry that potentially would serve to preclude summary judgment. Choosing the latter option, the trial court refused the injured parties' request for discovery referencing the Mendoza-Bastidas deposition in the underlying cases and holding that the Fuji Parties failed to provide responses to discovery demands relating to "intrastate/interstate travel of the subject vehicle." The problem with the trial court's ruling is that the injured parties were shut out from any discovery in the declaratory judgment action because of the trial court's perception of the actions of the Fuji Parties with respect to discovery.

Indeed, Prime's motion for summary judgment was filed as provided under the Court Rules, but that did not justify the trial court's abuse of discretion in denying the injured parties' entitlement to discovery before substantive consideration of Prime's motion.

CONCLUSION

For the reasons expressed above it is urged that this Court reverse the judgment of the trial court. Indisputably, New Jersey has adopted the federal financial responsibility standard requiring autobuses with passengers of 16 or more inclusive of the driver requiring $5.0 million in liability coverage. Indisputably, Prime was required to cover permissive users under its policy as that has been the law for more than sixty-five (65) years mandating the extension of the $5.0 million policy limit.

Finally, should the Court not agree with one or the other of the two points above, the injured parties should at the least have been afforded the opportunity to take discovery to determine whether the autobus involved in the accident was also used in interstate commerce such as to mandate application of the federal financial responsibility standards.

Respectfully submitted,

/s/ Francis X. Garrity

Dated: July 16, 2025 FRANCIS X. GARRITY

PRIME PROPERTY & CASUALTY INSURANCE, INC., Plaintiff, vs. NV SEVICE, INC., NV BUS SERVICE, INC., FUJI LINE INC.; QUICK TRANSIT MANAGEMENT AGENCY, LLC, THREE ACE'S TRANSPORTATION, INC., B.K.T.E. EXPRESS CO., LLC, FUJI EXPRESS, INC., ADEL SAADALLA, MARCO MENDOZA-BASTIDAS, VALENTIN LOPEZ-CULAJAY, DAYANARA ANTUNEZ, and/or JOHN DOES 1-10 (fictitious persons and/or entities) AND JOHN/JANE DOES 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001783-24-T4 Civil Action On Appeal from: Superior Court of New Jersey Law Division, Bergen County Docket No.: BER-L-4500-24 Sat Below: Hon. Gregg A. Padovano, J.S.C.

BRIEF OF PLAINTIFF-RESPONDENT PRIME PROPERTY & CASUALTY INSURANCE, INC. IN OPPOSITION TO APPEAL OF DEFENDANTS/APPELLANTS VALENTI LOPEZ-CULAJAY AND DAYANARA ANTUNEZ

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PRELIMINARY STATEMENT

Defendants/appellants Valentin Lopez-Culajay and Dayanara Antunez (collectively, "the Underlying Plaintiffs") have appealed the Law Division's January 27, 2025 Order granting a motion by plaintiff/respondent Prime Property & Casualty Insurance, Inc. ("Prime") for partial summary judgment: that a motor vehicle liability policy issued to Fuji Express, Inc. and related companies ("the Fuji Parties") does not afford coverage for the Underlying Plaintiffs' personal injury claims; and since such policy does not afford coverage, what are the minimum financial responsibility limits that the policy would be required to provide. The Law Division correctly ruled that the Prime Policy does not afford coverage because the Fuji Parties had not complied with an "Approved Driver Endorsement" thereto. Appellants have not appealed the decision of the Law Division that because the Fuji Parties had not complied with the terms of an "Approved Driver Endorsement" to the Prime Policy, the Prime Policy does not afford coverage.

The only, purely legal issue framed by this appeal is what the mandatory minimum financial limits are under New Jersey law applicable to a passenger bus operated exclusively within the state of New Jersey. The Law Division correctly found N.J.S.A 48:4-47, which requires not less than $25,000 in liability coverage, to be applicable (that the Prime Policy would be required to afford up to $25,000 in liability coverage); and that the federal mandatory minimum liability limits, which

mandates minimum liability limits of $5.0M per accident, would apply only to "for-hire motor carriers transporting passengers in interstate or foreign commerce."

Underlying Plaintiffs argue that the Prime Policy must afford up to $5M in coverage, either because: 1) the driver of the subject Fuji bus was a “permissive user”; or 2) federal financial responsibility laws applicable to transportation of passengers interstate also apply to a bus whose operation is entirely within the state borders. Whether the driver was a “permissive user” of the bus is a non-issue: Prime does not dispute that state financial responsibility laws require that some measure of coverage be afforded for liability arising out of the operation of a covered vehicle by a “permissive user,” even if the Prime Policy states (and the policyholder agreed) that the policy will not cover a driver who does not meet the requirements of the Approved Driver Endorsement. Nor does the state financial responsibility law require that a liability policy covering a passenger bus whose operation is entirely within the state borders afford not less than $5M in liability coverage. Appellants’ argument for $5M in liability coverage cites/relies upon N.J.S.A. 39:5B-32; however, this statute adopts federal minimum responsibility levels for vehicles transporting **cargo**, but does not apply to vehicles transporting **passengers,** such as the Fuji bus.

Underlying Plaintiffs argue that the trial court’s decision was premature because they had not had discovery. The Law Division’s decision on the narrow

legal issue framed by this appeal (the mandatory minimum liability limits applicable to a passenger bus whose operation is entirely within the state borders) was based on facts that the appellants did not and could not dispute (i.e., the plain language of the Prime Policy and the intrastate operation of the Fuji bus). Indeed, the Fuji parties, which operated the bus, had knowledge of all facts related to the operation of the bus. Since Fuji did not put forward any facts to dispute that the bus was only operated within the state borders, there must not have been anyone that could have disputed the material facts framed by Prime's summary judgment motion.

Prime respectfully submits that the decision of the Law Division, which was based upon established case law, including the decision of the Appellate Division in Alvarez v. Norwood, should be affirmed.

PROCEDURAL HISTORY

On or about July 19, 2022, the Underlying Plaintiffs commenced a lawsuit styled Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc. , et al. (the "Culajay Lawsuit") against NV Service, Inc., Fuji Express, and Mendoza in the Superior Court of New Jersey Law Division – Hudson County, Docket No. HUD-L-002379-22. Ja40. The Culajay Lawsuit alleges that the Underlying Plaintiffs sustained injuries and damages in and as a result of an accident. Ja41.

On or about July 3, 2023, Culajay and Antunez commenced a second lawsuit styled Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc. , et al. (the "Second Culajay Lawsuit") against NV Service, Inc., Fuji Express, Fuji Line Inc., Quick Transit Management Agency LLC, Three Aces' Transportation Inc, B.K.T.E. Express Co. LLC and Mendoza in the Superior Court of New Jersey Law Division – Hudson County, Docket No. HUD-L-002368-23. By Order dated July 21, 2023, the Culajay Lawsuit and the Second Culajay Lawsuit were consolidated for purposes of discovery, arbitration, and trial under Docket Number HUD-L-2379-22.

The instant Declaratory Judgment Action was subsequently filed on August 2, 2024. Ja37. A First Amended Complaint was filed on September 17, 2024. Ja115. Prime moved to consolidate this action with the Culajay Lawsuits but the Underlying Plaintiffs opposed consolidation and once Prime was denied the opportunity, it filed a motion for summary judgment in this action on October 25, 2024. Ja182.

The Underlying Plaintiffs and the Fuji Parties were provided ample time to respond. On December 12, 2024, the Underlying Plaintiffs filed a Cross Motion for Summary Judgment. Ja240. The Fuji Parties joined the Underlying Plaintiffs' Cross Motion with their own Opposition on December 20, 2024. Ja246. Oral argument was heard before the Hon. Gregg A. Padovano, J.S.C. on January 3, 2025. 1T. On January 27, 2025, the trial court issued a detailed Order and Opinion. Ja16-33.

The trial court found that the Prime Policy must provide coverage to Mendoza and/or the Fuji Parties under the omnibus provisions of the Prime Policy given that Mendoza was a permissive user of the bus at the time of the Accident. Ja31. However, the trial court further found that since Mendoza's driver's license was suspended within five years of the inception of the Policy for his failure to pay a traffic-related fine and was therefore not an "approved driver" under the Policy at the time of the Accident. Ja31. As such, the court found that according to the Approved Driver Endorsement under the Policy, Prime "will have no duty to defend or indemnify any `insured' for any Claim or `loss', with the exception to the minimum amount of insurance required by any applicable federal or state financial responsibility law." Ja31.

Next, the court found that New Jersey's state financial responsibility laws apply and mandate minimum liability limits of $25,000.00 per occurrence. Ja31. In doing so, the Court addressed the Underlying Plaintiffs' argument: "[w]hile

Defendants maintain that pursuant to N.J.S.A. 39:5B-32 and N.J.A.C. 13:60-2.1, New Jersey has adopted the minimum liability limits of $5.0 million per occurrence applicable under 49 C.F.R. 387 for for-hire motor carriers of passengers with a seating capacity of sixteen passengers or more, the court finds that **49 C.F.R. 387 is explicitly only applicable to "for-hire motor carriers transporting passengers in interstate or foreign commerce**." Ja31-32 (emphasis added.)

The trial court further considered whether discovery was necessary, but determined that it was not. Ja32. This was because Defendants failed to raise a genuine issues of material fact regarding whether the subject vehicle had the potential to be used in interstate commerce given the deposition testimony of Marco Mendoza Ja221; the email correspondence of Adel Saadalla dated December 21, 2022 Ja217; and the failure of the Fuji Parties to provide responses to the discovery demands relating to the intrastate/interstate travel of the subject vehicle, the subject vehicle was not available for interstate transport at the time of the accident. Ja33.

STATEMENT OF FACTS

THE PRIME POLICY

Prime issued Commercial Auto Insurance Policy No. PC21030229 ("the Prime Policy"), to Named Insureds, Fuji Express Co., LLC, Fuji Line Inc., Quick Management Agency, LLC, Three Ace's Transportation, Inc. and B.K.T.E. Express Co LLC (collectively, the "Fuji Parties"), with effective dates of March 16, 2021 to March 16, 2022. Ja58.

Section I of the Policy, "LIABILITY COVERAGE," states in part:

> A. Insuring Agreement
>
> 1. Subject to all of the terms, limitations, conditions, definitions, exclusions, and other provisions of this Policy, we will pay Damages in excess of any SIR that you are legally obligated to pay because of Bodily Injury or Property Damage to which this Policy applies if caused by an Accident and resulting from the ownership, maintenance, or use of a Scheduled Auto as identified in the Policy, on the Declarations or any Endorsement if:
>
> * * *
>
> b. You have complied with all the conditions set forth in Section VII – Conditions of the Policy, including without limitation all the reporting and notification requirements.
>
> * * *
>
> e. The Scheduled Auto is being operated by an Approved Driver at the time of the Accident. . . . .

Ja62.

The Prime Policy includes form ACA-99-31, the "Approved Driver Endorsement," which states in part:

This Endorsement changes the terms and conditions of the Policy, please read it carefully.

The "insured" is responsible for following each of the procedures set forth in this Endorsement and for making sure that all drivers operating an "auto" meet each of the requirements set forth herein. In the event the "insured" does not follow the procedures set forth herein and/or in the event a driver of an "auto" does not meet the requirements of this Endorsement at the time of any relevant Claim or Loss, the Insurer will have no duty to defend or indemnify any "insured" for any Claim or "loss", with exception to the minimum amount of insurance required by any applicable federal or state financial responsibility law.

A. Mandatory MVR Review and Monitoring by "Insured":

1. For existing drivers, the "insured" must obtain and review a Motor Vehicle Record ("MVR") for each driver at the inception of the Policy to ensure each driver meets the qualifications set forth in this Endorsement. The "insured" must monitor the MVR for each driver to ensure that each and every driver remains in compliance with the qualifications set forth in this Endorsement.
2. For new drivers hired after the inception date of this Policy, the "insured" must obtain and review an MVR and ensure the driver meets each of the qualifications set forth in this Endorsement. Thereafter, the "insured" must monitor the MVR of each driver and ensure that each and every driver remains in compliance with the qualifications set forth in this Endorsement.

Ja93.

The Approved Driver Endorsement further states:

A. Mandatory MVR Review and Monitoring by "Insured":

1. For existing drivers, the "insured" must obtain and review a Motor Vehicle Record ("MVR") at the inception of the Policy to ensure each driver meets the qualifications set forth in this Endorsement. The "insured" must monitor the MVR for each driver to ensure that each and every driver remains in compliance with the qualifications set forth in this Endorsement.

B. Driver Qualifications:

To qualify as an "approved driver" without additional underwriting and premium, the driver must meet each of the following qualifications at a) the later of either the inception of the Policy or the hiring date of the driver and b) at the time of the relevant Claim or Loss:

***

2. **The driver may not have had any driver's license or CDL disqualifications or suspensions within the past five years** [emphasis added], unless by reason of:

    a. Delinquent child support payments;
    b. Failure to provide proof of insurance; or
    c. Failure to pay **non-traffic** related fines. (emphasis added)

Ja93 (emphasis added).

The Approved Driver Endorsement further states:

> **C. Drivers Not Meeting Qualifications Subject to Underwriting and Additional Premium:**
>
> In the event the "insured" wishes to hire or continuing using a driver who does not meet the qualifications set forth herein, or who has fallen out of compliance with the qualifications set forth herein, the "insured" may submit the driver's information to the Insurer for further underwriting review. In this case, the Insurer will quote an associated additional premium and/or surcharge which must be paid in advance of the driver qualifying as an "approved driver", and the aforementioned driver will be specifically scheduled to the Policy.

Ja93.

PERSONAL GUARANTEE AND INDEMNITY AGREEMENT

On February 23, 2021, in connection with and in consideration of Prime's issuance of the Prime Policy, Adel Saadalla ("Saadalla"), on behalf of the Fuji Parties and on his own behalf, agreed to a Personal Guarantee and Indemnity Agreement ("Personal Guarantee"). Ja107-111.

The Fuji Parties (excepting Mendoza) are identified in the Personal Guarantee as the "Insured." Ja107. The Recitals section of the Personal Guarantee states in part:

> 1. In consideration for the representations contained herein and other good and valuable consideration, Prime has agreed to issue a policy of commercial auto and/or motor truck cargo insurance to the Insured (the "Policy"). . . . Coverage may be limited to vehicles, drivers and/or cargo that is specifically scheduled on the Policy. Despite these limitations, Prime may be obligated to pay certain claims pursuant to federal or state financial responsibility laws. . . . or other similar regulations (collectively, "Financial Responsibility Law(s)"). Even where Prime is required to make payments for such claims, it is the intent and understanding of the Insured that such claims are considered "Non-Covered Claim(s)" and are subject to this Agreement (if the Policy is limited to vehicles, drivers and/or cargo specifically scheduled on the Policy).
> * * *
> 3. The Insured has the responsibility to reimburse Prime for any Non-Covered Claim which Prime must pay as a result of any Financial Responsibility Law.
> 4. The Insured intends to prevent the occurrence of Non-Covered Claims that would expose Prime to any obligations under any Financial Responsibility Law. Accordingly, the Insured agrees that it will, when required by the Policy, schedule all vehicles, drivers and/or cargo with Prime by providing underwriting information required by Prime and paying all applicable premiums or other fees…

Ja107.

Within the Personal Guarantee's "AGREEMENT" section, Section 1 reads:

> **1. Indemnity**
>
> The Insured agrees to indemnify, defend and hold Prime harmless from any and all losses or claims arising out of a Non-Covered Claim. The Insured acknowledges its obligations to Prime for a Non-Covered Claim are not limited by the Limits of Liability of the Policy, and include attorney's fees and costs incurred in an effort to enforce this Agreement.

Ja107.

Section 4 of the Personal Guarantee's "AGREEMENT" section stated, in part:

> **4. Insured's obligation to notify Prime of Non-Covered Claims.**
>
> It is the Insured's intent that Prime shall not have a duty to defend any Non-Covered Claims, nevertheless, the Insured shall give immediate written notice that it may be called upon to cover a Non-Covered Claim, pursuant to Financial Responsibility Laws."

Ja108.

Section 5 of the Personal Guarantee's "AGREEMENT" section states in part:

> the Insured agrees that Prime does not have a duty to defend or settle any Non-Covered Claim. Prime shall, however, have the right to become involved in the defense, or to defend or settle any Non-Covered Claim. Prime's election to assume the defense of a case shall allow Prime to solely control the investigation and defense, including the selection of counsel. Prime also may negotiate toward settlement up to the applicable potential exposure to Prime under the MC-90 Endorsement or state or federal financial responsibility

> endorsement, if such a settlement is, in Prime's judgment , appropriate. Ja109
>
> Because the Insured is responsible to reimburse Prime for Non-Covered Claims, the Insured may elect to directly settle with any claimant without violating this Agreement, so long as the Insured promptly and directly pays the agreed settlement from its own funds, without looking to Prime for any funding toward such a settlement, and so long as the insured obtains a full and complete release of all claims against all Insureds under the subject Policy.

Ja109.

Section 6 of the Personal Guarantee's "AGREEMENT" section provided, in part:

> **6. Insured's obligations if Prime elects to defend, investigate or settle a Non-Covered Claim, or is required to pay a Non-Covered Claim.**
>
> If Prime elects, at its sole option and discretion, to defend, investigate or settle a Non-Covered Claim, the Insured agrees to fully cooperate with Prime in regard to that defense.
>
> The Insured further agrees to promptly reimburse Prime for:
>
> * * *
>
> c. All amounts Prime pays in settlement or to indemnify any Insured in regard to any Non-Covered Claim;
>
> * * *
>
> Such payments will be due to Prime within ten (10) calendar days after Prime provides the Insured an invoice for any of the above.

Ja109.

Section 7 of Personal Guarantee's "AGREEMENT" section states in part: "the Insured further agrees to reimburse and indemnify Prime for any and all attorney fees and costs incurred in an effort to enforce this Agreement." Ja109.

Section 8 of the Personal Guarantee's "AGREEMENT" section then read, in part:

> **8. Additional terms.**
>
> This Agreement shall be governed by the law of the State of Utah.
>
> * * *
>
> This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement . . . shall become inoperative only as provided herein.
>
> * * *
>
> For purposes of construction, this Agreement shall be deemed to have been drafted by both parties to this Agreement and shall not, therefore, be construed against any party for that reason in any subsequent dispute.
>
> In the event the Insured shall fail to perform any of its obligations hereunder, Prime shall be entitled to recover all of its reasonable costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or otherwise resulting from such breach.

> This Agreement has been prepared after discussions between and among the Insured and Prime. The Insured understands and acknowledges that Prime has and will continue to rely upon the Insured's representations and promises contained herein in the performance of any obligations under the Policy. The undersigned, individually and on behalf of the Insured, declares and represents that in executing this Agreement, they rely wholly upon their own individual judgment, belief and knowledge, and that they have had the opportunity to review this matter with counsel and insurance professionals of their own choosing.

Ja110.

PRIME GAVE THE FUJI PARTIES AND THE UNDERLYING PLAINTIFFS AMPLE NOTICE OF ITS COVERAGE POSITION

On July 8, 2021, Underlying Plaintiffs were passengers in a 2003 Ford E-450 Bus operated by Fuji Express, Inc. ("Fuji Express") and driven by Marco Mendoza Bastidas ("Mendoza") and claim to have been injured during, and as a result of, Mendoza's operation of such vehicle at or near the intersection of Lafayette and Anderson Avenues, Cliffside Park, New Jersey ("the Accident"). Ja38; Ja41.

A little over three months later, by letter dated October 20, 2021, Prime wrote to the Fuji Defendants and advised them of certain issues impacting coverage for the Accident. Ja279-286. Specifically, under Section III titled: "**DENIAL OF COVERAGE AND RESERVATION OF RIGHTS"**, Prime stated the following:

> The Policy requires the insured to comply with the Approved Drive Endorsement, PCA-99-43.

***

> The Approved Driver Endorsement PCA-99-43 which was issued with the Policy … includes several qualifications that drivers must satisfy in order to be scheduled on the Policy. Relevant to this claim[, the] driver may not have had "any driver's licenses or CDL disqualifications or suspensions within the past five years." An MVR for Mr. Mendoza was retained during Prime's investigation of the claim, the MVR shows Mr. Mendoza's licenses was suspended on November 13, 2019. As such, Mr. Mendoza does not satisfy the Approved Driver Endorsement qualifications and is not considered a scheduled driver and coverage is expressly precluded on this basis.

Ja284.

Prime's reservation of rights letter further advised the Fuji Defendants that "**[c]overage will still be provided for the claims arising from the July 8, 2021 accident pursuant to the applicable financial responsibility requirements... However to the extent Prime is required to may payments pursuant to those requirements, Fuji is obligated to reimburse Prime**. Ja285 (bold in original). The letter concluded by advising the Fuji Parties that they are entitled to consult with counsel, or its local department of insurance, regarding the preceding coverage issues and invited them to provide any additional information for Prime's consideration if they believed that the facts and conclusions of the reservation or rights letter were in error in any way. Ja286. To this day, despite ample opportunity to do so, the Fuji Parties did not provide any information to Prime suggesting that the subject bus was available for interstate transportation or that Mendoza qualified as an approved driver under the terms of the Prime Policy.

In fact, both Saadalla (by email dated December 1, 2022) and Mendoza (by way of deposition testimony on January 10, 2024) confirmed that the subject vehicle was *not* available for interstate transportation such that federal financial responsibility laws do not apply. Ja217; Ja221.

Finally, it must be noted that the fact that the Prime Policy did not provide $5M in coverage to the Fuji Parties for the Accident was not unknown to the Underlying Plaintiffs. On March 2, 2023, by written letter, the fact that the Prime Policy would not provide coverage to the Fuji Parties by virtue of Mendoza's failure to satisfy the Approved Driver Endorsement to the Prime Policy was communicated to counsel for the Underlying Plaintiffs. Ja289-90.

LEGAL ARGUMENT

I. THE TRIAL COURT PROPERLY DETERMINED THAT MINIMUM LIABILITY LIMITS OF $25,000 PER OCCURRENCE APPLY

A. Standard of Review

An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is *de novo*. See In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020) (agency's interpretation of a statute); Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019) (statutory interpretation); State v. Fuqua, 234 N.J. 583, 591 (2018) (statutory interpretation); State v. Dickerson, 232 N.J. 2, 17 (2018) (interpretation of court rules). Likewise, a trial court's interpretation of the coverage afforded under an insurance policy is reviewed *de novo* See Est. of Pickett v. Moore's Lounge, 464 N.J. Super. 549, 554-55 (App. Div. 2020).

Nevertheless, "[a] reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'"

Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

Here, the trial court as the trier-of-fact properly determined that: 1) Prime is required to extend insurance coverage to the Fuji parties and Mendoza according to the minimum liability limits of $25,000 per occurrence for claims asserted by the Underlying Plaintiffs in the Culajay Lawsuits; and that; 2) Prime is entitled to be reimbursed by the Fuji Parties and Saadalla for any payment it makes on account of the claims, causes of action and damages that have been or may be asserted in the underlying actions. Ja16-17.

B. The Trial Court's Decision Was Supported by the Factual Record

On January 27, 2025, after reviewing hundreds of pages of briefing and relevant evidence submitted by the parties and hearing oral from counsel, Judge Padovano issued a lengthy written opinions explaining, in detail, its analysis of the facts supporting its conclusions of law and findings. Ja16-33.

Specifically, the trial court determined that, [since] "Mendoza's driver's license was suspended within five years of the inception of the Policy for his failure to pay a traffic related fine and was therefore not an 'approved driver' under the [Prime] Policy at the time of the Accident. As such, the court finds that according to the Approved Driver Endorsement under the Policy, Prime 'will have no duty to defend or indemnify any insured for any Claim or loss, with the exception of the

minimum amount of insurance required by any applicable federal or state financial law." Ja31.

The record supports the court's conclusion that Mendoza's driver's license was suspended within five years of the inception of the Policy for his failure to pay a traffic related fine. Ja213-214. Accordingly, it is not a matter of dispute that Mendoza's license was suspended and Underlying Plaintiffs do not argue that Mendoza was entitled to coverage under the *terms* of the Prime Policy.

These findings were based on the trial court's detailed analysis of the relevant documents and testimony. The trial court specifically noted "Defendants [failure] to raise a genuine issue of material fact" regarding whether the subject vehicle had the potential to be used in interstate transportation" in light of: "1) the deposition testimony of Mendoza, 2) the email correspondence from Saadalla, and 3) the failure of the Fuji Parties to provide response to the discovery demands relating to the intrastate/interstate travel of the subject vehicle. Ja32.

Thus, the court held that the subject vehicle was not available for interstate transport at the time of the Accident. Ja32 citing Deposition Transcript of Marco Mendoza Ja221; Saadalla Email Correspondence dated December 21, 2022 Ja217; Demand of Plaintiff Prime to Defendant Fuji Express, Inc. for Production of Documents and Plaintiff Prime Request for Admissions. Ja224-234. The foregoing documents, are themselves sufficient to sustain the trial court's factual

determinations despite the Underlying Plaintiffs accusation that the trial court "abuse of discretion" "before substantive consideration of Prime's Motion." Db35.

As set forth below, however, Underlying Plaintiffs have failed to raise any issue worthy of appellate review. The only relevant issue for appeal is the minimum financial responsibility limits and to that end, the trial court properly considered the relevant evidence and reached conclusions based on the documents presented.

II. THE TRIAL COURT PROPERLY DETERMINED THAT THE POLICY LIMITS OF $5M DO NOT APPLY PURUSANT TO N.J.S.A. 39:5B-32 BECAUSE FMCSA REGULATIONS WERE NOT ADOPTED FOR MOTOR VEHICLES CARRYING PASSENGERS FOR HIRE

N.J.S.A 48:4-47 mandates liability coverage for motor vehicles carrying passengers for hire in the amount of $25,000 per occurrence. See N.J.S.A 48:4-47. Underlying Plaintiffs argue that Prime is required to provide coverage in the amount of $5M under state and federal financial responsibility laws. However, the relevant case law and statutory authority proves that N.J.S.A 48:4-47, not N.J.S.A. 39:5B-32, sets forth the relevant minimum financial responsibility limits.

Point I of the Underlying Plaintiffs Appeal Brief cites Rafanello v. Taylor-Esquivel, 465 N.J. Super. 304 (App. Div. 2020), but erroneously claims that the Rafanello decision applies to all commercial motor vehicles exceeding 10,000 pounds, gross vehicle weight. Db12. The holding in Rafanello does not discuss or analyze commercial motor vehicles transporting **passengers** and expressly limits its holding to commercial motor vehicles operating in intrastate or interstate travel

transporting **cargo**. See Rafanello 465 N.J. Super. 304 at 321 ("our Legislature expanded upon the federal mandate by expanding the law to cover all motor vehicles engaged in interstate and intrastate commerce **transporting cargo**")(emphasis added).

In Rafanello, plaintiff was injured when he was rear-ended by a dump truck operated by defendant, Taylor-Esquivel, who was in the course of his employment with NAB trucking. Id. at 307. NAB, Taylor-Esquival's employer had commercial automobile policy for the dump truck from American Millennium Insurance Company (AMIC) with liability coverage in the amount of $750,000. Id. at 307. However, the AMIC policy included a step-down provision which provided for maximum liability coverage only in the sum of $35,000, for accidents involving drivers not listed as a "Covered Driver" under the policy. Id. at 307.

On appeal, Rafanello's insurer argued that AMIC was obligated to provide liability coverage for claims against NAB and Taylor-Esquivel in the amount of $750,000 as mandated by New Jersey state law and federal law because the dump truck involved in this accident was a commercial motor vehicle engaged in interstate commerce, intrastate commerce, or both. Id. at 311-12. The Appellate Division analyzed the legislative framework as follows:

> Under Title 39 [Motor Vehicle and Traffic Laws], the Legislature has promulgated regulations to **differentiate certain classes of motor vehicles from the general class of motor vehicles**. See N.J.S.A. 39:3B-1 to -28 [SCHOOL BUSES]; N.J.S.A. 39:3C-1 to -36

[SNOWMOBILES AND ALL-TERRAIN VEHICLES AND DIRTBIKES; N.J.S.A. 39:4-31.1 to -31.5 [LOW SPEED VEHICLES]; N.J.S.A. 39:5H-1 to -27 [TRANSPORTATION NETWORK COMPANIES]. Additionally, the Legislature has specified the mandatory insurance requirements for these differing classes of motor vehicles, which either align with the minimum insurance coverage requirements mandated by N.J.S.A. 39:6B-1 or an increased minimum insurance coverage requirement. See N.J.S.A. 39:6B-1; N.J.S.A. 39:3C-20; N.J.S.A. 39:4-31.3(b).

However, **where the Legislature has adopted a separate statutory scheme for a class of motor vehicles and has not specified the amount of compulsory liability insurance coverage required**, it has delegated that authority to the Commissioner of Insurance in consultation with the Director of the Division of Motor Vehicles. N.J.S.A. 17:1-1; see N.J.S.A. 39:4-14.3(e). Moreover, where our Legislature has adopted federal statutes and regulations into its own regulatory scheme for a specific class of motor vehicle, it has clearly delineated the portions of the federal law applicable in our State. See N.J.S.A. 39:3B-27.

In distinguishing **vehicles transporting hazardous materials** from the general class of motor vehicles, our Legislature enacted a statutory scheme pursuant to N.J.S.A. 39:5B-1 to -32. N.J.S.A. 39:5B-18 to -31.1 establishes standards for the transportation of hazardous materials within the State of New Jersey. Specifically, N.J.S.A. 39:5B-26 provides:

> The [Department of Transportation], in consultation with the Department of Environmental Protection, the Department of Labor, the Department of Commerce and Economic Development, the Divisions of Motor Vehicles and State Police of the Department of Law and Public Safety, and other appropriate State departments and agencies shall adopt, within [twelve] months of the effective date of this act and pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 to -31), rules and regulations concerning **the transportation of hazardous materials**, which shall, to the maximum extent practicable, conform to the requirements established by 49 CFR Parts 100-199, adopted by the United

> States Department of Transportation pursuant to the provisions of the "Hazardous Materials Transportation Act," Pub.L. 93-633 (49 U.S.C. §§ 1801-1812).
>
> ***
>
> [w]e recognize that the intent of the statutes and regulations enacted by Congress was to protect drivers and shippers traveling public highways and to guarantee compensation to accident victims **injured by vehicles transporting cargo** and individuals in interstate commerce. Our Legislature reacted with an express intent on the subject by adopting the federally mandated minimum of $750,000 in insurance coverage for commercial motor vehicles. See **[1]** N.J.S.A. 39:5B-32(e); **[2]** N.J.A.C. 13:60-2.1(b); 49 U.S.C.); **[3]** § 31102(c)(2)(Q); **[4]** 49 U.S.C. § 31139(b); and **[5]** 49 CFR § 387.9. Saliently, **our Legislature expanded upon the federal mandate by expanding the law to cover all motor vehicles engaged in interstate and intrastate commerce transporting cargo.**

Rafanello 465 N.J. Super. 304 at 314; 321 (all emphasis added).

Thus, Rafanello stands for the proposition that pursuant to: [1] N.J.S.A. 39:5B18-32 [2] N.J.A.C. 13:60-2.1, [3] 49 U.S.C. § 31102(c)(2)(Q), [4] 49 U.S.C. § 31139(b); and [5] 49 CFR § 387.9, New Jersey requires insurers of commercial motor vehicles **transporting cargo** to provide no less than the federally-mandated amount of $750,000 in coverage regardless of whether a claim is covered by the policy and regardless of whether the subject vehicle was involved in intrastate or interstate transportation.

Contrary to the arguments raised by Underlying Plaintiffs and the Fuji Parties on appeal, it does not follow that New Jersey's adoption of federal minimum financial responsibility rules applicable to vehicles transporting hazardous materials

(or cargo) pursuant to N.J.S.A. 39:5B-16 to -32, applies broadly to commercial vehicles transporting passengers pursuant to N.J.S.A §48:4-47. See i.e. Rafanello 465 N.J. Super. 304 at 313 ("[t]o determine a question of statutory construction… Our objective in interpreting any statute is to give effect to the Legislature's intent. (internal citations omitted) When the clear language of the statute expresses the Legislature's intent, our analysis need go no further.")(internal citations omitted)).

Had the legislature intended for the federal motor carrier regulations to apply broadly to **all** commercial motor vehicles, including those transporting passengers, it could have amended the statutes that apply to all motor vehicles. Additionally, if such a general statute existed, the Rafanello court could have cited directly to it and its analysis would have been brief and would have found it unnecessary to parse the text of various statutes that the Underlying Plaintiffs claim are applicable here.

Underlying Plaintiffs argue that N.J.S.A. 39:5B-32 adopted, N.J.A.C. 13:60-2.1 inclusive of 49 CFR § 387.33 which establishes a $5M minimum liability for vehicles with a seating capacity of 15 passengers or more. Db15. However, Underlying Plaintiffs' position is based on selectively isolating one section of one statute (32) from one chapter and title (39:5B) – which specifically concerns "Transportation of Dangerous Articles on Highway":

Title 39. Motor Vehicles and Traffic Regulations (39:1-1 to 39:14-2)

Subtitle 1. Motor Vehicle and Traffic Laws (39:1-1 to 39:5H-27)

Chapter 5B. Transportation of Dangerous Articles on Highway (39:5B-1 to 39:5B-32)

39:5b-32. Qualifications of Interstate Motor Carrier Operators and Vehicles; Rules and Regulations, Registration, Financial Responsibility; Alcohol and Controlled Substances Programs

whereas the regulations of the specific autobus come from an entirely separate title, chapter and statute:

Title 48. Public Utilities (48:1-1 to 48:25-20)

Article 7. Insurance; Certain Motor Vehicles Carrying Passengers for Hire (48:4-46 to 48:4-46 to 48:4-55)

48:4-47. Financial Coverage Required; Insurance Policy; Filing with Utility Board; Rejection; Minimum and Maximum Liability for Bodily Injury or Death

Cf: N.J.S.A. 39:5B-32 with N.J.S.A 48:4-47.

As Rafanello makes clear, those section of the federal regulations apply **only** to the class of motor vehicles set forth in N.J.S.A. 39:5B. See Rafanello v. Taylor-Esquivel, 465 N.J. Super. 304 at 314("[i]mportantly, when interpreting a statute, it must be read 'in context with related provisions so as to give sense to the legislation as a whole…whatever the rule of [statutory] construction, it is subordinate to the goal of effectuating the legislative plan as it may be gathered from the enactment read in full light of its history, purpose, and context.'") (internal citations omitted).

The fact that the Legislature intended to adopt federal regulations specifically for transportation of property and not passengers is further made clear by t N.J.S.A. 39:5B-32(e) which cites only to 49 U.S.C. § 31139(Minimum financial responsibility for transporting property) and *not* to 49 U.S.C. § 31138(Minimum financial responsibility for transporting passengers). See N.J.S.A. 39:5B-32(e)("The superintendent shall enforce financial responsibility requirements under 49 U.S.C. 13906 and 31139, and 49 CFR Part 387.").

Finally, Underlying Plaintiffs present a new argument (not argued below) to claim that N.J.S.A. 48:4-47 "is not inconsistent with" N.J.S.A. 39:5B-32 because N.J.S.A. 39:5B-32 "in effect… amended N.J.S.A. 48:4-47." Db19. Underlying Plaintiffs' argument is supported by a single Chancery Division matrimonial case that does not support the proposition for which it is offered. In Raubar v. Raubar, 315 N.J. Super. 353, 361 (Law. Div. 1998), the court held that:

> **A statute should not be interpreted to change a long-standing rule or principle embodied in a different statute unless the statute manifests a clear intent to do so** (internal citation omitted). **This court must therefore construe these statutes as separate enactments intended to be consistent with one another**. (internal citation omitted). When the purposes of two statutes appear to conflict with one another, the text of each fails to cross-reference the other, and legislative history is silent as to the possible conflict, the court generally assumes that the latter statute constitutes an amendment of the earlier statute, particularly when the latter specifically concerns a certain subject matter, **whereas the previously enacted law pertains to the issue only in general terms**. (internal citation omitted; emphasis added)

Raubar 315 N.J. Super. 353 at 361.

Underlying Plaintiffs selectively quote from the above case and omit the portions of the beginning and end of the holding that have been bolded above. Raubar concerned the statute which grants specific authority to a spouse or former spouse to assume a new surname at or subsequent to entry of final judgment of divorce, N.J.S.A. 2A:34–21, which was adopted subsequent to the more general name change statute, N.J.S.A. 2A:52–1. See Raubar, 315 N.J. Super. at fn6.

This matter is distinct from Raubar because the two relevant statutes: N.J.S.A. 48:4-47, Autobuses and N.J.S.A. 39:5B-32, Transportation of Dangerous Articles on Highway, do not conflict with each other. Nor should it be assumed that N.J.S.A. 48:4-47 was amended by N.J.S.A. 39:5B-32: N.J.S.A. 48:4-47 is specific to autobuses; N.J.S.A. 39:5B-32 is specific to the transportation of dangerous articles on a highway, and neither are general statutes like N.J.S.A. 2A:52–1.

Moreover, even if Underlying Plaintiffs were correct that N.J.S.A. 39:5B-32 is a "general" statute intended to apply broadly to all commercial motor vehicles and *not* specifically limited to "Transportation of Dangerous Articles on Highway" or vehicles transporting cargo (which Prime vehemently rejects), Raubar is inapposite because it does not stand for the proposition that a newer general statute can override an earlier specific statute.

Finally, to the extent that Underlying Plaintiffs argue that N.J.S.A. 48:4-47 is outdated or has been amended by implication, the court need look no further than Huggins v. Aquilar, 246 N.J. 75 (2021), a 2021 case (addressed below in reference to appellant's arguments) that specifically cites N.J.S.A. 48:4-47 as an example of statutes that require liability coverage in excess of the $15,000/$30,000 minimum limit identified in the Omnibus Statute (N.J.S.A.6B-1). See Huggins 246 N.J. 75 at 87.

III. THE TRIAL COURT PROPERLY DETERMINED THAT PRIME MUST PROVIDE $25,000 IN COVERAGE PER THE TERMS OF THE PRIME POLICY

As recognized by the trial court (Ja29), an insurance policy is a contract that will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled." Flomerfelt v. Cardiello, 202 N.J. 432, 441 (2010). Courts interpret the language of an insurance policy according to its plain and ordinary meaning. Voorhees v. Preferred Mut. Ins. Co., 128 N.J. 165, 175 (1992). Courts cannot "write for the insured a better policy of insurance than the one purchased." Flomerfelt, Ibid citing Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 529 (1989).

Here, the Fuji Parties are not entitled to the $5 Million face amount of coverage because, as the trial court held: "Mendoza's driver's license was suspended within five years of the inception of the Policy for his failure to pay a traffic-related

fine and was therefore not an "approved driver" under the Policy at the time of the Accident. … [thus] according to the Approved Driver Endorsement under the Policy, Prime 'will have no duty to defend or indemnify any 'insured; for any Claim or 'loss' with the exception to the minimum amount of insurance required by any applicable federal or state financial responsibility law.'" Ja31.

The Prime Policy was clear and unambiguous as to the reduction of policy limits to the applicable financial responsibility limits and sets forth the reduction from the language in several places including on the Approved Drivers Endorsement:

> In the event "insured' does not follow the procedures set forth herein an;/or in the event a driver of an "auto" does not meet the requirements of this Endorsement at the time of any relevant Claim or Loss, the Insurer will have no duty to defend or indemnify any "insured" for any Claim or "loss", **with exception to the minimum amount of insurance required by any applicable federal or state financial responsibility law** [emphasis added].

Ja93.

Nevertheless, Underlying Plaintiffs argue that that [since Mendoza] "qualifies as a permissive user of the subject bus and is, therefore, afforded liability coverage under the Prime Policy to the Stated Limit of Liability of $5M." Pb22.

The Underlying Plaintiffs arguments regarding "permissive driver" status of Mendoza are irrelevant. It is not contested that Mendoza was a permissive user and indeed the trial court found him to be a permissive driver. Ja31. It does not follow

that Prime must therefore afford $5M in liability coverage irrespective of whether the Fuji Parties complied with the terms of the Policy because the same would vitiate the Fuji Parties obligations under the terms of the tantamount to allowing the Fuji Parties to have a better policy of insurance than the one purchased. Walker Rogge, N.J. 517 at 529.

IV. THE TRIAL COURT PROPERLY DETERMINED THAT THE FACT THAT MENDOZA WAS OPERATING THE AUTOBUS WITH PERMISSION OF THE FUJI PARTIES DOES NOT CREATE FULL POLICY LIMIT COVERAGE

Underlying Plaintiffs argue that [since Mendoza] "qualifies as a permissive user of the subject bus and is, therefore, afforded liability coverage under the Prime Policy to the Stated Limit of Liability of $5M." Pb22. Underlying Plaintiffs misapprehend the nature of minimum financial responsibility laws.

Whether or not Mendoza had permission from the Fuji Parties to operate the autobus is distinct from the rights and responsibilities of the Fuji Parties vis-à-vis Prime. Those rights and responsibilities are determined by the terms of the contracts between the parties. See Universal Underwriters Grp. v. Heibel, 386 N.J. Super. 307, 318 (App. Div. 2006)("Although N.J.S.A. 39:6B–1 mandates that every owner possess liability insurance in at least the amounts required by the statute, it does not create, through its express language or ancillary authority, an obligation for an automobile owner to provide indemnity to a permissive user").

Next, as set forth above, Prime's minimum financial responsibility obligations ($25,000 per occurrence) flowing to the Underlying Plaintiffs are mandated by N.J.S.A. 48:4-47, *not* N.J.S.A. 39:5B and *not* N.J.S.A. 39:6B. If the Court accepts that Prime must maintain limits pursuant to N.J.S.A. 39:6B, then the applicable limits would be $30,000, not $5 Million. See Huggins 246 N.J. 75 at 87 (2021)("Motor vehicles used to carry passengers for hire must maintain liability coverage in amounts set by a schedule, but far in excess of the $15,000/$30,000 limit identified in N.J.S.A. 39:6B-1(a). N.J.S.A. 48:4-47.")

Underlying Plaintiffs identify three recent cases that address the issue of whether full policy limits or state minimum financial responsibility limits apply. As indicated above, Huggins applies minimum limits. See Huggins 246 N.J. 75 at 93 ("we affirm the reformation of the policy but modify the trial court's imposition of the $1,000,000 policy amount and instead order the reformation of Federal's policy to the $100,000/$250,000 dealer-licensure minimum liability coverage."); see also Proformance Ins. Co. v. Jones, 185 N.J. 406, 421 (2005)("We hold that the Proformance policy must provide the statutorily required minimum limits of coverage for the accident.")

The third case does not apply the minimum limits but is easily distinguishable on the facts. In Potenzone v. Annin Flag Co., 191 N.J. 147 (2007), the court held that the full policy limits applied because: "[f]ollowing our decision

in *Ryder,* insureds, insurers, and self-insurers should have reasonably expected that the full policy limit for an accident during a loading or unloading operation was required…. If the insurer intended to provide the statutory minimum coverage for loading or unloading accidents, it should have amended its policy to expressly provide for such step-down coverage. Potenzone 191 N.J. 147 at 155-56.

Underlying Plaintiffs seek to analogize this case to Potenzone because Prime was allegedly "on notice" that it must provide coverage to permissive users and because the Prime Policy had no step-down provision. Underlying Plaintiffs' argument is fatally flawed because the Prime Policy had numerous indications that the Policy would "step-down" to mandated minimums. See i.e. the terms of the Approved Driver Endorsement cited by the trial court at Ja21 and the terms of the Personal Guarantee beginning at Ja107. Nor is Mendoza truly a "permissive user" under the coverage grant. He was specifically prohibited under the Approved Drivers Endorsement.

This case is analogous to Alvarez v. Norwood, No. A-3678-10T1, 2012 WL 1414116 (N.J. Super. Ct. App. Div. Apr. 25, 2012) which "involve[d] a taxi insurance policy that excluded coverage for unnamed and unapproved drivers." Ja292.

The only salient difference between this case and Alvarez is that this matter involves a bus insurance policy that excluded coverage for unnamed and unapproved

drivers rather than a taxi policy. Like here, in Alvarez "insurance policy included an omnibus clause that generally extended coverage to anyone using the vehicle with the named insured's permission." Ja293. It is not, as Underlying Plaintiffs argue, that Prime restricts s omnibus coverage. Alvarez even analyzes the cases submitted in opposition by the Underlying Plaintiffs:

> [w]e have held that reforming a policy to satisfy the statutory limits and no more vindicates both the statutory imperative to compensate third parties who are strangers to the insurance contract, and the intent of the parties who did not bargain for the policy limits. Rao v. Universal Underwriters Ins. Co., 228 N.J.Super. 396, 410–12 (App.Div.1988).
>
> > [W]e see no compelling public policy or other reason mandating a conclusion that because of Universal's unsuccessful attempt to exclude itself entirely from covering the lessee's use of the Open Road vehicle, that the remainder of the provision should become unenforceable and extend its coverage beyond the $15,000/$30,000 which the Legislature has presently established as the minimum coverage required to be carried. Rather than invalidating the entire policy provision, we prefer to treat the invalidated provision as severable, and will enforce the remainder of the insurance contract.
> > [Id. at 410–11 (internal citations omitted).]
>
> ***
>
> However, plaintiffs rely on Potenzone, supra, for the proposition that where the non-enforceability of a complete exclusion is well-settled, the court should simply treat the exclusion as a nullity, resulting in coverage at the full policy limits for the claim otherwise addressed by the exclusion. We believe plaintiffs misread Potenzone. The Potenzone Court declined to follow the path in Proformance and impose only the minimum limits, where a policy included an unenforceable exclusion of claims arising out of loading and unloading accidents. 191 N.J . at 155. The Court did so because it concluded the result was consistent with the expectations of the parties to the insurance contract, inasmuch

> as the disapproval of loading and unloading exclusions was settled in Ryder/P.I.E. Nationwide, Inc. v. Harbor Bay Corp., 119 N.J. 402 (1990). "Following our decision in Ryder, insureds, insurers, and self-insurers should have reasonably expected that the full policy limit for an accident during a loading or unloading operation was required." Potenzone, supra, 191 N.J. at 155.
>
> We find no comparable grounds to conclude that [driver analogous to Mendoza] or [insured analogous to the Fuji Parties] should have expected that the full policy limits would apply to accidents involving a principal driver of the insured taxi who was omitted from the application and the policy. An insured may reasonably expect a policy to cover the casual, unanticipated use of one's vehicle by a permitted user. See Repossession Specialists v. Geico Ins. Co., 423 N.J.Super. 518, 525–26 (App.Div.2012). However, the same cannot be said where the insured knows in advance someone will be a principal driver of the insured vehicle, but does not disclose that to the insurer.
>
> This case is more akin to the intentional omission of a member of a household who the applicant anticipated would be a principal operator of a vehicle. In such cases, we have found it appropriate to extend coverage at the minimum limits to an innocent omitted driver, but to deny coverage entirely where the unnamed driver, even if ignorant of the omission, was obliged to be aware of it. See, e.g., Rutgers Cas. Ins. Co. v. LaCroix, 194 N.J. 515 (2008) (extending PIP coverage, at minimum limits, to innocent injured daughter of named insured father who fraudulently omitted her name as a licensed driver in the household); Palisades Safety & Ins. Ass'n v. Bastien, 175 N.J. 144, 151 (2003) (denying PIP coverage for wife, who was "in a unique position to be aware of the other spouse's interactions with the insurer of the household's vehicles[,]" where named insured husband falsely represented no other persons of driving age resided in the household).
>
> Ja295-296.

Here there can no doubt that the Fuji Parties were, as early as October 20, 2021, "obliged to be aware" that the omission of Mendoza's license suspension would result in no coverage. Ja284. The requirement that all drivers must have five years

of clean driving records was explicitly set forth in the Approved Driver Endorsement. Ja93-94.

The Approved Driver Endorsement further required the Fuji Parties to conduct a MVR search of their drivers. Ja93. Had they done so prior to the Prime Policy inception, they would have had the opportunity to either exclude Mendoza from driving under the Prime Policy, or request that he be added to the Prime Policy so that Prime could adjust the premium accordingly. Ja93. The Fuji Parties failed to do so. Ja271.

In Alvarez, the Appellate Division also elucidated the public policy grounds for the court's rejection of full policy limits in circumstances like this case:

> [i]t suffices to recognize here that extension of full limits coverage to an accident involving a regular driver omitted from the insurance application would create "a disincentive ... to tell the truth." Palisades Safety & Ins. Ass'n, supra, 175 N.J. at 152. And, it would reward the insured for her omission by providing her with a level of coverage for which she did not bargain.
>
> Extending full limits in this and similar cases would also reduce the incentive of both taxi company insureds, and taxi insurers, to scrutinize the persons who may get behind the wheel of taxicabs.
>
> > The special duties and high degree of care which a common carrier owes to its passengers are too well known to require listing. The carriage of passengers by taxicabs is in an essentially sensitive area because of the privacy of the vehicle and the passenger's total dependency not only on the driver's skills but upon his protection as well.
> > [Naseef v. Cord, Inc., 90 *N.J.Super*. 135, 141 (App.Div.), aff'd, 48 N.J. 317 (1966).]

***

> It would be inconsistent with the public interest in assuring that taxicabs are operated by capable and competent persons to deny a taxicab insurer like Pinelands the ability to require disclosure and approval of regular drivers of the insured taxicab. We therefore decline to treat the exclusion of unnamed and unapproved drivers as a complete nullity, and to permit recovery of the full policy limits in an accident involving an unnamed and unapproved driver.
>
> Ja296-97.

The rationale of Alvarez is sound and should be followed by the court here as the trial court did. The Underlying Plaintiffs simply have no explanation why this court should not apply the rationale of Alvarez to enforce the state minimum financial liability limits of $25,000 per occurrence. T7:10-22. Nor can it explain the inconsistency of its argument – that full policy limits of $5 Million apply to permissive users, with the holding in Huggins - which applied minimum financial responsibility limits. Accordingly, the minimum financial responsibility limits of $25,000 per occurrence apply to the Accident that is the subject of the Culajay Lawsuits.

V. THE TRIAL COURT PROPERLY DETERMINED THAT DISCOVERY WAS NOT NECESSARY TO DETERMINE THE COVERAGE ISSUE AND THE APPLICABLE FINANCIAL RESPONSIBILITY LIMITS

The Underlying Plaintiffs cross-moved for summary judgment "seeking an adjudication that the Prime Policy limit as to Medoza and as to the DOT authorized companies is $5M." Ja24-25. The filing of a cross motion in and of itself is an

admission that this issue is purely legal and can be decided even in the absence of additional discovery. See Spring Creek Holding Co. v. Shinnihon U.S.A. Co., 399 N.J. Super. 158, 177 (App. Div. 2008)("The filing of a cross-motion for summary judgment generally limits the ability of the losing party to argue that an issue raises questions of fact, because the act of filing the cross-motion represents to the court the ripeness of the party's right to prevail as a matter of law.") Purely legal questions, such as the interpretation of insurance contracts, are questions of law particularly suited for summary judgment. Badiali v. New Jersey Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015).

A party opposing a motion for summary judgment on the grounds that discovery is incomplete, must "demonstrate with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action." Badiali v. New Jersey Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015) (quoting Wellington v. Est. of Wellington, 359 N.J. Super. 484, 496 (App. Div. 2003)). The party must identify the specific discovery that it maintains is still needed. See Trinity Church v. Lawson-Bell, 394 N.J. Super. 159, 166 (App. Div. 2007) ("A party opposing summary judgment on the ground that more discovery is needed must specify what further discovery is required, rather than simply asserting a generic contention that discovery is incomplete.") "[D]iscovery need not be undertaken or completed if it will patently not change the outcome." Minoia v. Kushner, 365 N.J.

Super. 304, 307 (App. Div. 2004) (citations omitted); see also DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 341 (App. Div. 2013). Moreover, "a claim of incomplete discovery will not defeat a summary judgment motion where the party opposing the motion has not sought discovery within the time prescribed by R. 4:24–1 [.]" Pressler, Current N.J. Court Rules, comment 2.3.3 on R. 4:46–2 (2008) (citing Liberty Surplus Ins. Co. v. Nowell Amoroso, P.A., 189 N.J. 436, 450–51 (2007)).

Despite the above, the Underlying Plaintiffs inappropriately raise three specific grounds to seek discovery. However, as set forth more full below, none of these issues are before this court. The only issue for the appellate court to decide is which minimum financial responsibility liability limits apply. This is a purely legal question that does not require further discovery.

A. The Trial Court Properly Determined that the Subject Bus Was Only Available for Intrastate Use.

The Underlying Plaintiffs argue that:

> [i]n Cox v. Bond Transportation, Inc., 53 N.J. 186 (1969), the Supreme Court considered the liability of a franchised interstate motor carrier who engaged an owner-operator of a tractor intending to have him transport goods for it on public highways in interstate ecommerce. The motor carrier contended that at the time of the accident, the driver was not engaged in interstate commerce. But the New Jersey Supreme Court rejected that position…

Db32.

Cox is both outdated and inapposite. Here, Mendoza was the operator of the subject bus. There was no "intent" to have him "transport goods" "interstate" as he testified that he drove an entirely intrastate route for the whole time that he's been working for Fuji. Ja272-73; see also Ja32 ([t]he court finds that discovery is not necessary to resolve the issue of whether the subject vehicle had the potential to be used in interstate commerce given that Defendants have failed to raise a genuine issue of material fact relating to this issue.")

Moreover, this court should not indulge the Underlying Plaintiffs' misleading claim that discovery was somehow rushed or that they did not have the ability to develop a sufficient factual record. The accident occurred on July 8, 2021. Ja19. The Fuji Parties were provided a reservation of rights letter on October 21, 2021. Ja27. The fact of whether Mendoza or the subject bus traveled a purely interstate route during all relevant times is and was purely within the knowledge and control of the Fuji Parties.

It is not merely, as the Underlying Plaintiffs claim, that the Claimant parties "were shut out from any discovery … because of the trial court's perception fo the actions of the Fuji parties with respect to discovery." Db35. The Fuji Parties failed to provide certified discovery response to Prime's discovery demands and Defendant Saadalla did not contest Prime's assertion that the subject bus was only available for intrastate transport in his December 10, 2024 certification. Ja258-60. The Fuji

Parties' failure to answer discovery is not a mere technicality. On December 1, 2022, Saadalla confirmed to Prime that the route taken by Mendoza on the date of the accident does not cross state lines and stays in New Jersey. Ja217. Nevertheless, both the Fuji Parties and the Underlying Plaintiffs make improper and non-substantive denials to this fact. Ja272.

Nor is there genuine dispute as to whether the subject Fuji bus was available for interstate transportation. Between March 16, 2021 and March 16, 2022 [the Prime Policy period], the Fuji Bus, while in service for Fuji, was only driven on routes that were within the state of New Jersey. Ja232; Ja32.

Had the availability of the Fuji bus for interstate transport been the subject of a genuine dispute, the Fuji Parties *could have* provided a response to the RFA's in a timely manner, or counsel for the Fuji Parties *could have* requested additional time to do so. The fact of whether the subject Fuji bus travels interstate is something well within the knowledge of Defendant Saadalla who supplied his own certification dated December 12, 2024 ("the Saadalla Certification") in support of the opposition to the summary judgment motion. The Saadalla Certification acknowledges the outstanding discovery demands Ja259 at ¶7, and was precisely the opportunity for Mr. Saadalla to elaborate as to any interstate movements of the Fuji Bus. Instead the Saadalla Certification failed to provide any reason why the Court should not deem the fact that the bus did not travel interstate admitted.

B. The Estoppel Issue is Not Before This Court and Is Moot in any Event

The Underlying Plaintiffs inappropriately raise the issue of estoppel by claiming that "the parties could not determine what action was taken by Prime with respect to reserving its rights." As the trial court acknowledged, Prime issued a reservation of rights letter to the Fuji Parties on October 20, 2021 and a coverage position letter [to the attorneys representing the Underlying Plaintiffs] on Morch 2, 2023. Ja27.

Furthermore, Underlying Plaintiffs cannot use the doctrine of estoppel to obtain coverage for a loss that is not within the coverage of the Prime Policy. It is well-established under New Jersey law that "a loss which is not within the coverage of a policy cannot be brought within such coverage by invoking the principles of waiver or estoppel." Greenberg & Covitz v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 312 N.J. Super. 251, 264 (App. Div. 1998). ***"[N]either waiver nor estoppel can be used to expand coverage that is specifically and unambiguously excluded from the policy language."*** Transamerica Occidental Life Ins. Co. v. Total Sys. Inc., 2011 WL 1322023, at *5 (D.N.J. Mar. 31, 2011), aff'd, 513 F. App'x 246 (3d Cir. 2013) (emphasis added).

"Waiver or estoppel can only have a field of operation when the subject-matter is within the terms of the contract. No one, we assume, would argue that a policy of insurance, which protected one against loss by fire, could be extended or broadened,

by the application of the principle of waiver or estoppel, to cover loss by cyclone. The effect, in such a case, would be to create a new contract, without a new consideration." Greenberg & Covitz, 312 N.J. Super. at 264.

Moreover, because Plaintiff is a third party to Prime's insuring agreement with the Fuji Parties and not an insured under the terms of the Prime Policy, they do not have standing to bring an estoppel claim against Property & Casualty. The ability of a third party to bring an estoppel claim against an insurer has not been established by New Jersey's courts. In fact, in Northfield Ins. Co. v. Mt. Hawley Ins. Co., 454 N.J. Super. 135 (App. Div. 2018), the New Jersey Appellate Division recognized the inherent issues present in evaluating whether a third party has standing to bring an estoppel claim against an insurer since estoppel claims brought by a third party involve "the alleged victim pursu[ing] relief against the insurer based on concepts that seem linked only to the insurer/insured relationship [.]" Northfield, 454 N.J. Super. 135, 149.

Indeed, allowing a third party to bring estoppel claims against an insurer runs contrary to New Jersey law in that an estoppel claim is entirely dependent on whether an insurer's conduct has prejudiced an insured and prejudice to a third party claimant is not a consideration in evaluating an estoppel claim. As such, the Underlying Plaintiffs, as strangers to Prime's insuring agreement with the Fuji Parties, does not have standing to bring an estoppel claim against Prime.

C. "Late Notice" is Not Before This Court

The Underlying Plaintiffs argue that Prime must establish "appreciable prejudice" in order to deny coverage based upon late notice. Db34. While this is an accurate statement of law, "late notice" was only one of the reasons for which Prime denied coverage and was *not* the basis for the trial court's decision to apply the state minimum financial responsibility limits such that it is not before the appellate court and there is no reason to engage in discovery on this issue.

D. Discovery is Unnecessary

The Underlying Plaintiffs argue that discovery is necessary to investigate the above factual issues only in the event that the court does not overturn the trial court's determination as to the legal issues of contract and statutory interpretation raised in its Points I and II. Db31. The fact is that there is no basis to entertain discovery when discovery would not change the outcome of the trial court's decision.

Underlying Plaintiffs have not even appealed the basis for Prime's coverage denial (Mendoza was an unapproved driver so therefore there is no coverage under the terms of the Policy). Underlying Plaintiffs' attempt to reopen discovery is nothing more than an attempt to gain leverage to relitigate the issues it is now appealing. However, as a point in fact, the trial court did not – as claimed by the Underlying Plaintiffs - *refuse* to permit discovery. It merely determined the legal issues raised by the Underlying Plaintiffs in Point I and II of their appellate brief.

The trial court action was still open and capable of continuing with discovery. This is evidenced by the extensive back and forth between the appellate division and appellants who were required to certify the decision as final notwithstanding the fact that the trial docket remained opened until the appellate division accepted the appeal as final.

CONCLUSION

Prime respectfully requests that this honorable court affirm the trial court's January 25, 2025 order and decision granting Prime's motion for summary judgment and holding that Prime shall extend insurance coverage to the Fuji Parties and Mendoza according to the minimum liability limits of $25,000 per occurrence for the claims asserted in the Culajay Lawsuits.

Respectfully submitted,

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Prime Property & Casualty Insurance, Inc.

David M. Kupfer

BY: Sean P. Shoolbraid
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Dated: August 18, 2025

PRIME PROPERTY & CASUALTY INSURANCE, INC., Plaintiff, vs. NV SERVICE INC.; NV BUS SERVICE INC.; FUJI LINE INC.; QUICK TRANSIT MANAGEMENT AGENCY LLC; THREE ACE'S TRANSPORTATION INC.; B.K.T.E. EXPRESS CO. LLC; FUJI EXPRESS, INC.; ADEL SAADALLA; MARCO MENDOZA-BASTIDAS; VALENTIN LOPEZ-CULAJAY; DAYANARA ANTUNEZ; and/or JOHN DOES 1-10 (fictitious persons and/or entities) AND JOHN/JANE DOES 1-10, Defendant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No.: A-001783-24 – T4 Civil Action On Appeal from: Superior Court of New Jersey Law Division, Bergen County Docket No.: BER-L-4500-24 Sat Below: Hon. Gregg A. Padovano, J.S.C.

REPLY BRIEF OF DEFENDANTS-APPELLANTS VALENTIN LOPEZ-CULAJAY AND DAYANARA ANTUNEZ IN FURTHER SUPPORT OF APPEAL

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POINT I

NEW JERSEY'S CHOICE TO PARTICIPATE IN THE FEDERAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM LEAVES NO QUESTION AS TO THE STATE'S ADOPTION BY REFERENCE OF THE FEDERAL STANDARD OF $5.0 MILLION FOR FINANCIAL RESPONSIBILITY

A. Introduction

Underlying plaintiffs, Valentin Lopez-Culajay and Dayanara Antunez ("underlying plaintiffs"), maintain on appeal that in 1986 New Jersey enacted N.J.S.A. 39:5B-32 directing the Superintendent of the State Police to adopt the interstate motor carrier standards, including the federal financial responsibility standards (49 C.F.R. Part 387) expressly referenced in paragraph (e) of the statute. Prime maintains that the statute only applies to commercial motor vehicles operating intrastate transporting cargo, not autobuses carrying passengers. (Pb23) On the contrary, the applicable federal statutes and regulations as well as the New Jersey statute and regulations and legislative history all support the underlying plaintiffs' position that New Jersey has adopted by reference the federal standards for interstate autobuses requiring $5.0 million in financial responsibility.

B. Federal Requirements for States Participating In the Federal Motor Carrier Assistance Program

As indicated in the underlying plaintiffs' initial Brief in Point I, with the enactment of N.J.S.A. 39:5B-32, New Jersey determined to participate in the Federal

Motor Carrier Assistance Program offered pursuant to 49 U.S.C. §31102 of the Federal Motor Carrier Safety Act. Thus, in order to determine the scope and intent of the New Jersey statute, the starting point should be the federal statute under which the State sought federal assistance. In this fashion, the New Jersey statute can be placed in context. What did the federal government require of the states for them to obtain federal grant funding under the Motor Carrier Assistance Program?

49 U.S.C. §31100 identifies the purpose of the statute.

> The purpose of this sub-chapter is to ensure that the Secretary, States and other political jurisdictions work in partnership to establish programs to improve motor carrier, commercial motor vehicle, and driver safety to support a safe and efficient transportation system by:
>
> (1) Focusing resources on strategic safety investments to promote safe for-hire and private transportation, ***including transportation of passengers*** and hazardous materials, to identify high-risk carriers and drivers, and to invest in activities likely to generate maximum reductions in the number and severity of ***commercial motor vehicle*** crashes. (Emphasis added)

Of course, the statute expressly refers to "transportation of passengers" and "commercial motor vehicles." Section 31101 expressly defines "commercial motor vehicle."

> (1) "commercial motor vehicle" means . . . a self-propelled or towed vehicle used on the highways in commerce ***principally to transport passengers*** or cargo, if the vehicle - - -
>
> (A) Has a gross vehicle weight rating or gross vehicle weight of at least 10,001 lbs. whichever is greater;

> (B) Is designed ***to transport more than ten passengers including the driver***; or (emphasis added)
>
> ***

Thus, Sections 31100 and 31101 refer to "transportation of passengers" and "commercial motor vehicles" with the latter expressly referencing vehicles used in commerce "principally to transport passengers" with further reference to "transport more than ten passengers." Unquestionably, the federal statutes are referring to autobuses.

Section 31102 identifies the goal of the Motor Carrier Safety Assistance Program funded under Section 31104.

> (b) Goal - - - the goal of the program is to ensure that the Secretary, ***States***, local governments, other political jurisdictions, federally recognized Indian tribes and other persons work in partnership to establish programs to improve motor carrier, commercial motor vehicle, and driver safety to support a safe and efficient surface transportation system by - - - (1) making targeted investments to promote safe commercial motor vehicle transportation, ***including the transportation of passengers*** and hazardous materials. (Emphasis added)

Paragraph (c) of Section 31102 captioned "State Plans" sets forth the requirement for states to participate.

> (c) State Plans. - - -
>
> (1) In general. - - -
>
> In carrying out the program, the Secretary shall prescribe procedures for a State to submit a multiple-year plan and

> annual updates thereto, under which the State agrees to assume responsibility for improving motor carrier safety by adopting and enforcing State regulations, standards and orders that are compatible with the regulations, standards, and orders of the Federal Government on commercial motor vehicle safety and hazardous materials transportation safety.

Paragraph (Q) of Section 31102 references the federal financial responsibility requirements adopted by the states that choose to participate.

> (Q) ensures that the State will cooperate in the enforcement of financial responsibility requirements under §§13906, 31138, 31139 and regulations issued under those Sections.

Section 31138 captioned "Minimum Financial Responsibility for Transporting Passengers" expressly provides that the Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage ***for the transportation of passengers for compensation*** by motor vehicle in the United States . . . ." (Emphasis added)

Pursuant to 49 U.S.C. 31138, 49 C.F.R. 387.33 established minimum limits for public liability for motor carriers of passengers operating in interstate or foreign commerce. Any vehicle with a seating capacity of 16 passengers or more including the driver was required to carry $5.0 million in coverage. Section 31104 references financial assistance programs to carry out the Motor Carrier Safety Assistance Program under Section 31102.

Therefore, construction of N.J.S.A. 39:5B-32 must be viewed in the context of the Federal Motor Carrier Assistance Program. New Jersey sought to participate in the federal program. In doing so, it was required to meet the mandates of the program. It was required to "assume responsibility for improving motor carrier safety by adopting and enforcing State regulations, standards and orders that are compatible with the regulations, standards and orders of the Federal Government on commercial motor vehicle safety and hazardous materials transportation safety." 49 U.S.C. 31102(e).

C. New Jersey Elects To Participate In the Motor Carrier Assistance Program

Consistent with the Federal Motor Carrier Assistance Act, 49 U.S.C. 31100, N.J.S.A. 39:5B-32 (b) directs the Superintendent of State Police to adopt rules and regulations that "[s]ubstantially conform to the requirements concerning the qualifications of interstate motor carrier operators and vehicles established pursuant to sections 401 to 404 of the 'Surface Transportation Act of 1982' . . . and the federal 'Motor Carrier Safety Act of 1984' . . . ."; and "include provisions with regard to motor carrier operators and vehicles engaged in intrastate commerce or used wholly within a municipality or a municipality's commercial zone . . . that are compatible with federal rules and regulations."

Subpart (e) of the New Jersey statute makes express reference to 49 C.F.R. Part 387.

> e. The Superintendent shall enforce financial responsibility requirements under 49 U.S.C. 13906 and 31139, and 49 C.F.R. Part 387.

Of course, as indicated above, 49 C.F.R. Part 387 establishes minimum financial responsibility for motor carrier autobuses with seating capacity of 16 passengers or more inclusive of the driver of $5.0 million.

The Senate Transportation Committee Statement dated January 31, 2005 at the time of the 1989 Amendment to N.J.S.A. 39:5B-32 made express reference to the Bill requiring the Superintendent of the State Police to "enforce certain federal motor carrier registration and financial responsibility requirements." It also made express reference to New Jersey's participation in Federal Motor Carrier Safety Assistance Program (MCSAP) funding.

The Senate Transportation and Public Utilities Committee Statement at the time of the 1991 Amendment noted that the Amended Bill required the Superintendent of State Police, in consultation with the Division of Motor Vehicles in the Department of Law and Public Safety and the Department of Transportation to revise and adopt rules and regulations and provide that the regulations would also "include provisions with regard to motor carrier operations and vehicles engaged in intrastate commerce or used wholly within a municipality or a municipality's commercial zone." The Statement concluded:

> This Bill will thus conform intrastate commercial motor vehicle operations more closely with the requirements for interstate operators and thus qualify the State for certain federal assistance.

Thus, the legislative history of N.J.S.A. 39:5B-32 evidences New Jersey's intent to participate in the Motor Carrier Assistance Program.

The Superintendent of the State Police adopted N.J.A.C. 13:60-1.1, et seq. the rules and regulations authorized pursuant to N.J.S.A. 39:6B-32. The regulation provides that the Chapter establishes rules and regulations "concerning the qualifications of motor carriers, operators and vehicles engaged in interstate or intrastate commerce or used or operated wholly within a municipality or a municipality's commercial zone which substantially conform to the requirements established pursuant to the Surface Transportation Assistance Act of 1982 . . . and the Federal Motor Carrier Safety Act . . . by adopting and incorporating by reference: the 'Federal Motor Carrier Safety Regulations'. . . ." N.J.A.C. 13:60-1.2 captioned "Application" provides that the provisions are applicable to every motor carrier and every person . . . involved or in any manner related to:

* * *

> 5. the transportation in a commercial motor vehicle, as defined at 49 C.F.R. 390.5, to the extent and not inconsistent with this chapter and N.J.A.C. 13:60-2.1(d) in intrastate commerce of any non-hazardous material cargo.

N.J.A.C. 13:60-2.1(d) expressly defined "commercial motor vehicle" as any self-propelled or towed motor vehicle used on a highway in intrastate commerce to transport passengers or property when the vehicle:

> i. Has a gross combination weight rating or a registered weight of 4,536 kg (10,001 pounds or more) and is designed or used to transport more than eight (8) passengers (including the driver or compensation).

By virtue of N.J.A.C. 13:60-2.1, the Superintendent of the State Police adopted the Federal Motor Carrier Safety Regulations, including 49 C.F.R. Part 387, referencing "minimum levels of financial responsibility for motor carriers." Part 387.33 establishes the limits at $5.0 Million for autobuses with a passenger capacity of sixteen (16) or more. The regulation (N.J.A.C. 13:60-2.1) also expressly modified the definition of "commercial motor vehicle" in the federal regulations by defining "commercial motor vehicle" as meaning "any self-propelled or towed motor vehicle used on a highway in *intrastate commerce to transport passengers* or property when the vehicle . . . iii. Designed or used to transport more than eight (8) passengers including the driver for compensation." (Emphasis added). See also, N.J.A.C. 13:60-1.3(d).

Finally, N.J.A.C. 16:53-9.2 expressly references "autobuses" requiring the driver of each autobus when it is in operation to exhibit a certificate showing that the autobus is insured in conformity with "Title 48 of the Revised Statutes or 49 C.F.R. Part 387, incorporated herein by reference . . . ." Yes, for certain commercial

motor vehicles designed to transport eight (8) passengers or less for compensation, or designed to transport less than fifteen (15) passengers without compensation, Title 48 might apply. But, here, the autobus involved in the subject accident had a capacity to carry twenty-five (25) passengers including the driver for compensation and was thus governed by 49 C.F.R. Part 387.

The federal standards established by virtue of the Federal Motor Carrier Safety Act, 49 U.S.C. Section 31100, et seq. and federal regulations adopted pursuant to that statute mandating levels of financial responsibility for autobuses established the context within which New Jersey enacted N.J.S.A. 39:5B-32. In order to obtain federal funding, New Jersey was required to meet the Act's regulations that prescribed "minimum standards for commercial motor vehicles." 49 U.S.C. Section 31136. Subparagraph Q of 49 U.S.C. Section 31102 ensures that the States will cooperate in the enforcement of financial responsibility requirements. New Jersey chose to participate in the Federal Motor Carrier Safety Assistance Program when it adopted N.J.S.A. 39:5B-32 in 1986. The statute and the regulations adopted pursuant to the statute, i.e. N.J.A.C. 13:60-1.1 et seq., clearly indicate New Jersey's decision to adopt the federal financial responsibility standards for commercial motor vehicles defined as including autobuses with a seating capacity of sixteen (16) or more passengers including the driver. Here, that financial responsibility requirement was $5.0 Million. In this regard, the Appellate Division's

decision in Rafanello v. Taylor Esquivel, 465 N.J. Super. 304, 316-317 (App. Div. 2020) is instructive. There, the Court determined that New Jersey had adopted the federal standard for commercial motor vehicles exceeding 10,000 lbs., gross vehicle weight. Yes, the Court in Rafanello was addressing a commercial motor vehicle transporting cargo, but the principle adopted by the Court, i.e. adoption of the federal financial responsibility standards, remains precedential. "Commercial motor vehicles" by federal and state definitions included not just vehicles transporting cargo but also vehicles transporting passengers. 49 U.S.C. Section 31101 and N.J.A.C. 13:60-2.1.

As a State participant in the federal Motor Carrier Assistance Program, New Jersey was required to adopt the federal standards including that for financial responsibility. N.J.S.A. 39:5B-32 was enacted to permit the State's participation.

Should this Court determine that New Jersey has adopted the $5.0 Million federal standard for financial responsibility for autobuses with a passenger capacity of sixteen (16) or more, then the case is over. The Court need not go any further.

POINT II

MARCO MENDOZA-BASTIDAS QUALIFIES AS A PERMISSIVE USER AND THE PRIME POLICY LACKING A STEPDOWN PROVISION, HE IS AFFORDED THE FACE AMOUNT OF THE POLICY

In its Response Brief, Prime concedes that Mendoza was a permissive user (Pb29) but suggests that at most it owes the minimum amount of insurance it

contends is required by New Jersey law, i.e. $25,000 per occurrence per N.J.S.A. 48:4-47. Of course, should this Court determine that the minimum amount is $5.0 million for the reasons set forth in Point I, then the issue has already been resolved. But, should this Court determine that the minimum limit is $25,000 per occurrence, then the issue of Prime's obligation to Mendoza is very much ripe for determination. As a permissive user, Mendoza qualifies as an insured pursuant to the mandatory omnibus provision of the Prime policy notwithstanding the total void in the policy providing for such coverage. Ryder/P.I.E. Nationwide Inc. v. Harbor Bay Corporation, Inc., 119 N.J. 402 (1990) (all parties subject to omnibus coverage requirements – both self-insurers and those with liability policies – must provide coverage). The law mandates the extension of coverage to him. N.J.S.A. 39:6B-1. The Prime policy by its terms provides that the limit of liability is $5.0 million. Yet, Prime maintains that it does not extend coverage to the face amount on the policy Declarations. No, it contends that Mendoza as a permissive user is only afforded what Prime deems to be the minimum coverage, i.e. $25,000 per occurrence. The position cannot be supported by the terms of the policy or the law.

Prime maintains that it has a "drop-down" provision limiting its coverage to the minimum amount of insurance required by State financial responsibility law. (Pb31) But, the Prime policy limit on the Declarations Page is $5.0 million and nowhere in the policy is there a drop-down provision limiting the extension of

coverage to a permissive user. There is a provision limiting the extension of coverage to the "Insured," but the policy contains an entire provision captioned "Section III - - Who Is An Insured." (Ja73) Reference to that express provision reveals that the "Named Insured" qualifies as do "Approved Driver(s)." Permissive users as "Insured(s)" are not listed or otherwise identified. (Ja73) The Approved Driver Endorsement references the minimum amount of insurance required by any applicable State financial responsibility law, but that limitation only applies to persons qualifying as "Insured(s)." Being in quotation marks, it is a reference to the policy provision captioned "Section III - - Who Is An Insured." (Ja73) Thus, it has no applicability to omnibus permissive users.

Certainly this Court cannot make a better contract for the parties, insurer or insured, than they made for themselves. Dowdell v. Abdul – Matin, 198 N.J. 95 (2009) (if the terms of an insurance policy are clear, court should interpret the policy as written and avoid writing a better insurance policy than the one purchased). Yet, Prime argues that by extending coverage to Mendoza as a permissive user, he would get coverage that the Named Insured would not get. (Pb30) In other words, Prime is asking this court to make a better contract for it than it drafted for itself. This leads to the question: Why should this Court do that? Prime is an admitted insurer in New Jersey. It well knew that New Jersey law for more than 65-years has required insurers underwriting coverage on motor vehicles to extend coverage to permissive

users. Matits v. Nationwide Mut. Ins. Co., 33 N.J. 488, 496-498 (1960). Prime *chose* to ignore the law when it issued the policy to the Fuji Parties. In doing so, it forced the underlying plaintiffs to contest its flat denial of coverage to the bus operators and the bus driver. It reaches the Appellate Division and finally concedes the obvious in its Brief - - - as a permissive user Mendoza qualifies as an insured under its policy (Pb29). After conceding this obligation, Prime asserts that the extension of coverage to Mendoza is limited to $25,000 per occurrence, not the $5.0 million identified on the Declarations Page (Ja60) of the policy. (Pb31) With a concession that Mendoza is an insured even though he is not an "Approved Driver," but no drop-down provision for permissive users, Prime asks this Court to reform its own policy drafted by it to add the requisite language to protect against it having to extend the face amount of the coverage on the policy to a permissive user. Having violated the law and having issued the policy with no step-down provision, it asks this Court to ignore the dictates of the Supreme Court in Potenzone v. Annin Flag Co., 191 N.J. 147, 155-156 (where the court expressly held that a permissive user is afforded the *full policy limit*, not the statutory minimum coverage, when it failed to expressly provide a step-down provision). Prime was empowered to calculate the premium based upon the required omnibus extension of coverage to permissive users and charge that premium to the Fuji Parties. Of course, with the increased risk that premium would be higher than the $717,555 charged. (Ja60) For whatever reason,

whether to be more competitive in the marketplace or to maintain the Fuji Parties as customers, Prime made the decision to issue a policy that precluded coverage to permissive users who were not "Approved Drivers." In doing so, it knowingly left itself open to challenge on the basis that the policy as issued violated New Jersey law and would be reformed to extend coverage to permissive users regardless of whether it had collected a premium for the additional exposure.

It is bad enough that Prime violated the law triggering tens of thousands of dollars in legal fees and costs, but to violate the law and then ask this Court to protect it from having to honor its obligations under the policy is "beyond the pale" of acceptance.

Prime should be held to the terms of its policy as drafted by it. The policy should be reformed such as to qualify Mendoza as an insured permissive user. After doing so, Mendoza is afforded coverage to the extent the policy so provides. Lacking any form of step-down provision limiting coverage to permissive users, Prime must extend the stated limit of liability of $5.0 million to Mendoza.

POINT III

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING DISCOVERY

On the issue of the trial court's determination of coverage, the underlying plaintiffs agree with Prime that the issue of the minimum liability coverage on an autobus with a passenger capacity of sixteen (16) or more inclusive of the driver is

a legal question as addressed in Point I. Likewise, the issue of coverage for permissive users under a policy without a step-down provision presents a legal issue. But, Prime defended the Fuji Parties and Mendoza pursuant to a reservation of rights without proof of ever obtaining their consent. That raised an issue of estoppel that warranted discovery in light of the $5.0 million limit of liability on the Prime policy that would have been available to the autobus operators and Mendoza regardless of the financial responsibility laws. Likewise, the underlying plaintiffs were not required to be bound by the asserted failures of the Fuji Parties to provide discovery. They were entitled to demand and review records relating to the subject autobus and whether it was or could be used in interstate commerce.

CONCLUSION

For the reasons expressed in their initial Brief and those herein, underlying plaintiffs Valentin Lopez-Culajay and Dayanara Antunez urge this Court to reverse the Order of the Law Division and enter declaratory judgment that plaintiff's limit of liability for the subject accident is $5.0 million.

Respectfully submitted,

/s/ Francis X. Garrity

Dated: September 2, 2025 FRANCIS X. GARRITY

PRIME PROPERTY & CASUALTY INSURANCE, INC., Plaintiff, vs. NV SERVICE INC.; NV BUS SERVICE INC.; FUJI LINE INC.; QUICK TRANSIT MANAGEMENT AGENCY LLC; THREE ACE'S TRANSPORTATION INC.; B.K.T.E. EXPRESS CO. LLC; FUJI EXPRESS, INC.; ADEL SAADALLA; MARCO MENDOZA-BASTIDAS; VALENTIN LOPEZ-CULAJAY; DAYANARA ANTUNEZ; and/or JOHN DOES 1-10 (fictitious persons and/or entities) AND JOHN/JANE DOES 1-10, Defendant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No.: A-002034-24 – T4 <u>Civil Action</u> On Appeal from: Superior Court of New Jersey Law Division, Bergen County Docket No.: BER-L-4500-24 Sat Below: Hon. Gregg A. Padovano, J.S.C.

DEFENDANTS-APPELLANTS' BRIEF IN SUPPORT OF APPEAL

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PRELIMINARY STATEMENT

This appeal involves a commercial auto liability policy issued by Plaintiff-Respondents, Prime Property & Casualty Insurance, Inc. ("Prime"), that did not afford coverage to permissive users, a blatant violation of longstanding New Jersey law existing for sixty-five (65) years. Defendant-Appellants (hereinafter the "Fuji Defendants") contend that the trial court erred in overlooking that the insurance policy (the "Prime Policy") is an illegal contract violative against public policy.

The issue on appeal is whether Prime can benefit from an illegal contract that denies coverage to permissive users and forces the Fuji Defendants as insureds, and their personal guarantor Adel Saadalla ("Saadalla"), to indemnify and guarantee payment to Prime regardless of the policy limits or what Prime pays in the underlying personal injury claim.

In the absence of a ruling that the Prime Policy is void ab initio, the insured and personal guarantor Saadalla are forced to reimburse Prime whatever Prime pays on the underlying personal injury claim regardless of the policy limits. Prime should not be permitted to rely on a policy that it knows does not comply with the law to shift the burden of loss to the policyholder. Meanwhile, if Prime failed to offer a policy to the Fuji Defendants that covered permissive users, then the Fuji Defendants and Saadalla were deprived of the opportunity to assess whether to pursue a policy through Prime or another insurer for statutorily mandated coverage.

These circumstances raise an issue of significant public importance – what is an admitted insurance company in New Jersey required to offer its policyholder? As an authorized insurance company in New Jersey, Prime is bound by this State's insurance regulations and was required to submit the Prime Policy to the New Jersey Department of Banking and Insurance ("NJDOBI"). Indeed, Prime was in the best position to determine coverage, having an obligation to obtain approval of its insurance form to ensure mandated coverage for the protection of the public. Knowing precisely what it was doing, and undoubtedly having notice of the mandate extending coverage to permissive users, Prime cannot argue that it was unaware that its provision limiting coverage to "approved drivers" was void and unenforceable under New Jersey's compulsory motor vehicle law.

Prime chose to ignore the mandate supporting coverage to permissive users and the expansive body of case law supporting the mandate, resulting in Prime excluding all permissive users that were not approved drivers. Prime could have offered a policy that covered permissive users with an increased premium, but did not. Instead, Prime undermined statutory provisions applicable to its policy and issued a policy conflicting with the mandate under N.J.S.A. 39:6B-1 requiring coverage for permissive users. For this reason, the Prime policy violates public policy and is unenforceable.

Prime is not entitled to benefit from its illegal policy and enforce the indemnification provision and personal guarantee against the Fuji Defendants and Saadalla. By virtue of not covering permissive users, Prime is looking to the Fuji Defendants and Saadalla to reimburse Prime for all costs associated with the underlying personal injury claim. If Prime prevails, every insurer issuing a policy at odds with public policy would be able to disclaim coverage, have its insured to accept an illegal contract with an illegal step down in coverage, and force its insured to bear the unfavorable consequences – personal liability and reimbursement of all costs, expenses, and settlement proceeds associated with the underlying claim regardless of the applicable financial responsibility of the insurer. The Court should not countenance such an outcome, which not only undermines the public policy of providing certainty in insurance coverage, but imposes all the financial burden to cover settlement payments and defense costs on the insured, placing the survival of an insured's business in grave jeopardy.

The Fuji Defendants and Saadalla also argue that they should have been permitted the opportunity to take discovery to determine a number of unsettled issues including, but not limited to, the following: (i) whether the Prime Policy was approved by NJDOBI; (ii) whether Prime offered a policy extending coverage to permissive users; (iii) whether Prime properly reserved its rights; and (iv) whether Prime's position that the Fuji Defendants provided late notice is legal.

PROCEDURAL HISTORY

After commencing a declaratory judgment action on August 2, 2024, Prime immediately moved for summary judgment on October 25, 2024 before the Fuji Defendants had even entered an appearance. See Appendix, at Ja37, Ja182. On August 3, 2024, the Track Assignment Notice was filed, assigning the matter as a "Track 1" case with one hundred fifty (150) days of discovery. Id. at Ja 114. The initial discovery end date was April 6, 2025, more than five (5) months after the summary judgment filing.

On September 5, 2024, a Notice of Appearance was filed on behalf of Defendants-Appellants, Valentin Lopez-Culajay and Dayanara Antunez (the "Injured Party Defendants"). Id. at Ja 115.

On September 17, 2024, Prime filed a First Amended Complaint seeking judgment that the Prime Policy did not afford coverage for an accident that occurred on July 8, 2021, involving an autobus owned and operated by one or more of the Fuji Defendants. Id. at Ja115.

On November 12, 2024, a Notice of Appearance was filed on behalf Defendants-Appellants, Fuji Line Inc., Quick Transit Management Agency, LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, and Fuji Express, Inc. (collectively, the "Fuji Defendants"). Id. at Ja137. The Fuji Defendants' principal, Adel Saadalla ("Saadalla"), is also a party defendant and entered an appearance on

November 12, 2024. The autobus driver, Marco Mendoza-Bastidas ("Mendoza-Bastidas"), has also been named as a defendant, but has not entered an appearance.

On December 13, 2024, an Answer and Counterclaim for Declaratory Judgment was filed on behalf of the Injured Party Defendants. Id. at Ja138. On December 19, 2024, an Answer and Counterclaim was filed on behalf of the Fuji Defendants and Saadalla. Id. at Ja155. No Answer was filed on behalf of NV Service, Inc., NV Bus Service, Inc., or Mendoza-Bastidas.

On summary judgment, Prime argued that the Prime Policy did not afford coverage to the Fuji Defendants or Mendoza-Bastidas for personal injury claims arising from the underlying automobile accident because Mendoza-Bastidas was not an "approved driver." Id. at Ja19-21. To the extent coverage exists, Prime sought, in the alternative, that the Prime Policy only provided liability coverage limits of $25,000.00 per occurrence. Id. at Ja21. Lastly, Prime also sought a determination that the Fuji Defendants and Saadalla were required under the Personal Guaranty and Indemnity Agreement to reimburse Prime for all payments made by Prime towards the underlying personal injury claims, including costs, expenses, attorneys' fees, and settlement payments. Id. at Ja22-24.

On December 13, 2025, the Injured Party Defendants cross-moved for summary judgment seeking an adjudication that coverage under the Prime Policy extended to the named insureds and permissive users for personal injuries arising

from the motor vehicle accident. Id. at Ja24-26; Ja242-247. The Injured Party Defendants also sought a determination that the limit of liability under the Prime Policy was $5.0 million. Ibid. The Injured Party Defendants also opposed Prime's motion on grounds that summary judgment was premature given that discovery had yet to be taken on Prime's coverage obligations. Id. at Ja26. On December 20, 2024, the Fuji Defendants submitted a brief joining the Injured Party Defendants' cross-motion and opposing Prime's summary judgment motion on similar grounds, including that Prime cannot issue an enforceable policy requiring the Fuji Defendants to pay the full premium for a policy depriving coverage to permissive users. Id. at Ja24-25.

On January 3, 2025, oral argument was held before the Honorable Gregg A. Padovano, J.S.C. On January 27, 2025, Judge Padovano issued an Opinion and Order granting Prime's motion for summary judgment "in part." Id. at Ja16-33. While Judge Padovano ruled that the omnibus provisions of the Prime Policy must provide coverage to the Fuji Defendants and Mendoza-Bastidas as permissive users, the trial court also ruled that Mendoza-Bastidas was not an "approved driver" under the Prime Policy – two competing concepts. Id. at Ja31-33. As a result, the trial court held that Prime had no duty to defend or indemnify its insured for any claim or loss except to the minimum limits required by law. Ibid. The trial court then concluded that the Fuji Defendants and Mendoza-Bastidas were afforded the

minimum liability limits of $25,000 per occurrence. Ibid. As a result, the cross-motion seeking liability limits of $5.0 million was denied. Ibid.

Lastly, the trial court held that Prime was entitled to reimbursement from the Fuji Defendants and Saadalla for any payments by Prime towards the claims and damages in the underlying personal injury action. Ibid.

The Injured Party Defendants filed a Notice of Appeal on February 18, 2025 under Docket No. A-001783-24 – T4. Id. at Ja1. The Fuji Defendants and Saadalla filed a Notice of Appeal on March 12, 2025. Id. at Ja311.

STATEMENT OF FACTS

I. THE ACCIDENT AND UNDERLYING ACTIONS

On July 8, 2021, Mendoza was operating a 2003 Ford E-450 Bus with a passenger capacity above twenty-five (25). See Appendix at Ja38. On that date, the Injured Party Defendants alleged they were injured when the bus crossed over a speed bump while traveling on Anderson Avenue in Cliffside Park, New Jersey. Ibid. At the time, the bus was operated under the authority of one of the Fuji Defendants. The bus was insured under the Prime Policy, which was issued to the Fuji Defendants and provided a liability limit of $5.0 million in coverage. Id. at Ja42, Ja57. The Fuji Defendants are authorized by the United States Department of Transportation and the Federal Motor Carrier Safety Administration to operate commercial motor vehicles in interstate commerce.

On July 19, 2022, the Injured Party Defendants filed a lawsuit for their injuries in the Superior Court of New Jersey, Hudson County, captioned as Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc., et al., under Docket No. HUD-L-2379-22. Id. at Ja40. On or about July 3, 2023, the Injured Party Defendants filed a subsequent lawsuit, captioned as Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc., et al., under Docket No. HUD-L-002368-23 (both personal injury lawsuits were consolidated and shall collectively be referred to as the "Personal Injury Action"). Id. at Ja41. The owners of the bus (NV Service Inc. and

NV Bus Service Inc.), the operators of the bus line (Fuji Line, Inc., Quick Transit Management Agency LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc.), the principal of the bus line (Saadalla), and the bus driver (Mendoza-Bastidas) were named in the second personal injury lawsuit. Ibid.

The Fuji Defendants made a timely demand for insurance coverage under the Prime Policy. On October 20, 2021, a letter was issued by Andrew D. Wright, Esq. of Prime to the Fuji Defendants and Mendoza-Bastidas stating that no insurance coverage was available under the provisions of the Prime Policy, but that Prime would continue to handle the claim under a reservation of rights. Id. at Ja280. The letter failed to inform the Fuji Defendants and Mendoza-Bastidas of their right to accept or reject Prime's offer to defend claims arising from the accident while reserving its rights. Ibid.

In the Personal Injury Action, Prime was assigned defense counsel to defend the Fuji Defendants and Mendoza-Bastidas. The Personal Injury Action was defended and scheduled for trial; however, trial scheduled for December 9, 2024 was adjourned specifically due to Prime's filing of the instant coverage dispute and pending summary judgment motion.

On January 30, 2025, a Stipulation and Consent Order was entered in the Personal Injury Action dismissing the matter without prejudice due to the declaratory judgment action and this anticipated appeal.

II. THE PRIME POLICY & PRIME'S COVERAGE CONTENTIONS

Prime issued a Commercial Auto Insurance Policy (the "Prime Policy") in New Jersey to the named insureds, Fuji Line, Inc., Quick Transit Management Agency LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc. and Adel Saadalla. Id. at Ja57-105. The Fuji Defendants purchased the Prime Policy for a premium of $722,110.33. Id. at Ja171. The Declarations Page reflects a limit of liability for bodily injury of $5.0 million. Id. at Ja60.

Under the Insuring Agreement, the Prime Policy extended coverage only if a "Scheduled Auto is being operated by a Scheduled Driver at the time of the accident." Id. at Ja62. The "Scheduled Drivers Endorsement" states that Prime's acceptance of a driver was "subject to underwriting approval and may require additional premium." Id. at Ja87.

The Prime Policy also contains a "Approved Driver Endorsement" requiring the policyholder ensure each driver meets the following "Driver Qualifications":

> To qualify as an "approved driver" without additional underwriting and premium, the driver must meet each of the following qualifications . . .
>
> 2. **The driver may not have had any driver's license or CDL disqualifications or suspensions within the past five years** [emphasis added], unless by reason of:
>
> a. Delinquent child support payments;
>
> b. Failure to provide proof of insurance; or
>
> c. Failure to pay **non-traffic** related fines. (emphasis added)

[Id. at Ja93-94.]

The Approved Driver Endorsement also provides that if the insurer desired to use a driver not meeting the Driver Qualifications, or if the driver falls out of compliance, "the 'insured' may submit the driver's information to the Insurer for further underwriting review. In this case, the Insurer will quote an associated additional premium and/or surcharge which must be paid in advance of the driver qualifying as an 'approved driver' . . ." Ibid.

The Prime Policy did not extend coverage to permissive users under the Insuring Agreement. Nevertheless, Prime argued to the trial court that Mendoza-Bastidas was not an "approved driver," although documents supporting the summary judgment motion revealed his license was suspended on November 13, 2019 for merely seven (7) days due to his failure to appear on a traffic-related fine. Id. at Ja214-16.

Despite also arguing alternatively that the minimum amount of insurance required by applicable federal or state financial responsibility law applies, the Prime Policy placed the responsibility upon the insured and its broker to determine the insurance required for federal or state law:

> H. This Policy has been issued to the Insured in response to a request for coverage from the Insured, and its retained broker, if applicable. Various optional insurance has been offered to Insured by Insurer, including different types of insurance and different limits of liability, and Insured and its broker have expressly selected the type and amount of coverage desired. As such, Insured, and its retained broker if applicable, are solely responsible for determining the type and amount of insurance needed for Insured's operations and the amount of

> insurance required by any federal or local laws which may apply to Insured's specific operations. In no event shall Insurer be responsible for determining the type and amount of insurance required by federal or local laws which may apply to Insured's specific operations, and Insurer makes no warranty that this Policy complies with all laws that may apply to Insured's various business operations. In the event any court, arbitrator or regulatory agency reforms or revises this Policy to comply with laws applicable to the type or amount of insurance required by Insured's specific operations, Insured and its broker shall indemnify and hold Insurer harmless from any increased limit of liability or other exposure created by such reformation or revision, including attorney fees and costs arising therefrom.
>
> [Id. at Ja75].

III. THE PERSONAL GUARANTY AND INDEMNITY AGREEMENT

In connection with the Prime Policy, Saadalla individually and on behalf of the Fuji Defendants, executed a "Personal Guarantee and Indemnity Agreement" (the "PGIA"). Id. at Ja106-114. The PGIA requires the Fuji Defendants to indemnify, defend, and hold Prime harmless from any and all losses or claims arising from a "Non-Covered Claim." Ibid. The insured's indemnity obligation is not limited to the limits of liability under the Prime Policy. Ibid. The obligation to indemnify Prime even exists where Prime is obligated to pay claims pursuant to federal and state financial responsibility laws. Ibid.

The PGIA also provides that Prime has no duty to defend or settle any Non-Covered Claims. Ibid. However, in the event Prime elects to defend or a settle Non-Covered Claim, or is otherwise required to pay a Non-Covered Claim, the PGIA requires that the Fuji Defendants reimburse Prime for "[a]ll amounts Prime

pays in settlement or to indemnify any Insured in regard to any Non-Covered Claim . . ." Ibid.

The PGIA also requires Saadalla to "personally undertake[] the financial obligations set forth in this Agreement [the PGIA] in the event the Insured refuses or fails to indemnify and hold Prime harmless . . ." Ibid.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FAILING TO RULE THAT THE PRIME POLICY IS AN ILLEGAL CONTRACT (JA25, T21:24 TO T22:6, T26:12-T28:11)

The Fuji Defendants maintain that the Prime policy is an illegal contract that violates the Omnibus Clause, which provides:

> [e]very owner or registered owner of a motor vehicle registered . . . in this State shall maintain motor vehicle liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death, and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle . . .
>
> [N.J.S.A. 39:6B-1a (the "Omnibus Clause").]

The Omnibus Clause is part of New Jersey's public policy mandating insurance coverage to any person with permission to use a vehicle, which is vital to insure financial protection to innocent accident victims. Connecticut Indem. Co. v. Podeszwa, 392 N.J. Super. 480, 486-487 (App. Div. 2007); see also State Farm Mut. Auto Ins. Co. v. Zurich Am. Ins. Co., 55 N.J. 155, 167-168 (1970) (emphasizing "[t]he strong public policy of this State for liberal construction of liability insurance to effect the broadest range of protection to users of the highways . . ."). Thus, New Jersey maintains a strong public policy to liberally construe insurance coverage for the broadest range of protection.

The "initial permission" rule, first enunciated sixty-five (65) years ago in Mattis v. Nationwide Mut. Ins. Co., 33 N.J. 488, 496-497 (1960), provides that once a driver has been allowed to use a vehicle, the use is covered by the omnibus clause of the policy. Mattis, supra, 33 N.J. at 496-497 (stating "if a person is given permission to use a motor vehicle . . . any subsequent use short of theft or the like . . . is a permissive use within the terms of a standard omnibus clause . . ."). The decision by the Mattis Court was affirmed in Selected Risks Ins. Co. v. Zullo, 48 N.J. 362, 366-367 (1966), holding that permissive users must be provided coverage under the Omnibus Clause.

Since Mattis and Selected Risks, the New Jersey Supreme Court has consistently held that permissive users of motor vehicles are required to be covered under N.J.S.A. 39:6B-1. See e.g., State Farm Mut. Auto Ins. Co., supra, 55 N.J. at 167-168; Verriest v. INA Underwriters Ins. Co., 142 N.J. 401 (1995); Martusus v. Tartamosa, 150 N.J. 148 (1997); Potenzone v. Annin Flag Co., 191 N.J. 147 (2007); Huggins v. Aquilar, 246 N.J. 75, (2021). New Jersey courts have also held that an "unlimited range of conduct" falls within the scope of N.J.S.A. 39:6B-1. Proformance Ins. Co. v. Jones, 185 N.J. 406, 412 (2005) (citing Jaquez v. Nat'l Cont'l Ins. Co., 178 N.J. 88 (2003).

"Underlying the initial permission rule is the intent 'to assure that all persons wrongfully injured have financial responsible persons to look to for damages'

because 'a liability insurance contract is for the benefit of the public as well as for the benefit of the named or additional insured.'" Verriest, supra, 142 N.J. at 413 (citation omitted).

In analyzing whether a policy provision violates existing law, the New Jersey Supreme Court has often stated that "[a] policy provision that conflicts with statutorily mandated coverage will not be enforced." Proformance Ins. Co., supra, 185 N.J. at 416; see also Zuckerman v. Nat. Union Fire Ins. Co., 100 N.J. 304, 320 (1985) (stating "[a] condition to the enforcement of insurance contracts is that they not violate public policy.").

In its implementation of the initial permission doctrine, "New Jersey Courts have refused to enforce insurance provisions that attempted to circumvent the permissive users rule by excluding categories of permissive users from a policy's minimum mandatory liability coverage – or, put another way, that used an escape clause." Engrassia v. Uzcategui, 273 N.J. 373, 378 (2019) (citing Proformance Ins. Co., supra, 85 N.J. at 416-17); see also Willis v. Sec. Ins. Group, 104 N.J. Super. 410, 414-15 (Ch. Div. 1968), aff'd 53 N.J. 260 (1969) (holding an endorsement void against public policy for excluding coverage for permissive users); Ryder P.I.E. Nationwide v. Harbor Bay, 119 N.J. 402, 408 (1990) (holding a policy exclusion denying coverage to an additional insured as invalid because the omnibus clause provided coverage to additional insureds in a loading/unloading case).

According to the New Jersey Supreme Court, "the term 'public policy' contemplates a standard measured by the impact upon the public at large rather than the individual . . ." Zuckerman, supra, 100 N.J. at 320. Sometimes considered an abstract term, public policy has been defined as "that princip[le] of law which holds that no person can lawfully do that which has a tendency to be injurious to the public or against the public good." Mehlman v. Mobil Oil Corp., 153 N.J. 163, 187 (1998).

On public policy grounds, "insurance contracts have consistently been construed strictly against insurance companies." Zuckerman, supra, 100 N.J. at 320. Supporting that rationale is that "insurance contracts are contracts of adhesion since an individual's bargaining power is necessarily limited." Ibid. As a result, insurance contracts must be interpreted in a manner recognizing "the reasonable expectations of the insured." Id. at 320-21 (citing Di Orio v. New Jersey Manufacturers Ins. Co., 79 N.J. 257, 269 (1979).

The language at issue in the Prime Policy is no different from the long line of cases holding insurance policies void against public policy for circumventing the Omnibus Clause. Here, the Prime Policy limits coverage to "approved drivers," thereby excluding unapproved drivers, an entire category of permissive users. The Approved Driver Endorsement eviscerates the public policy of mandated coverage for permissive users such as Mendoza-Bastidas. If such a policy provision were upheld, our Legislature's goal of ensuring coverage to all permissive users at all

times will be completely undermined. By abandoning the public policy of New Jersey's compulsory motor vehicle law and the related permissive user doctrine, the Approved Driver Endorsement in the Prime Policy is nothing more than an illegal escape clause rending the Prime Policy void against public policy. For these reasons, the trial court's ruling failed to recognize that the Prime Policy violates public policy and cannot be enforced for the benefit of Prime to the Fuji Defendants and Saadalla's detriment.

The case law places the burden on insurers issuing automobile liability policies in New Jersey to comply with mandatory liability coverage statute, N.J.S.A. 39-6B. When the statute is violated the policy is automatically reformed to bring the policy into compliance. The insurer has no legal recourse against the party benefiting from the reformation, e.g., a permissive user of the vehicle. Here, Prime has no recourse against the bus driver, Marco Mendoza-Bastidas, if coverage is found in his favor. Likewise, Prime would, under normal circumstances, have no legal recourse against a policyholder. But here Prime asserts that it can contractually pursue its policyholder for indemnity if its policy is reformed to meet the requirements of New Jersey's financial responsibility laws. Prime makes this assertion in the face of its own expertise as an admitted insurer aware that those financial responsibility laws mandate the extension of coverage to permissive users and that its requirement that only "approved drivers" were covered violates the law.

The Prime policy and the PGIA should be read as one agreement. Prime should not be permitted to rely on a policy that it knows does not comply with the law to shift the burden of loss to the policyholder. The undisputed fact that the policy does not meet the requirements of the law should bar Prime from its efforts to enforce the indemnity agreement against the Fuji Defendants and the personal guarantee against Saadalla.

As it stands, due to the illegality of the Prime Policy, the Fuji Defendants are forced to accept an illegal contract without mandated coverage that it purchased for $722,110.33. Id. at Ja171. Even more egregious, Prime's violation of the Omnibus Statute also requires the Fuji Defendants to accept an illegal step down in coverage and then reimburse Prime for all costs, expenses, and settlement proceeds associated with the underlying claim, notwithstanding the additional exposure of paying all amounts above Prime's financial responsibility ruled by the trial court as $25,000.00.

Under the Prime Policy, if an "approved driver" is driving, then coverage is enforceable and the Fuji Defendants and Saadalla have no indemnity or personal guarantee obligations. In other words, when it's an "approved driver," it's real insurance. However, when the accident involves an unapproved driver who is otherwise a permissive user afforded coverage by law, Prime says there is no coverage and the policyholder is reduced to being self-insured. This outcome is not

what the Fuji Defendants or Saadalla sought, especially if Prime did not offer a policy covering permissive users.

The widespread impact on the public at large to Prime issuing an illegal policy cannot be understated. When Prime has to "pay the piper" as a result of a third-party claim, it looks to its insured to reimburse Prime to pay out the claim, all arising from the fact that Prime never issued a policy in compliance with New Jersey law. The result is unjust and unintended – the Fuji Defendants and Saadalla are financially liable regardless of the liability limits under the Prime Policy. The Court should not countenance such an unfair outcome.

Should this Court agree with the arguments in this Point, then the Prime Policy is void ab initio and the Fuji Defendants and Saadalla should not be required to reimburse or otherwise indemnify Prime. However, should this Court disagree with the arguments herein as a matter of law, then there are still questions of fact requiring the reversal of the trial court's ruling.

In particular, Prime's failure to cover permissive users raises an important fact question – what if Prime never offered a policy to the Fuji Defendants and Saadalla covering permissive users? At the trial level, there was no opportunity to conduct discovery on this critical issue. If Prime failed to offer coverage to permissive users at an increased premium, then the Fuji Defendants and Saadalla were deprived of the opportunity to accept statutorily mandated coverage from Prime or seek the

coverage elsewhere. If proven to be true, then the Prime Policy is void ab initio. Thus, it may be determined through discovery that the indemnity and personal guarantee provisions of the Prime Policy are not be enforceable, and the Fuji Defendants would be entitled to the reimbursement of their premium from Prime.

Should this Court reject the arguments in this Point, then the Fuji Defendants and Saadalla's alternative arguments in Point II should be considered.

POINT II

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT BEFORE DISCOVERY COULD BE TAKEN (Ja32)

In this action, the Fuji Defendants were not afforded the opportunity to pursue discovery because Prime moved for summary judgment immediately after commencing the action. Notably, the time prescribed by the Rules of Court to pursue discovery had not expired – over five (5) months of discovery remained from the time Prime filed its summary judgment motion to the initial discovery end date on April 6, 2025. Once the motion for summary judgment was filed, serving discovery would have been an idle gesture until the motion was determined.

Prime's Complaint seeking declaratory judgment was filed on August 2, 2024, and Prime then swiftly moved for summary judgment on October 25, 2024 before the Fuji Defendants and Saadalla even entered an appearance. See Appendix at Ja37, Ja184. From the outset, the Fuji Defendants and Saadalla were compelled to quickly file an Answer to the Complaint and respond to summary judgment. Slightly over two (2) months after the summary judgment motion was filed, the trial court held oral argument and issued its ruling thereafter on January 27, 2025. Id. at Ja18.

Ironically, Prime defended the Personal Injury Action since 2022, but did not seek to disclaim coverage until two (2) years into defending the personal injury claims. In fact, Prime waited until the approaching trial date in the Personal Injury Action and only then filed its declaratory judgment claims, followed immediately

by summary judgment. The lack of discovery taken was created by Prime's rush for a swift adjudication on its coverage claims given the impending personal injury trial.

Due to the rush to judgment by Prime, the Fuji Defendants and Saadalla had a choice: (i) serve discovery during the pendency of the summary judgment motion and face the argument that such an effort was a ploy to defeat summary judgment; or (ii) explain in opposition to summary judgment why discovery was needed and that the motion was premature. The Fuji Defendants and Saadalla elected for the

second option, setting forth arguments to the trial court that summary judgment was premature under the facts and existing case law. Separately, serving discovery would have been an idle gesture until the summary judgment motion was determined.

No discovery was taken before the trial court's order granting summary judgment. There was no discovery on whether the Prime Policy was approved by NJDOBI. There was no discovery on whether Prime offered a policy to the Fuji Defendants and Saadalla extending coverage to permissive users. There was no discovery on whether Prime properly reserved its rights in defending the Fuji Defendants and the defendant driver. There was no discovery on Prime's "late notice" argument as a further basis to deny coverage. Given these issues bearing on coverage, summary judgment was premature.

A. Permissive Use

As set forth in Point I, supra, to the extent this Court does not accept that the Prime Policy is void ab initio, then there are critical questions bearing on the enforceability of the Prime Policy (or lack thereof) that warrant discovery. In that event, discovery is required to determine whether the Prime Policy was approved by NJDOBI and if Prime offered a policy extending coverage to permissive users. These questions go directly to whether the Prime Policy should be reformed and if the PGIA is enforceable.

B. Reservation of Rights

On the issue of reservation of rights, insurance companies are required to properly reserve their rights in the event the insurer provides a defense for its insured while also maintaining its right to deny coverage. Merchants Ind. Corp. of New York v. Eggleston, 37 N.J. 114, 127 (1962); accord Griggs v. Bertram, 88 N.J. 347 (1982). Given the inherent conflict in defending an insured while maintaining the right to deny coverage, an insurer is obligated to inform the insured of the potential conflict and obtain the insured's consent to defend while reserving its rights. In the instant case, the parties were unable to conduct discovery and determine what, if any, action Prime took in reserving its rights. Discovery was necessary and, therefore, Prime's motion for summary judgment should not have been granted absent discovery on this issue.

C. Late Notice

On the issue of late notice, Prime argued that timely notice was not provided since the accident occurred on July 8, 2021 and it was not notified by the Fuji Defendants until August 20, 2021. Here, the Prime Policy requires "immediate written notice, as soon as possible and in no event later than 72 hours, of any incident, event, occurrence, loss or accident, which might give rise to a claim covered by this policy."

To deny coverage based upon late notice, an insurer must establish appreciable prejudice. Cooper v. Gov't Employees Ins. Co., 51 N.J. 86 (1968). To determine whether an insurer suffered appreciable prejudice, a court must consider "first, 'whether substantial rights have been irretrievably lost' as a result of the insured's breach, and second, 'the likelihood of success of the insurer in defending against the accident victim's claim' had there been no breach." KnightBrook Ins. Co. v. Tandazo-Calopina, 472 N.J. Super. 158, 168 (App. Div. 2022) (citing Hager v. Gonsalves, 398 N.J. Super. 529, 536 (App. Div. 2008)). Here, the parties were not permitted discovery on the "late notice" argument by Prime.

CONCLUSION

For all of the foregoing reasons, the Fuji Defendants and Saadalla respectfully request that this Court reverse the ruling of the trial court. It is clear that the Prime Policy violates public policy as a matter of law because Prime was required to cover permissive users in accordance with well-established case law. Therefore, the Prime Policy should be held void ab initio, with the indemnity and personal guarantee provisions stricken. Prime should not be able to rely on a policy it knows violates the law and shift the burden of loss onto the Fuji Defendants and Saadalla.

Should this Court disagree, the Fuji Defendants and Saadalla should at the very least be provided the opportunity to conduct discovery for the reasons expressed herein.

Respectfully submitted,

By: */s/ Anthony Bianco*
Anthony Bianco, Esq.

Dated: July 16, 2025

PRIME PROPERTY & CASUALTY INSURANCE, INC., Plaintiff, vs. NV SEVICE, INC., NV BUS SERVICE, INC., FUJI LINE INC.; QUICK TRANSIT MANAGEMENT AGENCY, LLC, THREE ACE'S TRANSPORTATION, INC., B.K.T.E. EXPRESS CO., LLC, FUJI EXPRESS, INC., ADEL SAADALLA, MARCO MENDOZA-BASTIDAS, VALENTIN LOPEZ-CULAJAY, DAYANARA ANTUNEZ, and/or JOHN DOES 1-10 (fictitious persons and/or entities) AND JOHN/JANE DOES 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-002034-24-T4 Civil Action On Appeal from: Superior Court of New Jersey Law Division, Bergen County Docket No.: BER-L-4500-24 Sat Below: Hon. Gregg A. Padovano, J.S.C.

BRIEF OF PLAINTIFF-RESPONDENT PRIME PROPERTY & CASUALTY INSURANCE, INC. IN OPPOSITION TO APPEAL OF DEFENDANTS/APPELLANTS FUJI LINE INC., QUICK TRANSIT MANAGEMENT AGENCY, LLC, THREE ACE'S TRANSPORTATION INC., B.K.T.E. EXPRESS CO. LLC, FUJI EXPRESS, INC., AND ADEL SAADALLA

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PRELIMINARY STATEMENT

Defendants/appellants Fuji Line Inc., Quick Transit Management Agency, LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co., LLC, Fuji Express, Inc., and Adel Saadalla (collectively, "the Fuji Parties") have appealed the Law Division's January 27, 2025 Order granting a motion by plaintiff/respondent Prime Property & Casualty Insurance, Inc. ("Prime") for partial summary judgment.

The only, purely legal issue framed by this appeal is what the mandatory minimum financial limits are under New Jersey law applicable to a passenger bus operated exclusively within the state of New Jersey. The Law Division correctly found N.J.S.A 48:4-47, which requires not less than $25,000 in liability coverage, to be applicable (that the Prime Policy would be required to afford up to $25,000 in liability coverage); and that the federal mandatory minimum liability limits, which mandates minimum liability limits of $5.0M per accident, would apply only to "for-hire motor carriers transporting passengers in interstate or foreign commerce."

The Fuji Parties argue that the Trial Court erred in failing to rule that the Prime Policy was an "illegal contract" because the driver of the subject Fuji bus was a "permissive user." However, whether the driver was a "permissive user" of the bus is a non-issue: Prime does not dispute that state financial responsibility laws require that some measure of coverage be afforded for liability arising out of the operation of a covered vehicle by a "permissive user," even if the Prime Policy states (and the

policyholder agreed) that the policy will not cover a driver who does not meet the requirements of the Approved Driver Endorsement. The Fuji Parties' cite/rely upon N.J.S.A. 39:5B1(a); however, the applicable version of this statute requires minimum liability limits of $15,000/$30,000 and applies to "automobiles" not vehicles transporting **passengers,** such as the Fuji bus.

The Fuji Parties argue that the trial court's decision was premature because they had not had discovery. The Law Division's decision on the narrow legal issue framed by this appeal (the mandatory minimum liability limits applicable to a passenger bus whose operation is entirely within the state borders) was based on facts that the appellants did not and could not dispute (i.e., the plain language of the Prime Policy and the intrastate operation of the Fuji bus). Indeed, the Fuji parties, which operated the bus, had knowledge of all facts related to the operation of the bus. Since Fuji did not put forward any facts to dispute that the bus was only operated within the state borders, there must not have been anyone that could have disputed the material facts framed by Prime's summary judgment motion.

Prime respectfully submits that the decision of the Law Division, which was based upon established case law, including the decision of the Appellate Division in Alvarez v. Norwood, should be affirmed.

PROCEDURAL HISTORY

On or about July 19, 2022, the Underlying Plaintiffs commenced a lawsuit styled Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc. , et al. (the "Culajay Lawsuit") against NV Service, Inc., Fuji Express, and Mendoza in the Superior Court of New Jersey Law Division – Hudson County, Docket No. HUD-L-002379-22. Ja0040. The Culajay Lawsuit alleges that the Underlying Plaintiffs sustained injuries and damages in and as a result of an accident. Ja0041.

On or about July 3, 2023, Culajay and Antunez commenced a second lawsuit styled Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc. , et al. (the "Second Culajay Lawsuit") against NV Service, Inc., Fuji Express, Fuji Line Inc., Quick Transit Management Agency LLC, Three Aces' Transportation Inc, B.K.T.E. Express Co. LLC and Mendoza in the Superior Court of New Jersey Law Division – Hudson County, Docket No. HUD-L-002368-23. Ja0041. By Order dated July 21, 2023, the Culajay Lawsuit and the Second Culajay Lawsuit were consolidated for purposes of discovery, arbitration, and trial under Docket Number HUD-L-2379-22. Ja0041.

The instant Declaratory Judgment Action was subsequently filed on August 2, 2024. Ja0037. A First Amended Complaint was filed on September 17, 2024. Ja0116. Prime moved to consolidate this action with the Culajay Lawsuits but the Underlying Plaintiffs opposed consolidation and once Prime was denied the

opportunity, it filed a motion for summary judgment in this action on October 25, 2024. Ja0184.

The Fuji Parties and the Underlying Plaintiffs were provided ample time to respond. On December 12, 2024, the Underlying Plaintiffs filed a Cross Motion for Summary Judgment. Ja0242. The Fuji Parties joined the Underlying Plaintiffs' Cross Motion with their own Opposition on December 20, 2024. Ja0253. Oral argument was heard before the Hon. Gregg A. Padovano, J.S.C. on January 3, 2025. 1T. On January 27, 2025, the trial court issued a detailed Order and Opinion. Ja0016-0033.

The trial court found that the Prime Policy must provide coverage to Mendoza and/or the Fuji Parties under the omnibus provisions of the Prime Policy given that Mendoza was a permissive user of the bus at the time of the Accident. Ja0031. However, the trial court further found that since Mendoza's driver's license was suspended within five years of the inception of the Policy for his failure to pay a traffic-related fine and was therefore not an "approved driver" under the Policy at the time of the Accident. Ja0031. As such, the court found that according to the Approved Driver Endorsement under the Policy, Prime "will have no duty to defend or indemnify any `insured' for any Claim or `loss', with the exception to the minimum amount of insurance required by any applicable federal or state financial responsibility law." Ja0031.

Next, the court found that New Jersey's state financial responsibility laws apply and mandate minimum liability limits of $25,000.00 per occurrence. Ja0031. In doing so, the Court addressed the Underlying Plaintiffs' argument: "[w]hile Defendants maintain that pursuant to N.J.S.A. 39:5B-32 and N.J.A.C. 13:60-2.1, New Jersey has adopted the minimum liability limits of $5.0 million per occurrence applicable under 49 C.F.R. 387 for for-hire motor carriers of passengers with a seating capacity of sixteen passengers or more, the court finds that **49 C.F.R. 387 is explicitly only applicable to "for-hire motor carriers transporting passengers in interstate or foreign commerce**." Ja0031-0032 (emphasis added.)

The trial court further considered whether discovery was necessary to resolve the issue of whether the subject vehicle had the potential to be used interstate, but determined that it was not. Ja0032. This was because Defendants failed to raise a genuine issues of material fact regarding whether the subject vehicle had the potential to be used in interstate commerce given the deposition testimony of Marco Mendoza Ja0223; the email correspondence of Adel Saadalla dated December 21, 2022 Ja0219; and the failure of the Fuji Parties to provide responses to the discovery demands relating to the intrastate/interstate travel of the subject vehicle, the subject vehicle was not available for interstate transport at the time of the accident. Ja0033.

STATEMENT OF FACTS

THE PRIME POLICY

Prime issued Commercial Auto Insurance Policy No. PC21030229 ("the Prime Policy"), to Named Insureds, Fuji Express Co., LLC, Fuji Line Inc., Quick Management Agency, LLC, Three Ace's Transportation, Inc. and B.K.T.E. Express Co LLC (collectively, the "Fuji Parties"), with effective dates of March 16, 2021 to March 16, 2022. Ja0058.

Section I of the Policy, "LIABILITY COVERAGE," states in part:

> A. Insuring Agreement
>
> 1. Subject to all of the terms, limitations, conditions, definitions, exclusions, and other provisions of this Policy, we will pay Damages in excess of any SIR that you are legally obligated to pay because of Bodily Injury or Property Damage to which this Policy applies if caused by an Accident and resulting from the ownership, maintenance, or use of a Scheduled Auto as identified in the Policy, on the Declarations or any Endorsement if:
>
> * * *
>
> b. You have complied with all the conditions set forth in Section VII – Conditions of the Policy, including without limitation all the reporting and notification requirements.
>
> * * *
>
> e. The Scheduled Auto is being operated by an Approved Driver at the time of the Accident. . . . .

Ja0062.

The Prime Policy includes form ACA-99-31, the "Approved Driver Endorsement," which states in part:

> **This Endorsement changes the terms and conditions of the Policy, please read it carefully.**
>
> The "insured" is responsible for following each of the procedures set forth in this Endorsement and for making sure that all drivers operating an "auto" meet each of the requirements set forth herein. In the event the "insured" does not follow the procedures set forth herein and/or in the event of a driver of an "auto" does not meet the requirements of this Endorsement at the time of any relevant Claim or Loss, the Insurer will have no duty to defend or indemnify any "insured" for any Claim or "loss", with exception to the minimum amount of insurance required by any applicable federal or state financial responsibility law.
>
> **A. Mandatory MVR Review and Monitoring by "Insured":**
>
> 1. For existing drivers, the "insured" must obtain and review a Motor Vehicle Record ("MVR") for each driver at the inception of the Policy to ensure each driver meets the qualifications set forth in this Endorsement. The "insured" must monitor the MVR for each driver to ensure that each and every driver remains in compliance with the qualifications set forth in this Endorsement.
>
> 2. For new drivers hired after the inception date of this Policy, the "insured" must obtain and review an MVR and ensure the driver meets each of the qualifications set forth in this Endorsement. Thereafter, the "insured" must monitor the MVR of each driver and ensure that each and every driver remains in compliance with the qualifications set forth in this Endorsement.

Ja0093.

The Approved Driver Endorsement further states:

> **A. Mandatory MVR Review and Monitoring by "Insured":**

1. For existing drivers, the "insured" must obtain and review a Motor Vehicle Record ("MVR") at the inception of the Policy to ensure each driver meets the qualifications set forth in this Endorsement. The "insured" must monitor the MVR for each driver to ensure that each and every driver remains in compliance with the qualifications set forth in this Endorsement.

B. Driver Qualifications:

To qualify as an "approved driver" without additional underwriting and premium, the driver must meet each of the following qualifications at a) the later of either the inception of the Policy or the hiring date of the driver and b) at the time of the relevant Claim or Loss:

***

2. **The driver may not have had any driver's license or CDL disqualifications or suspensions within the past five years** [emphasis added], unless by reason of:

    a. Delinquent child support payments;
    b. Failure to provide proof of insurance; or
    c. Failure to pay **non-traffic** related fines. (emphasis added)

Ja0093 (emphasis added).

The Approved Driver Endorsement further states:

C. Drivers Not Meeting Qualifications Subject to Underwriting and Additional Premium:

In the event the "insured" wishes to hire or continuing using a driver who does not meet the qualifications set forth herein, or who has fallen out of compliance with the qualifications set forth herein, the "insured" may submit the driver's information to the Insurer for further underwriting review. In this case, the Insurer will quote an associated additional premium and/or surcharge which must be paid in advance of the driver qualifying as an "approved driver", and the aforementioned driver will be specifically scheduled to the Policy.

Ja0093.

PERSONAL GUARANTEE AND INDEMNITY AGREEMENT

On February 23, 2021, in connection with and in consideration of Prime's issuance of the Prime Policy, Adel Saadalla ("Saadalla"), on behalf of the Fuji Parties and on his own behalf, agreed to a Personal Guarantee and Indemnity Agreement ("Personal Guarantee"). Ja0107-0111.

The Fuji Parties (excepting Mendoza) are identified in the Personal Guarantee as the "Insured." Ja0107. The Recitals section of the Personal Guarantee states in part:

> 1. In consideration for the representations contained herein and other good and valuable consideration, Prime has agreed to issue a policy of commercial auto and/or motor truck cargo insurance to the Insured (the "Policy"). . . . Coverage may be limited to vehicles, drivers and/or cargo that is specifically scheduled on the Policy. Despite these limitations, Prime may be obligated to pay certain claims pursuant to federal or state financial responsibility laws. . . . or other similar regulations (collectively, "Financial Responsibility Law(s)"). Even where Prime is required to make payments for such claims, it is the intent and understanding of the Insured that such claims are considered "Non-Covered Claim(s)" and are subject to this Agreement (if the Policy is limited to vehicles, drivers and/or cargo specifically scheduled on the Policy).
>
> * * *
>
> 3. The Insured has the responsibility to reimburse Prime for any Non-Covered Claim which Prime must pay as a result of any Financial Responsibility Law.

> 4. The Insured intends to prevent the occurrence of Non-Covered Claims that would expose Prime to any obligations under any Financial Responsibility Law. Accordingly, the Insured agrees that it will, when required by the Policy, schedule all vehicles, drivers and/or cargo with Prime by providing underwriting information required by Prime and paying all applicable premiums or other fees…

Ja0107.

Within the Personal Guarantee's "AGREEMENT" section, Section 1 reads:

> **1. Indemnity**
>
> The Insured agrees to indemnify, defend and hold Prime harmless from any and all losses or claims arising out of a Non-Covered Claim. The Insured acknowledges its obligations to Prime for a Non-Covered Claim are not limited by the Limits of Liability of the Policy, and include attorney's fees and costs incurred in an effort to enforce this Agreement.

Ja0107.

Section 4 of the Personal Guarantee's "AGREEMENT" section stated, in part:

> **4. Insured's obligation to notify Prime of Non-Covered Claims.**
>
> It is the Insured's intent that Prime shall not have a duty to defend any Non-Covered Claims, nevertheless, the Insured shall give immediate written notice that it may be called upon to cover a Non-Covered Claim, pursuant to Financial Responsibility Laws."

Ja0108.

Section 5 of the Personal Guarantee's "AGREEMENT" section states in part:

> the Insured agrees that Prime does not have a duty to defend or settle any Non-Covered Claim. Prime shall, however, have the right to become involved in the defense, or to defend or settle any Non-Covered Claim. Prime's election to assume the defense of a case shall allow Prime to solely control the investigation and defense, including the selection of counsel. Prime also may negotiate toward settlement up to the applicable potential exposure to Prime under the MC-90 Endorsement or state or federal financial responsibility endorsement, if such a settlement is, in Prime's judgment, appropriate.
>
> Because the Insured is responsible to reimburse Prime for Non-Covered Claims, the Insured may elect to directly settle with any claimant without violating this Agreement, so long as the Insured promptly and directly pays the agreed settlement from its own funds, without looking to Prime for any funding toward such a settlement, and so long as the insured obtains a full and complete release of all claims against all Insureds under the subject Policy.

Ja0109.

Section 6 of the Personal Guarantee's "AGREEMENT" section provided, in part:

> **6. Insured's obligations if Prime elects to defend, investigate or settle a Non-Covered Claim, or is required to pay a Non-Covered Claim.**
>
> If Prime elects, at its sole option and discretion, to defend, investigate or settle a Non-Covered Claim, the Insured agrees to fully cooperate with Prime in regard to that defense.

> The Insured further agrees to promptly reimburse Prime for:
>
> * * *
>
> c. All amounts Prime pays in settlement or to indemnify any Insured in regard to any Non-Covered Claim;
>
> * * *
>
> Such payments will be due to Prime within ten (10) calendar days after Prime provides the Insured an invoice for any of the above.

Ja0109.

Section 7 of Personal Guarantee's "AGREEMENT" section states in part: "the Insured further agrees to reimburse and indemnify Prime for any and all attorney fees and costs incurred in an effort to enforce this Agreement." Ja0109.

Section 8 of the Personal Guarantee's "AGREEMENT" section then read, in part:

> **8. Additional terms.**
>
> This Agreement shall be governed by the law of the State of Utah.
>
> * * *
>
> This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement . . . shall become inoperative only as provided herein.

* * *

> For purposes of construction, this Agreement shall be deemed to have been drafted by both parties to this Agreement and shall not, therefore, be construed against any party for that reason in any subsequent dispute.
>
> In the event the Insured shall fail to perform any of its obligations hereunder, Prime shall be entitled to recover all of its reasonable costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or otherwise resulting from such breach.
>
> This Agreement has been prepared after discussions between and among the Insured and Prime. The Insured understands and acknowledges that Prime has and will continue to rely upon the Insured's representations and promises contained herein in the performance of any obligations under the Policy. The undersigned, individually and on behalf of the Insured, declares and represents that in executing this Agreement, they rely wholly upon their own individual judgment, belief and knowledge, and that they have had the opportunity to review this matter with counsel and insurance professionals of their own choosing.

Ja0110.

PRIME GAVE THE FUJI PARTIES AND THE UNDERLYING PLAINTIFFS AMPLE NOTICE OF ITS COVERAGE POSITION

On July 8, 2021, Underlying Plaintiffs were passengers in a 2003 Ford E-450 Bus operated by Fuji Express, Inc. ("Fuji Express") and driven by Marco Mendoza Bastidas ("Mendoza") and claim to have been injured during, and as a result of, Mendoza's operation of such vehicle at or near the intersection of Lafayette

and Anderson Avenues, Cliffside Park, New Jersey ("the Accident"). Ja0038; Ja0041.

A little over three months later, by letter dated October 20, 2021, Prime wrote to the Fuji Defendants and advised them of certain issues impacting coverage for the Accident. Ja0281-0288. Specifically, under Section III titled: "**DENIAL OF COVERAGE AND RESERVATION OF RIGHTS"**, Prime stated the following:

> The Policy requires the insured to comply with the Approved Drive Endorsement, PCA-99-43.
>
> ***
>
> The Approved Driver Endorsement PCA-99-43 which was issued with the Policy … includes several qualifications that drivers must satisfy in order to be scheduled on the Policy. Relevant to this claim[, the] driver may not have had "any driver's licenses or CDL disqualifications or suspensions within the past five years." An MVR for Mr. Mendoza was retained during Prime's investigation of the claim, the MVR shows Mr. Mendoza's licenses was suspended on November 13, 2019. As such, Mr. Mendoza does not satisfy the Approved Driver Endorsement qualifications and is not considered a scheduled driver and coverage is expressly precluded on this basis.

Ja0286.

Prime's reservation of rights letter further advised the Fuji Parties that "**[c]overage will still be provided for the claims arising from the July 8, 2021 accident pursuant to the applicable financial responsibility requirements... However to the extent Prime is required to may payments pursuant to those requirements, Fuji is obligated to reimburse Prime**. Ja0287 (bold in original). The letter concluded by advising the Fuji Parties that they are entitled to consult with

counsel, or its local department of insurance, regarding the preceding coverage issues and invited them to provide any additional information for Prime's consideration if they believed that the facts and conclusions of the reservation or rights letter were in error in any way. Ja0288. To this day, despite ample opportunity to do so, the Fuji Parties did not provide any information to Prime suggesting that the subject bus was available for interstate transportation or that Mendoza qualified as an approved driver under the terms of the Prime Policy.

In fact, both Saadalla (by email dated December 1, 2022) and Mendoza (by way of deposition testimony on January 10, 2024) confirmed that the subject vehicle was *not* available for interstate transportation such that federal financial responsibility laws do not apply. Ja0219; Ja0223.

LEGAL ARGUMENT

I. THE TRIAL COURT PROPERLY DETERMINED THAT MINIMUM LIABILITY LIMITS OF $25,000 PER OCCURRENCE APPLY

A. Standard of Review

An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is *de novo*. See In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020) (agency's interpretation of a statute); Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019) (statutory interpretation); State v. Fuqua, 234 N.J. 583, 591 (2018) (statutory interpretation); State v. Dickerson, 232 N.J. 2, 17 (2018) (interpretation of court rules). Likewise, a trial court's interpretation of the coverage afforded under an insurance policy is reviewed *de novo* See Est. of Pickett v. Moore's Lounge, 464 N.J. Super. 549, 554-55 (App. Div. 2020).

Nevertheless, "[a] reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'"

Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

Here, the trial court as the trier-of-fact properly determined that: 1) Prime is required to extend insurance coverage to the Fuji parties and Mendoza according to the minimum liability limits of $25,000 per occurrence for claims asserted by the Underlying Plaintiffs in the Culajay Lawsuits; and that; 2) Prime is entitled to be reimbursed by the Fuji Parties and Saadalla for any payment it makes on account of the claims, causes of action and damages that have been or may be asserted in the underlying actions. Ja0016-0017.

B. The Trial Court's Decision Was Supported by the Factual Record

On January 27, 2025, after reviewing hundreds of pages of briefing and relevant evidence submitted by the parties and hearing oral from counsel, Judge Padovano issued a lengthy written opinions explaining, in detail, its analysis of the facts supporting its conclusions of law and findings. Ja0016-0033.

Specifically, the trial court determined that, [since] "Mendoza's driver's license was suspended within five years of the inception of the Policy for his failure to pay a traffic related fine and was therefore not an 'approved driver' under the [Prime] Policy at the time of the Accident. As such, the court finds that according to the Approved Driver Endorsement under the Policy, Prime 'will have no duty to defend or indemnify any insured for any Claim or loss, with the exception of the

minimum amount of insurance required by any applicable federal or state financial law." Ja0031.

The record supports the court's conclusion that Mendoza's driver's license was suspended within five years of the inception of the Policy for his failure to pay a traffic related fine. Ja0215-0216. Accordingly, it is not a matter of dispute that Mendoza's license was suspended and the Fuji Parties do not argue that Mendoza was entitled to coverage under the *terms* of the Prime Policy.

These findings were based on the trial court's detailed analysis of the relevant documents and testimony. The trial court specifically noted "Defendants [failure] to raise a genuine issue of material fact" regarding whether the subject vehicle had the potential to be used in interstate transportation" in light of: "1) the deposition testimony of Mendoza, 2) the email correspondence from Saadalla, and 3) the failure of the Fuji Parties to provide response to the discovery demands relating to the intrastate/interstate travel of the subject vehicle. Ja0032.

Thus, the court held that the subject vehicle was not available for interstate transport at the time of the Accident, Ja0032 citing Deposition Transcript of Marco Mendoza Ja0223; Saadalla Email Correspondence dated December 21, 2022 Ja0219; Demand of Plaintiff Prime to Defendant Fuji Express, Inc. for Production of Documents and Plaintiff Prime Request for Admissions. Ja224-234. The foregoing

documents, are themselves sufficient to sustain the trial court's factual determinations.

As set forth below, however, the Fuji Parties have failed to raise any issue worthy of appellate review. The only relevant issue for appeal is the minimum financial responsibility limits and to that end, the trial court properly considered the relevant evidence and reached conclusions based on the documents presented.

II. THE TRIAL COURT PROPERLY DETERMINED THAT MINIMUM FINANCIAL RESPONSIBILITY LIMITS PURSUANT TO N.J.S.A. 48:4-47 APPLY TO MENDOZA'S PERMISSIVE USE OF THE FUJI AUTOBUS

The Fuji Parties argue that "the Prime Policy is an illegal contract that violates [N.J.S.A. 39:6B-1 (the "Omnibus Clause")]." Db15. The Fuji Parties also partially quote the Omnibus Clause but fail to include the full statutory language that was operable at the time of the Accident:

> Every owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain motor vehicle liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle **wherein such coverage shall be at least in: (1) an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and (2) an amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and (3) an amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any one accident.**

See N.J.S.A. 39:6B-1 eff. 2003.]

Accordingly, if the Court accepts that Prime must maintain limits pursuant to N.J.S.A. 39:6B-1(a), then the applicable limits would be $15,000 or $30,000. See Huggins v. Aquilar 246 N.J. 75 at 87 (2021)("Motor vehicles used to carry passengers for hire must maintain liability coverage in amounts set by a schedule, but far in excess of the $15,000/$30,000 limit identified in N.J.S.A. 39:6B-1(a). N.J.S.A. 48:4-47.") Furthermore, the Omnibus Clause concerns automobiles *not* autobuses. The Fuji Parties cite to a statute that does not apply to the Fuji bus or the subject Accident. Here, Prime's minimum financial responsibility obligations ($25,000 per occurrence) flowing to the Underlying Plaintiffs are mandated by N.J.S.A. 48:4-47, *not* N.J.S.A. 39:5B and *not* N.J.S.A. 39:6B.

Moreover, whether or not Mendoza had permission from the Fuji Parties to operate the autobus is distinct from the rights and responsibilities of the Fuji Parties vis-à-vis Prime. The same does not render the insurance policy "illegal." Those rights and responsibilities are determined by the terms of the contracts between the parties. See Universal Underwriters Grp. v. Heibel, 386 N.J. Super. 307, 318 (App. Div. 2006)("Although N.J.S.A. 39:6B–1 mandates that every owner possess liability insurance in at least the amounts required by the statute, it does not create, through its express language or ancillary authority, an obligation for an automobile owner to provide indemnity to a permissive user").

Like the Underlying Plaintiffs, the Fuji Parties identify three recent cases that address the issue of whether full policy limits or state minimum financial responsibility limits apply. As indicated above, Huggins applies minimum limits. See Huggins 246 N.J. 75 at 93 ("we affirm the reformation of the policy but modify the trial court's imposition of the $1,000,000 policy amount and instead order the reformation of Federal's policy to the $100,000/$250,000 dealer-licensure minimum liability coverage."); see also Proformance Ins. Co. v. Jones, 185 N.J. 406, 421 (2005)("We hold that the Proformance policy must provide the statutorily required minimum limits of coverage for the accident.")

The third case does not apply the minimum limits but is easily distinguishable on the facts. In Potenzone v. Annin Flag Co., 191 N.J. 147 (2007), the court held that the full policy limits applied because: "[f]ollowing our decision in *Ryder*, insureds, insurers, and self-insurers should have reasonably expected that the full policy limit for an accident during a loading or unloading operation was required…. If the insurer intended to provide the statutory minimum coverage for loading or unloading accidents, it should have amended its policy to expressly provide for such step-down coverage. Potenzone 191 N.J. 147 at 155-56.

The Fuji Parties seek to analogize this case to Potenzone because Prime was allegedly "on notice" that it must provide coverage to permissive users and because the Prime Policy had no step-down provision. The Fuji Parties' argument is fatally

flawed because the Prime Policy had numerous indications that the Policy would "step-down" to mandated minimums. See i.e. the terms of the Approved Driver Endorsement cited by the trial court at Ja0021 and the terms of the Personal Guarantee beginning at Ja0107. Nor is Mendoza truly a "permissive user" under the coverage grant. He was specifically prohibited under the Approved Drivers Endorsement.

This case is analogous to Alvarez v. Norwood, No. A-3678-10T1, 2012 WL 1414116 (N.J. Super. Ct. App. Div. Apr. 25, 2012) which "involve[d] a taxi insurance policy that excluded coverage for unnamed and unapproved drivers." Ja0294.

The only salient difference between this case and Alvarez is that this matter involves a bus insurance policy that excluded coverage for unnamed and unapproved drivers rather than a taxi policy. Like here, in Alvarez "insurance policy included an omnibus clause that generally extended coverage to anyone using the vehicle with the named insured's permission." Ja0296. It is not, as the Fuji Parties argue, that Prime restricts omnibus coverage. Alvarez even analyzes the cases submitted in opposition by the Fuji Parties:

> [w]e have held that reforming a policy to satisfy the statutory limits and no more vindicates both the statutory imperative to compensate third parties who are strangers to the insurance contract, and the intent of the parties who did not bargain for the policy limits. Rao v. Universal Underwriters Ins. Co., 228 N.J.Super. 396, 410–12 (App.Div.1988).

> [W]e see no compelling public policy or other reason mandating a conclusion that because of Universal's unsuccessful attempt to exclude itself entirely from covering the lessee's use of the Open Road vehicle, that the remainder of the provision should become unenforceable and extend its coverage beyond the $15,000/$30,000 which the Legislature has presently established as the minimum coverage required to be carried. Rather than invalidating the entire policy provision, we prefer to treat the invalidated provision as severable, and will enforce the remainder of the insurance contract.
> [Id. at 410–11 (internal citations omitted).]

***

However, plaintiffs rely on Potenzone, supra, for the proposition that where the non-enforceability of a complete exclusion is well-settled, the court should simply treat the exclusion as a nullity, resulting in coverage at the full policy limits for the claim otherwise addressed by the exclusion. We believe plaintiffs misread Potenzone. The Potenzone Court declined to follow the path in Proformance and impose only the minimum limits, where a policy included an unenforceable exclusion of claims arising out of loading and unloading accidents. 191 N.J . at 155. The Court did so because it concluded the result was consistent with the expectations of the parties to the insurance contract, inasmuch as the disapproval of loading and unloading exclusions was settled in Ryder/P.I.E. Nationwide, Inc. v. Harbor Bay Corp., 119 N.J. 402 (1990). "Following our decision in Ryder, insureds, insurers, and self-insurers should have reasonably expected that the full policy limit for an accident during a loading or unloading operation was required." Potenzone, supra, 191 N.J. at 155.

We find no comparable grounds to conclude that [driver analogous to Mendoza] or [insured analogous to the Fuji Parties] should have expected that the full policy limits would apply to accidents involving a principal driver of the insured taxi who was omitted from the application and the policy. An insured may reasonably expect a policy to cover the casual, unanticipated use of one's vehicle by a permitted user. See Repossession Specialists v. Geico Ins. Co., 423 N.J.Super. 518, 525–26 (App.Div.2012). However, the same cannot be said where

> the insured knows in advance someone will be a principal driver of the insured vehicle, but does not disclose that to the insurer.
>
> This case is more akin to the intentional omission of a member of a household who the applicant anticipated would be a principal operator of a vehicle. In such cases, we have found it appropriate to extend coverage at the minimum limits to an innocent omitted driver, but to deny coverage entirely where the unnamed driver, even if ignorant of the omission, was obliged to be aware of it. See, e.g., Rutgers Cas. Ins. Co. v. LaCroix, 194 N.J. 515 (2008) (extending PIP coverage, at minimum limits, to innocent injured daughter of named insured father who fraudulently omitted her name as a licensed driver in the household); Palisades Safety & Ins. Ass'n v. Bastien, 175 N.J. 144, 151 (2003) (denying PIP coverage for wife, who was "in a unique position to be aware of the other spouse's interactions with the insurer of the household's vehicles[,]" where named insured husband falsely represented no other persons of driving age resided in the household).
>
> Ja6297-6298.

Here there can no doubt that the Fuji Parties were, as early as October 20, 2021, "obliged to be aware" that the omission of Mendoza's license suspension would result in no coverage. Ja0286. The requirement that all drivers must have five years of clean driving records was explicitly set forth in the Approved Driver Endorsement. Ja93-94.

The Approved Driver Endorsement further required the Fuji Parties to conduct a MVR search of their drivers. Ja93. Had they done so prior to the Prime Policy inception, they would have had the opportunity to either exclude Mendoza from driving under the Prime Policy, or request that he be added to the Prime Policy

so that Prime could adjust the premium accordingly. Ja0093. The Fuji Parties failed to do so. Ja0273.

In Alvarez, the Appellate Division also elucidated the public policy grounds for the court's rejection of full policy limits in circumstances like this case:

> [i]t suffices to recognize here that extension of full limits coverage to an accident involving a regular driver omitted from the insurance application would create "a disincentive ... to tell the truth." Palisades Safety & Ins. Ass'n, supra, 175 N.J. at 152. And, it would reward the insured for her omission by providing her with a level of coverage for which she did not bargain.
>
> Extending full limits in this and similar cases would also reduce the incentive of both taxi company insureds, and taxi insurers, to scrutinize the persons who may get behind the wheel of taxicabs.
>
> > The special duties and high degree of care which a common carrier owes to its passengers are too well known to require listing. The carriage of passengers by taxicabs is in an essentially sensitive area because of the privacy of the vehicle and the passenger's total dependency not only on the driver's skills but upon his protection as well.
> > [Naseef v. Cord, Inc., 90 *N.J.Super.* 135, 141 (App.Div.), aff'd, 48 N.J. 317 (1966).]
>
> ***
>
> It would be inconsistent with the public interest in assuring that taxicabs are operated by capable and competent persons to deny a taxicab insurer like Pinelands the ability to require disclosure and approval of regular drivers of the insured taxicab. We therefore decline to treat the exclusion of unnamed and unapproved drivers as a complete nullity, and to permit recovery of the full policy limits in an accident involving an unnamed and unapproved driver.
>
> Ja0298-0299.

The rationale of Alvarez is sound and should be followed by the court here as the trial court did. The Fuji Parties simply have no explanation why this court should not apply the rationale of Alvarez to enforce the state minimum financial liability limits of $25,000 per occurrence. T7:10-22. Nor can it explain the inconsistency of its argument – that full policy limits of $5 Million apply to permissive users, with the holding in Huggins - which applied minimum financial responsibility limits. Accordingly, the minimum financial responsibility limits of $25,000 per occurrence apply to the Accident that is the subject of the Culajay Lawsuits.

III. THE TRIAL COURT PROPERLY DETERMINED THAT PRIME MUST PROVIDE $25,000 IN COVERAGE PER THE TERMS OF THE PRIME POLICY

As recognized by the trial court (Ja29), an insurance policy is a contract that will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled." Flomerfelt v. Cardiello, 202 N.J. 432, 441 (2010). Courts interpret the language of an insurance policy according to its plain and ordinary meaning. Voorhees v. Preferred Mut. Ins. Co., 128 N.J. 165, 175 (1992). Courts cannot "write for the insured a better policy of insurance than the one purchased." Flomerfelt, Ibid citing Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 529 (1989).

Here, the Fuji Parties are not entitled to the $5 Million face amount of coverage because, as the trial court held: "Mendoza's driver's license was suspended within five years of the inception of the Policy for his failure to pay a traffic-related fine and was therefore not an "approved driver" under the Policy at the time of the Accident. … [thus] according to the Approved Driver Endorsement under the Policy, Prime 'will have no duty to defend or indemnify any 'insured; for any Claim or 'loss' with the exception to the minimum amount of insurance required by any applicable federal or state financial responsibility law.'" Ja0031.

The Prime Policy was clear and unambiguous as to the reduction of policy limits to the applicable financial responsibility limits and sets forth the reduction from the language in several places including on the Approved Drivers Endorsement:

> In the event "insured' does not follow the procedures set forth herein an;/or in the event a driver of an "auto" does not meet the requirements of this Endorsement at the time of any relevant Claim or Loss, the Insurer will have no duty to defend or indemnify any "insured" for any Claim or "loss", **with exception to the minimum amount of insurance required by any applicable federal or state financial responsibility law** [emphasis added].

Ja0093.

The Fuji Parties arguments regarding "permissive driver" status of Mendoza are irrelevant. It is not contested that Mendoza was a permissive user and indeed the trial court found him to be a permissive driver. Ja0031. It does not follow that Prime

must therefore afford $5M in liability coverage irrespective of whether the Fuji Parties complied with the terms of the Policy because the same would vitiate the Fuji Parties obligations under the terms of the tantamount to allowing the Fuji Parties to have a better policy of insurance than the one purchased. Walker Rogge, N.J. 517 at 529.

IV. THE TRIAL COURT PROPERLY DETERMINED THAT DISCOVERY WAS NOT NECESSARY TO DETERMINE THE COVERAGE ISSUE AND THE APPLICABLE FINANCIAL RESPONSIBILITY LIMITS

The Fuji Parties joined the Underlying Plaintiffs cross-motion for summary judgment "seeking an adjudication that the Prime Policy limit as to Medoza and as to the DOT authorized companies is $5M." Ja024-025. The filing of a cross motion in and of itself is an admission that this issue is purely legal and can be decided even in the absence of additional discovery. See Spring Creek Holding Co. v. Shinnihon U.S.A. Co., 399 N.J. Super. 158, 177 (App. Div. 2008)("The filing of a cross-motion for summary judgment generally limits the ability of the losing party to argue that an issue raises questions of fact, because the act of filing the cross-motion represents to the court the ripeness of the party's right to prevail as a matter of law.") Purely legal questions, such as the interpretation of insurance contracts, are questions of law particularly suited for summary judgment. Badiali v. New Jersey Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015).

A party opposing a motion for summary judgment on the grounds that discovery is incomplete, must "demonstrate with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action." Badiali v. New Jersey Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015) (quoting Wellington v. Est. of Wellington, 359 N.J. Super. 484, 496 (App. Div. 2003)). "[D]iscovery need not be undertaken or completed if it will patently not change the outcome." Minoia v. Kushner, 365 N.J. Super. 304, 307 (App. Div. 2004) (citations omitted); see also DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 341 (App. Div. 2013). Moreover, "a claim of incomplete discovery will not defeat a summary judgment motion where the party opposing the motion has not sought discovery within the time prescribed by R. 4:24–1 [.]" Pressler, Current N.J. Court Rules, comment 2.3.3 on R. 4:46–2 (2008) (citing Liberty Surplus Ins. Co. v. Nowell Amoroso, P.A., 189 N.J. 436, 450–51 (2007)).

Despite the above, the Fuji Parties inappropriately raise three specific grounds to seek discovery. However, as set forth more full below, none of these issues are before this court. The only issue for the appellate court to decide is which minimum financial responsibility liability limits apply. This is a purely legal question that does not require further discovery.

A. The Trial Court Already Decided the "Permissive Use" issue in the Fuji Parties Favor

The Fuji Parties argue that "discovery is required to determine wither the Prime Policy was approved by NJDOBI and if Prime offered a policy extending coverage to permissive uses. Db24. First, while Prime submits that the Prime Policy was approved by NJDOBI, such argument should be rejected out of hand because it is inappropriately raised for the first time on appeal. See State v. Galicia, 210 N.J. 364, 383 (2012)(Arguments not presented before the trial court are not within the scope of appeal and are prohibited from introduction.); see also Ja0024-0026.

Moreover, this court should not indulge the Fuji Parties' misleading claim that discovery was somehow rushed or that they did not have the ability to develop a sufficient factual record. The accident occurred on July 8, 2021. Ja0019. The Fuji Parties were provided a reservation of rights letter on October 21, 2021. Ja0027. The fact of whether Mendoza or the subject bus traveled a purely interstate route during all relevant times is and was purely within the knowledge and control of the Fuji Parties.

It is not, as the Fuji Parties claim, that the "lack of discovery taken was created by Prime's rush for a swift adjudication." Db23. The Fuji Parties failed to provide certified discovery response to Prime's discovery demands and Defendant Saadalla did not contest Prime's assertion that the subject bus was only available for intrastate transport in his December 10, 2024 certification. Ja0260-0262. The Fuji

Parties' failure to answer discovery is not a mere technicality. On December 1, 2022, Saadalla confirmed to Prime that the route taken by Mendoza on the date of the accident does not cross state lines and stays in New Jersey. Ja0219. Nevertheless, both the Fuji Parties and the Underlying Plaintiffs make improper and non-substantive denials to this fact. Ja0274.

Nor is there genuine dispute as to whether the subject Fuji bus was available for interstate transportation. Between March 16, 2021 and March 16, 2022 [the Prime Policy period], the Fuji Bus, while in service for Fuji, was only driven on routes that were within the state of New Jersey. Ja0234; Ja32.

Had the availability of the Fuji bus for interstate transport been the subject of a genuine dispute, the Fuji Parties *could have* provided a response to the RFA's in a timely manner, or counsel for the Fuji Parties *could have* requested additional time to do so. The fact of whether the subject Fuji bus travels interstate is something well within the knowledge of Defendant Saadalla who supplied his own certification dated December 12, 2024 ("the Saadalla Certification") in support of the opposition to the summary judgment motion. The Saadalla Certification acknowledges the outstanding discovery demands Ja0261 at ¶7, and was precisely the opportunity for Mr. Saadalla to elaborate as to any interstate movements of the Fuji Bus. Instead the Saadalla Certification failed to provide any reason why the Court should not deem the fact that the bus did not travel interstate admitted.

B. The Estoppel Issue is Not Before This Court and Is Moot in any Event

The Fuji Parties inappropriately raise the issue of estoppel by claiming that "the parties were unable to conduct discovery and determine what, if any, action Prime took in reserving its rights." Db25. As the trial court acknowledged, Prime issued a reservation of rights letter to the Fuji Parties on October 20, 2021 and a coverage position letter [to the attorneys representing the Underlying Plaintiffs] on Morch 2, 2023. Ja27.

Furthermore, the Fuji Parties cannot use the doctrine of estoppel to obtain coverage for a loss that is not within the coverage of the Prime Policy. It is well-established under New Jersey law that "a loss which is not within the coverage of a policy cannot be brought within such coverage by invoking the principles of waiver or estoppel." Greenberg & Covitz v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 312 N.J. Super. 251, 264 (App. Div. 1998). ***"[N]either waiver nor estoppel can be used to expand coverage that is specifically and unambiguously excluded from the policy language."*** Transamerica Occidental Life Ins. Co. v. Total Sys. Inc., 2011 WL 1322023, at *5 (D.N.J. Mar. 31, 2011), aff'd, 513 F. App'x 246 (3d Cir. 2013) (emphasis added).

"Waiver or estoppel can only have a field of operation when the subject-matter is within the terms of the contract. No one, we assume, would argue that a policy of insurance, which protected one against loss by fire, could be extended or broadened,

by the application of the principle of waiver or estoppel, to cover loss by cyclone. The effect, in such a case, would be to create a new contract, without a new consideration." Greenberg & Covitz, 312 N.J. Super. at 264.

C. "Late Notice" is Not Before This Court

The Fuji Parties argue that Prime must establish "appreciable prejudice" in order to deny coverage based upon late notice. Db25. While this is an accurate statement of law, "late notice" was only one of the reasons for which Prime denied coverage and was *not* the basis for the trial court's decision to apply the state minimum financial responsibility limits such that it is not before the appellate court and there is no reason to engage in discovery on this issue.

D. Discovery is Unnecessary

There is no basis to entertain discovery when discovery would not change the outcome of the trial court's decision. The Fuji Parties' attempt to reopen discovery is nothing more than an attempt to gain leverage to relitigate the issues it is now appealing. However, as a point in fact, the trial court did not – as claimed by the Fuji Parties and Underlying Plaintiffs in their appeal - *refuse* to permit discovery. It merely determined the legal issue raised by the Fuji Parties in Point I their appellate brief. The trial court action was still open and capable of continuing with discovery. This is evidenced by the extensive back and forth between the appellate division and appellants who were required to certify the decision as final notwithstanding the fact

that the trial docket remained opened until the appellate division accepted the appeal as final.

CONCLUSION

Prime respectfully requests that this honorable court affirm the trial court's January 25, 2025 order and decision granting Prime's motion for summary judgment and holding that Prime shall extend insurance coverage to the Fuji Parties and Mendoza according to the minimum liability limits of $25,000 per occurrence for the claims asserted in the Culajay Lawsuits.

Respectfully submitted,

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Dated: September 2, 2025

PRIME PROPERTY & CASUALTY INSURANCE, INC., Plaintiff, vs. NV SERVICE INC.; NV BUS SERVICE INC.; FUJI LINE INC.; QUICK TRANSIT MANAGEMENT AGENCY LLC; THREE ACE'S TRANSPORTATION INC.; B.K.T.E. EXPRESS CO. LLC; FUJI EXPRESS, INC.; ADEL SAADALLA; MARCO MENDOZA-BASTIDAS; VALENTIN LOPEZ-CULAJAY; DAYANARA ANTUNEZ; and/or JOHN DOES 1-10 (fictitious persons and/or entities) AND JOHN/JANE DOES 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION CONSOLIDATED Docket No.: A-002034-24-T4 Docket No.: A-001783-24 – T4 Civil Action On Appeal from: Superior Court of New Jersey Law Division, Bergen County Docket No.: BER-L-4500-24 Sat Below: Hon. Gregg A. Padovano, J.S.C.

BRIEF OF DEFENDANTS VALENTIN LOPEZ-CULAJAY AND DAYANARA ANTUNEZ IN FURTHER PARTIAL SUPPORT OF APPEAL OF DEFENDANTS FUJI LINE INC., QUICK TRANSIT MANAGEMENT AGENCY, LLC, THREE ACE'S TRANSPORTATION INC., B.K.T.E. EXPRESS CO. LLC AND FUJI EXPRESS INC.

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PRELIMINARY STATEMENT

The issue on appeal before this Court is whether the trial court erred in its determination, upon summary judgment, as to the level of liability insurance coverage required on a commercial autobus in which two passengers were seriously injured. Appellate review is *de novo*.

Defendants-appellants (hereinafter "injured party defendants") contend that the trial court erred in its determination that under a New Jersey statute, last visited in 1972, the minimum level of liability insurance required on a commercial autobus with a passenger capacity of twenty-five (25) is "$25,000 per occurrence." If correct, this would mean that for the accident the two injured parties would share $25,000 in compensation for their injuries together with any other passengers on the bus – an absurd result. The injured parties contended below that the statute, N.J.S.A. 48:4-47, relied upon by the plaintiff insurer and accepted by the trial court, was amended by virtue of New Jersey's adoption of the federal financial responsibility standard upon the enactment of N.J.S.A. 39:5B-32 in 1986 and N.J.A.C. 13:60-2.1 in 1987. The federal standard was $5.0 million per occurrence. The trial court agreed that New Jersey adopted the federal financial responsibility standard but concluded that the federal standard only applied to "for-hire motor carriers transporting passengers in interstate or foreign commerce." The court did not explain how the State could "adopt the federal standard" for New Jersey but then

apply the adopted standard only to interstate commerce rendering the State adoption of the standard a nullity. Should this Court reverse the trial court and determine that the federal financial responsibility standard applies, the balance of the legal issues will be rendered academic.

The injured parties also argued that the insurer was required to extend coverage to the operator of the autobus as a permissive user, a statutory obligation determined by the Supreme Court since 1960 but ignored by the insurer in the covering language of its policy. The Supreme Court has dictated that an insurer must afford the full policy limit, here $5.0 million, when the insurer fails to abide established precedent. Huggins v. Aquilar, 246 N.J. 75, 92 (2021). Notwithstanding the dictates of Huggins, the trial court held that Prime was required to meet only what the court viewed as the minimum State standard of $25,000.

Finally, the injured parties argued in the alternative that they should be permitted discovery to determine (1) whether Prime properly reserved its rights; (2) whether Prime's assertion of late notice was legal; and (3) whether the subject autobus was also used in interstate commerce such that it would be required to meet the federal financial responsibility standard. The injured parties were not afforded the opportunity to take discovery because the insurer moved for summary judgment immediately after the suit was commenced. While noting that the deposition of the

bus operator had already been taken (in the underlying personal injury cases), the court denied the request for discovery.

PROCEDURAL HISTORY

The plaintiff, Prime Property & Casualty Insurance, Inc. (hereinafter "Prime"), filed this declaratory judgment action on August 2, 2024. (Ja37) Plaintiff filed a First Amended Complaint on September 17, 2024. (Ja115) The insurer sought an adjudication as to coverage afforded for an accident involving an autobus insured by it. (Ja115) Joined as defendants were parties identified as insureds or potential insureds under the Prime policy, specifically, N.V. Service, Inc.; N.V. Bus Service, Inc.; owners of the bus; and Fuji Line Inc.; Quick Transit Management Agency LLC; Three Ace's Transportation Inc.; B.K.T.E. Express Co., LLC; Fuji Express, Inc. (the "Fuji Parties"); operator of the bus line, and Adel Saadalla. (Ja115) In the action, Prime sought an adjudication that it did not afford coverage for an accident that occurred on July 8, 2021 involving a bus owned and/or operated by one or more of the aforementioned defendants. (Ja115) Also joined in the action were Valentin Lopez-Culajay and Dayanara Antunez who were injured in the accident of July 8, 2021 and joined in the action as "interested parties" pursuant to N.J.S.A. 2A:16-51 et seq. They had filed suit for their injuries and their actions were pending in the Superior Court of New Jersey, Hudson County. (Ja118 and JA119) Finally, also joined in the action was Marco Mendoza-Bastidas, the driver of the subject bus at the time of the accident. (Ja115)

On December 13, 2024, an Answer and Counterclaim for Declaratory Judgment was filed on behalf of defendants, Valentin Lopez-Culajay and Dayanara Antunez. (Ja136)

On December 19, 2024, an Answer and Counterclaim was filed on behalf of the co-defendants, Fuji Line Inc., Quick Transit Management Agency, LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc., and Adel Saadalla ("Fuji Parties"). (Ja153)

On October 25, 2024 Prime moved for summary judgment seeking an adjudication that it did not afford insurance coverage to NV Service, Inc., NV Bus Service, Fuji Line Inc., Quick Transit Management Agency LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc., Adel Saadalla and/or Marco Mendoza-Bastidas for the claims, causes of action and damages arising from the subject bus accident and asserted in the underlying Lopez-Culajay and Antunez actions filed in the Superior Court. (Ja182) Prime further sought an Order that it owed no duty or obligation under the MCS-90 Endorsement or federal minimum financial responsibility laws to pay any judgment recovered by any claimant resulting from the accident. (Ja182) Finally, Prime sought an Order that Fuji Express, Fuji Line Inc., Quick Transit Management, Three Ace's, B.K.T.E. Express and Adel Saadalla were obligated under the Personal Guaranty and Indemnity Agreement to indemnify and hold Prime harmless for costs, attorney's

fees, expenses, settlement proceeds or other funds expended or deemed owing by reason of the accident. (Ja182)

By way of cross-motion for summary judgment filed on December 13, 2024, defendants Valentin Lopez-Culajay and Dayanara Antunez sought an Order declaring and adjudging that insurance coverage extended under the Prime insurance policy to the named insureds and permissive users arising out of the use the subject motor vehicle involved in the accident and further, for an adjudication that the limit of liability under the plaintiff Prime's policy for the subject accident was $5.0 million. (Ja240) Alternatively, the injured parties sought denial of Prime's motion for summary judgment to permit discovery as to Prime's coverage obligations to the autobus operator as a permissive user and Prime's named insureds as interstate motor carriers. Defendants/injured parties' Responses to Prime's Statement of Material Facts were filed on December 13, 2024. (Ja246)

On December 20, 2024 the Fuji Parties submitted their responses to Prime's Statement of Undisputed Material Facts and Brief in opposition to plaintiff Prime's motion for summary judgment and in further support of defendants Valentin Lopez-Culajay and Dayanara Antunez's Cross-Motion. (Ja251)

Oral argument was heard before the Hon. Gregg A. Padovano, J.S.C. on January 3, 2025.[1] On January 27, 2025 Judge Padovano issued an Order and Opinion granting Prime's motion for summary judgment declaring that the Fuji Parties and Mendoza-Bastidas were afforded the minimum liability limits of $25,000 per occurrence for the Lopez-Culajay and Antunez claims asserted in their pending actions in the Superior Court. (Ja17 and Ja32) The Order further provided that Prime was entitled to be reimbursed by the Fuji Parties and Saadalla for any payment it makes on account of the claims, causes of action and damages in the pending actions. (Ja17 and Ja33) The Order further provided that the cross-motion for summary judgment filed on behalf of the injured parties seeking to establish a limit of liability of $5.0 million was denied. (Ja17 and Ja33)

Defendants Valentin Lopez-Culajay and Dayanara Antunez filed a Notice of Appeal on February 18, 2025. (Ja1) The Fuji Parties and Adel Saadalla filed a Notice of Appeal on March 12, 2025 under Docket No. A-002034-24. (Ja309)

[1] "1T" references transcript of oral argument on cross-motions for summary judgment heard by Judge Padovano on January 3, 2025.

STATEMENT OF FACTS

On July 8, 2021 Valentin Lopez Culajay and Dayanara Antunez were passengers in a 2003 Ford E-450 Bus operated by Marco Mendoza-Bastidas (Ja119). The bus had a passenger capacity of twenty-five (25) inclusive of the driver. (Ja259) At or near the intersection of Lafayette and Anderson Avenues in Cliffside Park, New Jersey, Lopez-Culajay and Antunez were injured as a result of the operation of the vehicle by Mendoza-Bastidas. (Ja119)

On July 19, 2022, Lopez-Culajay and Antunez commenced a lawsuit in the Superior Court of New Jersey captioned Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc., et al. under Docket No. HUD-L-002379-22. (Ja118) On July 3, 2023 Lopez-Culajay and Antunez commenced a second lawsuit captioned Valentin Lopez-Culajay and Dayanara Antunez v. NV Service Inc., et al., in the Superior Court of New Jersey under Docket No. HUD-L-002368-23. (Ja119) NV Service Inc. and NV Bus Service Inc., owners of the bus, as well as Fuji Line, Inc., Quick Transit Management Agency LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc., operators of the bus line, Adel Saadalla, principal of the bus lines, and Marco Mendoza-Bastidas, the bus driver, were named in the second Culajay and Antunez lawsuit as defendants. (Ja119)

Due demand was made by Fuji Parties as well as Marco Mendoza-Bastidas for insurance coverage under a policy of insurance issued by plaintiff Prime Property

& Casualty Insurance, Inc. (hereinafter "Prime"). (Ja128) By letter dated October 20, 2021, Andrew D. Wright, Esq. on behalf of Prime wrote to Fuji Express and Marco Mendoza-Bastidas and advised them that no insurance coverage was available under the express terms of the Prime policy, however, Prime advised it would continue to handle the claim pursuant to a reservation of its rights as set forth in the letter. (Ja279) The letter did not advise that Fuji Express and Mendoza-Bastidas had a right to accept or reject Prime's offer to handle the claims arising out of the July 8, 2021 accident while reserving its rights. (Ja279) On March 2, 2023, Mr. Wright, on behalf of Prime, wrote to LaBarbiera and Martinez, Esqs., counsel for Valentin Lopez-Culajay and Dayanara Antunez, advising that Prime had reserved its rights. (Ja289).

The Prime policy was issued in New Jersey to the named insureds, Fuji Line, Inc., Quick Transit Management Agency LLC, Three Ace's Transportation Inc., B.K.T.E. Express Co. LLC, Fuji Express, Inc. and Adel Saadalla. (Ja59) That policy on the Declarations Pages reflected a limit of liability for bodily injury of $5.0 million. (Ja60) The Insuring Agreement extended coverage only if an Insured Auto is operated by an Approved Driver at the time of the accident (Ja62). The Scheduled Drivers Endorsement on the policy by its terms provided that acceptance by the insurer of a driver was "subject to underwriting approval." (Ja87) The insurer maintained that Mendoza-Bastidas did not qualify as an approved driver because he

had been cited for a moving violation on September 2, 2019 and his license was suspended on November 13, 2019. (Ja128) Prime also contended that the insureds did not provide notice of the accident until August 20, 2021, a month after the accident occurred in violation of the Prime policy requirement that Fuji give Prime "immediate written notices, as soon as possible and in no event later than 72 hours, of any incident, event, occurrence, loss or accident that may give rise to a claim." (Ja129)

The Prime policy included a provision captioned "B. Liability Exclusions" that provided as follows:

> B. Liability Exclusions
>
> > In the event that any of the exclusions stated in this Policy are found by a court of law to be unenforceable or in contradiction to applicable law in regards to a specific Claim, the invalid provision is to be interpreted as providing the minimum insurance coverage required under the financial responsibilities laws, in place of the invalid exclusion, for such Claim. (Ja64)

No liability exclusion in the Prime policy was in issue as the basis to deny insurance coverage for the subject accident. (Ja115)

The Prime policy by its express terms purported to place the responsibility upon the policyholder and its retained broker, not the insurer, for determining the insurance required for federal or local laws. (Ja75) The policy provided:

H. This Policy has been issued to the Insured in response to a request for coverage from the Insured, and its retained broker, if applicable. Various optional insurance has been offered to Insured by Insurer, including different types of insurance and different limits of liability, and Insured and its broker have expressly selected the type and amount of coverage desired. As such, Insured, and its retained broker if applicable, are solely responsible for determining the type and amount of insurance needed for Insured's operations and the amount of insurance required by any federal or local laws which may apply to Insured's specific operations. In no event shall Insurer be responsible for determining the type and amount of insurance required by federal or local laws which may apply to Insured's specific operations, and Insurer makes no warranty that this Policy complies with all laws that may apply to Insured's various business operations. In the event any court, arbitrator or regulatory agency reforms or revises this Policy to comply with laws applicable to the type or amount of insurance required by Insured's specific operations, Insured and its broker shall indemnify and hold Insurer harmless from any increased limit of liability or other exposure created by such reformation or revision, including attorney fees and costs arising therefrom. (Ja75)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN ITS CONSTRUCTION OF N.J.S.A. 39:5B-32 AND N.J.A.C. 13:60-2.1 IN FAILING TO CONCLUDE THAT NEW JERSEY HAD ADOPTED BY REFERENCE THE FEDERAL FINANCIAL RESPONSIBILITY STANDARD UNDER 49 U.S.C. §387 (Ja31-Ja32)

The injured parties maintained before the trial court that New Jersey, by statute and regulation, had adopted by reference the federal financial responsibility standard of $5.0 million for autobuses with a seating capacity of sixteen (16) or more passengers.[2] The Appellate Division in Rafanello v. Taylor-Esquivel, 465 N.J. Super. 304, 316-317 (App. Div. 2020) had already determined that New Jersey had adopted the federal standards for commercial motor vehicles exceeding 10,000 pounds, gross vehicle weight. Citing Rafanello, Judge Padovano expressly agreed that pursuant to N.J.S.A. 39:5B-32 and N.J.A.C. 13:60-2.1, New Jersey had adopted the federal standards by virtue of its participation in the Motor Carrier Assistance Program, 49 U.S.C. §31102(c)(1). (Ja31-Ja32) However, the trial court erroneously concluded that the federal standard under 49 U.S.C. §387 for autobuses applied "in interstate or foreign commerce," and therefore would not apply to intrastate transportation. (Ja32) It appears that the court did not appreciate the implications of

[2] The trial court in its Opinion erroneously referred to the subject bus as having a passenger capacity of fifteen (15) (at p. 4 of 18) (Ja19). Indisputably the bus had a capacity of twenty-five (25) passengers inclusive of the driver. (See ¶6 Certification of Adel Saadallah) (Ja259)

New Jersey's "adoption by reference" of the federal standards nor the implications of Rafanello as a binding precedent. Because the plaintiff insurer maintains that the federal standards do not apply, the injured parties will address the error of the trial court as well as the erroneous position of the plaintiff insurer.

The Federal Motor Carrier Safety Act, 49 U.S.C. §13100, regulates commercial motor vehicles including interstate passenger bus transportation. The Act defines "motor carrier," in part, as a "person providing motor vehicle transportation for compensation," and the term "transportation" as including "motor vehicles related to movement of passengers." 49 U.S.C. §13102. The term "commercial motor vehicle" is defined, in part, in the statute as a "self-propelled vehicle used on highways in commerce principally to transport passengers if the vehicle is designed to transport more than ten (10) passengers." 49 U.S.C. §31101. For autobuses with a seating capacity of sixteen (16) or more passengers, including the driver, the level of financial responsibility is $5.0 million. 49 U.S.C. §31138 and 49 C.F.R. 387.33.

The Federal Motor Carrier Safety Act is authorized to develop and enforce effective, compatible, and cost-beneficial regulations and practices for motor carriers, commercial motor vehicles, and driver safety. 49 U.S.C. §31100. The Act's regulations "prescribe minimum standards for commercial motor vehicles." 49 U.S.C. §31136. Subparagraph Q of 49 U.S.C. §31102 ensures that the states will

cooperate in the enforcement of financial responsibility requirements under §13906, §31138 and §31139 and regulations under those sections." As indicated, 49 C.F.R. 387.33 establishes liability limits of $5.0 Million for autobuses with a passenger capacity of sixteen (16) or more including the driver.

Pursuant to 49 U.S.C. §31102, the Motor Carrier Safety Assistance Program was created. Subparagraph (c)(1) of the statute creates a federal grant program that provides financial assistance to states to reduce the number and severity of accidents and hazardous material incidents involving commercial motor vehicles. 49 C.F.R. §350.101(a) and 49 U.S.C. §31102. A state participating in the Motor Carrier Safety Assistance Program agrees to adopt and enforce commercial motor vehicle safety "regulations, standards, and orders that are compatible with the regulations, standards, and orders of the Federal government." 49 U.S.C. §31102(c)(1). Thus, a state participating in the Motor Carrier Safety Assistance Program must enforce laws and regulations that meet the minimum standards set by the Federal Motor Carrier Safety Act regulations or risk losing Motor Carrier Assistance Program funding. 49 U.S.C. §§31114 and 31311(a)(1). See, Parker v. Fulton, 2023 U.S. Dist. LEXIS 44345, 2023 WL 2535. (Ja298)

New Jersey chose to participate in the Federal Motor Carrier Safety Assistance Program when it adopted N.J.S.A. 39:5B-32 in 1986. The statute provides that the Superintendent of the State Police shall adopt "rules and regulations

concerning the qualifications of interstate motor carrier operators and vehicles, which shall substantially conform with the requirements established pursuant to §§401 and 404 of the 'Surface Transportation Assistance Act of 1982.'" The statute expressly references an exception for hours of service for commercial motor vehicles designed to transport sixteen (16) or more passengers including the driver. Importantly, the exception leaves no question but that the statute is referencing passenger buses. Further, the statute at paragraph e. expressly references the federal regulation, 49 C.F.R. Part 387, governing financial responsibility requirements for commercial motor vehicles operating in interstate commerce including autobuses with a passenger capacity of 16 or more including the driver.

Pursuant to N.J.S.A. 39:5B-32, the Superintendent of the State Police adopted N.J.A.C. 13:60-2.1 in 1987. The regulation adopted the Federal Motor Carrier Safety Regulations, including 49 C.F.R. Part 387 referencing "minimum levels of financial responsibility for motor carriers." As indicated, Part 387.33 establishes the limits at $5.0 million for autobuses with a passenger capacity of sixteen (16) or more. The New Jersey regulation expressly modified the definition of "commercial motor vehicle" in the federal regulations by defining "commercial motor vehicle" as meaning "any self-propelled or towed motor vehicle used on a highway in *intrastate commerce to transport passengers* or property when the vehicle: . . . ii. designed or used to transport more than eight passengers (including the driver) for compensation.

(Emphasis added) See also, Volume 39, Issue 11 Proposed Re-adoption with Amendments, N.J.A.C. 13:60 and Subchapter 2 Adoption and Incorporation by Reference of Federal Motor Carrier Regulations and Appendices to Federal Motor Carrier Safety Regulations. The regulation's express reference and redefinition of "commercial motor vehicle" to include autobuses with a capacity of 8 passengers for compensation reflects the intent to encompass autobuses.

The Superintendent of the State Police adopted additional regulations dealing with definitions and general requirements. N.J.A.C. 13:60-1.3 references the term "intrastate commerce" and defines it as meaning "trade, traffic, or transportation in this State which is not interstate commerce." Subparagraph (d) of the regulation provided as follows:

> (d) Wherever the term "interstate" is used in the Federal Motor Carrier Regulations, adopted and incorporated by reference, herein, and all supplements and amendments thereto, it shall for the purpose of this chapter, mean or include both "interstate" and "intrastate" transportation in commerce and those vehicles used or operated wholly within a municipality or a municipality's commercial zone except where stated otherwise.

Finally, subparagraph (g) of the adopted regulation provides as follows:

> (g) The provisions and requirements of these regulations as well as the Federal Motor Carrier Safety Regulations adopted and incorporated, by reference, herein, and all supplements and amendments thereto, and made a part hereof as if set forth in full, are applicable to all motor vehicles, as defined in this chapter, engaged in transportation in interstate and intrastate commerce or operating in interstate and intrastate commerce or used or

> operated wholly within a municipality or a municipality's commercial zone, as well as motor vehicles engaged in transportation of hazardous material(s) in a quantity requiring hazardous material(s) placarding or displaying hazardous material(s) placarding unless specifically otherwise.

Therefore, subparagraph (d) of N.J.A.C. 30:60-1.3 expressly provides that the term "interstate" used in the Federal Motor Carrier Safety Regulations shall mean or include "both interstate and intrastate transportation in commerce . . . ." Without question, N.J.A.C. 13:60-2.1 defines "commercial motor vehicle" to include a self-propelled motor vehicle used on a highway in *intrastate commerce to transport passengers* when the vehicle "is designed or used to transport more than eight (8) passengers (including the driver) for compensation."

The Appellate Division in Rafanello had already concluded that, in fact, New Jersey had adopted the federal financial responsibility standards. 465 N.J. Super. at 316-317. Thus, it is impossible to reconcile the trial court's recognition of the holding in Rafanello applying federal standards to commercial motor carriers (above 10,000 pounds) with its holding that the federal standards as to autobuses do not apply. The trial court referenced the federal standards as to autobuses applying to "interstate or foreign commerce." Of course they do because they are federal standards, but when they are "adopted by reference" by a state, they become state standards. The New Jersey statute and regulations apply to "motor carrier operators and vehicles," which would include autobuses. The federal statutes and regulations

likewise apply to "commercial motor vehicles" defined, in part, as self-propelled vehicles used "on highways to transport passengers or cargo." 49 U.S.C. §31101. There is simply no question as to New Jersey's adoption of the federal financial responsibility standards for commercial motor vehicles whether those vehicles be motor vehicles carrying cargo or autobuses.

Here, the autobus the injured parties were occupying at the time of the accident had a passenger capacity of twenty-five (25) inclusive of the driver. Thus, while the plaintiff insurer maintains that New Jersey did not adopt federal standards and regulations for the transportation of passengers in an autobus, the unambiguous language of the federal and state statutes and regulations are to the contrary. New Jersey has adopted the federal standards and applied those standards to *intrastate* transportation of commercial motor vehicles, including autobuses with a passenger capacity of sixteen (16) or more including the driver. Those standards include financial responsibility for such autobuses of $5.0 million. Prime suggests, without citation or basis, that because the New Jersey Legislature adopted a separate statutory insurance scheme for autobuses, the federal motor carrier regulations do not apply. On the contrary, the Legislature adopted the federal standards, including the financial responsibility standards with the passage of N.J.S.A. 39:5B-32 and the adoption of N.J.A.C. 13:60-2.1. The statute and the regulations clearly reflect New Jersey's decision to adopt the federal motor carrier standards, including financial

responsibility standards. There simply is no support for Prime's suggestion that the State carved out a "separate statutory scheme for autobuses." On the contrary, N.J.S.A. 48:4-47 establishing financial responsibility standards for autobuses was last amended in 1972. Certainly the Legislature well recognized the statute's applicability to autobuses in 1985 when it enacted N.J.S.A. 39:5B-32 directing the Superintendent of the State Police to adopt the federal motor carrier standards, including the federal financial responsibility standards (49 C.F.R. 387) expressly referenced in paragraph e. of the statute.

N.J.S.A. 39:5B-32, enacted in 1985 to be effective in 1986, authorizing the Superintendent of the State Police to issue regulations adopting the federal standards, including financial responsibility standards for autobuses, is not inconsistent with N.J.S.A. 48:4-47 last amended in 1972 treating financial responsibility for autobuses. N.J.S.A. 48:4-47 established a minimum responsibility standard for autobuses with a passenger capacity of 21 nor more than 30 of $25,000 and a maximum liability of $400,000 while N.J.S.A. 39:5B-32 by adoption of the federal standard (49 C.F.R. 387.33T) increased the financial responsibility for autobuses with a passenger capacity of 16 or more to $5.0 million. In effect, N.J.S.A. 39:6B-32 by adopting the federal financial responsibility standard amended N.J.S.A. 48:4-47 increasing the financial responsibility requirements for autobuses operated in New Jersey. See, Raubar v. Raubar, 315 N.J. Super. 353 (Ch. Div. 1998) (holding

that when the purposes of two statutes appear to conflict with one another, and legislative history is silent as to the possible conflict, the court generally assumes that the latter statute constitutes an amendment of the earlier statute, particularly when the latter specifically concerns a certain subject).

The trial court erred in its conclusion that federal financial responsibility standards governing autobuses (with a passenger capacity of 16 inclusive of the driver) were not adopted by reference by New Jersey with the enactment of N.J.S.A. 39:5B-32 and adoption of N.J.A.C. 13:60-2.1. The autobus on which the injured parties on July 8, 2021 were passengers had a 25 passenger capacity inclusive of the driver. As such, pursuant to New Jersey law, by virtue of adoption of 49 C.F.R. 387, the minimum financial responsibility for liability arising out of the operation of the subject autobus was $5.0 million.

Should this Court agree with the injured parties' argument in this Point that New Jersey has adopted the federal financial responsibility standard for autobuses with a capacity of 16 or more inclusive of the driver pursuant to N.J.S.A. 39:5B-32 and N.J.A.C. 13:60-2.1, then the required limit of liability on the Prime policy for the subject accident is $5.0 million. This Court need go no further as the Prime policy reflects a policy limit of $5.0 million and must be enforced to meet the minimum requirements of the law. Pursuant to N.J.S.A. 39:6B-1, the autobus operator, Marco Mendoza-Bastidas, and the Fuji entities will be afforded coverage

as a matter of law under the policy. On the other hand, should this Court reject the injured parties' argument in this Point, then their alternative arguments in Point II and III are ripe for consideration.

POINT II

MARCO MENDOZA-BASTIDAS QUALIFIES AS A PERMISSIVE USER OF THE SUBJECT BUS AND IS, THEREFORE, AFFORDED LIABILITY COVERAGE UNDER THE PRIME POLICY TO THE STATED LIMIT OF LIABILITY OF $5.0 MILLION (Ja31)

Should this Court determine that the New Jersey minimum limit of liability for an autobus with a capacity of twenty-five (25) passengers inclusive of the driver is the same as the federal standard of $5.0 million, then the issue raised in Point II is academic. Should the Court determine that the limit is less than $5.0 million, then this Court must determine whether Marco Mendoza-Bastidas, the operator of the autobus, is entitled to the $5.0 million limit as reflected on the Declarations of the Prime policy.

More than fifty (50) years ago, New Jersey adopted compulsory motor vehicle insurance. N.J.S.A. 39:6B-1 requires owners of motor vehicles registered and/or principally garaged in New Jersey to purchase and maintain automobile insurance coverage for liability arising out of the ownership, maintenance, use or operation of the vehicles. Insurance coverage must extend not just to the owner of the motor vehicle but also to permissive users, including operators, of the motor vehicle. Here, Prime issued a policy of insurance covering the subject autobus on which the injured parties were passengers when the accident occurred on July 8, 2021. The policy purports to preclude coverage to Mendoza-Bastidas as the driver of the bus as a permissive user. The provision contravenes decades of established New Jersey law

mandating the extension of insurance coverage to permissive users. Accordingly, the Prime policy must be reformed to provide that coverage extends to the operator, Marco Mendoza-Bastidas, for the subject accident to the policy's stated limit of liability of $5.0 Million.[3]

N.J.S.A. 39:6B-1 instituting compulsory motor vehicle insurance took effect on January 1, 1973. But, the statute was preceded by N.J.S.A. 39:6-46, a motor vehicle security-responsibility law providing that a motor vehicle liability policy offered as proof of financial responsibility must extend coverage "to the insured named therein and any other person using or responsible for the use of any such motor vehicle with the express or implied consent of the insured . . . ." As early as 1960 in Matits v. Nationwide Mut. Ins. Co., 33 N.J. 488 (1960), the Supreme Court ruled that insurance coverage under a motor vehicle policy must extend to any permittee who had "initial permission to use the automobile." 33 N.J. at pp. 496-497. In 1966, the Supreme Court reiterated its decision from Matits in Selected Risk Ins. Co. v. Zullo, 48 N.J. 362 (1966). Again, the Supreme Court ruled that a permissive user of a motor vehicle must be afforded coverage under the omnibus provisions of the policy. In 1968, in Willis v. Security Ins. Group., 53 N.J. 260

[3] Indisputably, the Fuji Parties, as bus line operators, and NV Service Inc., as bus owner, granted permission to Mendoza-Bastidas to operate the bus. As such, he and the parties liable for his operation are all permissive users and afforded coverage to the $5.0 million limit of liability.

(1969), the Supreme Court affirmed the decision of Judge Wick reported at 105 N.J. Super. 410 (Ch. Div. 1968), holding that permissive users of motor vehicles were required to be covered under the omnibus provisions of the policy per N.J.S.A. 39:6-46(a). In accord with the interpretations of the prior financial responsibility statute, the Supreme Court has construed N.J.S.A. 39:6B-1 consistently holding that permissive users of a motor vehicle must be afforded coverage. Ryder/P.I.E. Nationwide v. Harbor Bay Corp., 119 N.J. 402 (1990); Potenzone v. Annin Flag Co., 191 N.J. 147 (2007); Proformance Ins. Co. v. Jones, 185 N.J. 406 (2005); Rutgers Cas. Ins. Co. v. Collins, 158 N.J. 542 (1999); State Farm Mut. Auto Ins. Co. v. Estate of Simmons, 84 N.J. 28 (1980); Verriest v. INA Underwriters Ins. Co., 142 N.J. 401 (1995); Martusus v. Tartamosa, 150 N.J. 148 (1997) and Huggins v. Aquilar, 246 N.J. 75 (2021).

Therefore, it is clear that under New Jersey law Prime cannot preclude coverage under its policy for the permissive user, Marco Mendoza-Bastidas. He must be afforded coverage and the policy reformed to so provide.

The extension of coverage to Mendoza leads to the question: What limit of liability should extend to Mr. Mendoza-Bastidas? As noted in Point I, the minimum limit of liability under Federal and New Jersey law for operation of a bus with sixteen (16) or more passengers inclusive of the driver is $5.0 million. The stated limit on the Prime policy is $5.0 Million. But, Prime contends that it is only required to

extend limits of $25,000 pursuant to N.J.S.A. 48:4-47. For purposes of this Point, the issue is whether or not Mr. Mendoza-Bastidas as a permissive user is entitled to (a) the stated limit on the policy of $5.0 million, or (b) should Prime's argument be accepted, the limit of $25,000.

The New Jersey Supreme Court addressed the issue of whether a permissive user, upon reformation of a policy, is entitled to the full policy limit or the limit established by the financial responsibility law in three cases. In Huggins v. Aquilar, 246 N.J. 75 (2021), the Court addressed the considerations in determining whether to apply the stated limit on the policy or that of the minimum financial responsibility law after reviewing the Court's decisions in Proformance Ins. Co. v. Jones, 185 N.J. 406 (2005) and Potenzone v. Annin Flag Company, 191 N.J. 147 (2007). In these cases, the Court examined whether the insurer issuing the automobile policy should have reasonably expected that the full policy limit for an accident involving a permissive user was required. In Proformance, the Court under the circumstances there, holding a "business pursuits" exclusion invalid, concluded that minimum mandatory limits applied, not the full policy limits. When the issue of coverage for a permissive user engaged in loading and unloading arose once again in Potenzone, the Court concluded that the full policy limit should apply in light of the fact that sixteen (16) years had passed since the Ryder/P.I.E. loading and unloading decision and the insurer should have recognized its obligation to a permissive user. In

Huggins because of facially divergent prior opinions the Supreme Court applied the minimum financial responsibility statute.

Here, the first decision mandating coverage for a permissive user and the applicability of our State's financial responsibility law was in Matits in 1960. As indicated above, the case law addressing the issue of the extension of coverage to permissive users has been consistent in its applicability for now more than sixty-five (65) years. It cannot be seriously argued by Prime that it was unaware that its provision limiting coverage to "approved drivers," thereby excluding unapproved drivers, was void and unenforceable under New Jersey's compulsory motor vehicle law. The insurer simply chose to ignore the statute and the legions of cases mandating the extension of coverage to permissive users. This is exactly why in Potenzone the Supreme Court held that the insurer should be required to pay the stated policy limit in the Declarations. The law should not countenance an insurer's blatant disregard of the law mandating the extension of coverage to all permissive users. Accordingly, the policy should simply be read to include coverage for permissive users with the full $5.0 million limit.

In its Insuring Agreement the Prime policy expressly limited coverage to "Approved Driver[s]" as did the Scheduled Drivers Endorsement. It was pursuant to these provisions that Prime denied coverage to the autobus operator, Marco Mendoza-Bastidas. If these provisions are invalid as in contravention of New Jersey

law, specifically, N.J.S.A. 39:6B-1, then the policy must be reformed to include Mendoza-Bastidas as an insured as a permissive user. There is no provision of the Prime policy providing for the limit of liability to "step down" to the minimum level of the New Jersey financial responsibility law (assuming the level is not $5.0 million). The policy does provide that the limit will step down if a liability *exclusion* is found by a court of law to be unenforceable or in contradiction to applicable law. Prime policy Section I – Liability Coverage, B. Liability Exclusions. (Ja64) But, the legal defect in the Prime policy lay in its failure to extend coverage to permissive users in the Insuring Agreement, not an exclusion in the Liability Exclusions. Thus, once the policy is reformed to include permissive users as insureds, the only limit of liability provision in the policy applicable is that stated in the Declarations –$5.0 million.

Finally, it should be noted that Prime was not ignorant of the law with respect to Federal and State financial responsibility laws. Prime is licensed by the State of New Jersey Department of Banking and Insurance as an "admitted" company. As an admitted company, it is subject to state oversight and must meet regulatory requirements. It is deemed to be aware of the statutes and case law mandating the extension of coverage to permissive users. Beyond the requirements of an admitted company, Prime itself in the Recitals section of the Personal Guarantee and

Indemnity Agreement expressly referenced the Federal and State Financial Responsibility Laws.

In the Recitals section of the Personal Guarantee and Indemnity Agreement, the contract states, in part, as follows:

> Despite these limitations, Prime may be obligated to pay certain claims pursuant to Federal or State Financial Responsibility laws . . . or other similar regulations (collectively, "Financial Responsibility" laws). Even where Prime is required to make payments for such claims, it is the intent and understanding of the insured that such claims are considered "Non-Covered Claims" and they are subject to this agreement (if the Policy is limited to vehicles, drivers and/or cargo specifically scheduled on the policy). (¶ 1 of Personal Guarantee and Indemnity Agreement Recitals) (Ja107)

Further, in the Recitals, the contract states, in part, once again:

> The Insured has the responsibility to reimburse Prime for any Non-Covered Claim which Prime must pay as a result of any Financial Responsibility Law. (¶ 3 of the Personal Guarantee and Indemnity Agreement Recitals) (Ja107)

Once again, in the Recitals, the agreement states:

> The Insured intends to prevent the occurrence of Non-Covered Claims that would expose Prime to any obligations under any Financial Responsibility Laws. (¶ 4 of the Personal Guarantee and Indemnity Agreement Recitals) (Ja107)

Finally, Prime in the policy itself sought to distance itself from the obligations of federal and state financial responsibility laws purporting to place that

responsibility on the policyholders and the retained broker. See Prime policy, Section V – Limits of Liability, Par. H. (Ja75)

Given Prime's stated knowledge of the implications of this State's financial responsibility laws, it is in no position to suggest that it was "surprised" to find that it was obligated to extend coverage to permissive users. All it had to do was check New Jersey law to find that it clearly and explicitly required the extension of coverage to permissive users. Certainly Prime should not be afforded the "benefit" of a reduced limit of liability under New Jersey's financial responsibility laws in the face of a policy it issued in clear contravention of those laws. Prime should be held to the same standard as any insurer writing motor vehicle insurance in the State of New Jersey. If the obligation to extend coverage to permissive users has been clear for more than sixty-five (65) years, Prime should not be permitted to suggest ignorance of those laws. Under the rules established by the Supreme Court, Prime should be held to the full limit of liability of $5.0 Million just as the insurer in Potenzone.

The trial court never addressed the issue of Prime's failure to meet the minimum requirements of this State's financial responsibility laws by failing to extend coverage to permissive users. Indeed, the court imposed those laws upon Prime and held that it must afford coverage to the Fuji parties and Mendoza-Bastidas

to what it perceived the minimum limit, but it never addressed whether the $5.0 million face amount in the Declarations should apply.

POINT III

THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO DENY THE PRIME MOTION TO PERMIT DISCOVERY (Ja32)

Should this Court agree with the arguments presented in Points I and II and conclude that Prime must extend coverage to a limit of $5.0 million, then the issue of discovery in Point III will be rendered moot. If the Court rejects those arguments, then due consideration of Point III is required.

The within declaratory judgment action was commenced on August 2, 2024. The defendants-appellants Lopez-Culajay and Antunez filed their Answer and Counterclaim on December 13, 2024. By then Prime had already moved for summary judgment on October 25, 2024 contending that no coverage extended under the policy because Marco Mendoza-Bastidas was not an "approved driver," because of "late notice" of the accident, and if the New Jersey autobus financial responsibility law applied, Prime was only required to extend $25,000 per occurrence per N.J.S.A. 48:4-47. Prime was aware of the coverage issues for more than two years at the time it filed its declaratory judgment action and motion. It was further aware that no discovery whatsoever had been taken. There had been no discovery as to whether Prime properly reserved its rights in defending the several corporate defendants as well as Marco Mendoza-Bastidas. There had been no discovery as to the relationship between NV Service, Inc. and/or the NV Bus Service, Inc. and the several DOT authorized companies. There had been no

discovery as to the purported "late notice" defense. The trial court referenced the deposition of Marco Mendoza-Bastidas, but that had been taken in the underlying personal injury case, not the within declaratory judgment insurance case.

A. Potential Interstate Use of Bus

The bus involved in the accident was owned by NV Service Inc., but was operated by one or more of the Fuji Parties, DOT authorized motor carriers insured by Prime. The legal relationship between the owner of the bus and the DOT authorized motor carriers was unknown. Was the bus leased to the DOT motor carriers? What were the terms? Did the lease comply with federal law? Did the bus carry the DOT number of one or more of the DOT authorized carriers? Was the bus ever used in interstate commerce? How frequently?

In Cox v. Bond Transportation, Inc., 53 N.J. 186 (1969), the Supreme Court considered the liability of a franchised interstate motor carrier who engaged an owner-operator of a tractor intending to have him transport goods for it on public highways in interstate commerce. The motor carrier contended that at the time of the accident, the driver was not engaged in interstate commerce. But, the New Jersey Supreme Court rejected the position holding:

> When a lessor-operator is engaged by a franchised carrier to drive his equipment in the carrier's business, and the carrier qualifies or invests him with authority to engage him in "authorized" transportation by giving him the decals or signs required by the Commission to show such transportation, *prima*

> *facie* the arrangement is within and subject to Section 1057.4 of the regulations [ICC Regulations].

53 N.J. at 203.

Here, one of the DOT authorized companies was responsible for the operation of the subject bus. Indeed, while the bus was operated at the time of the accident on an intrastate basis, the DOT authorized company responsible for the bus's operation may have had the authority to utilize the bus on an interstate basis. See also, Moore v. Nayer, 321 N.J. Super. 419 (App. Div. 1999) certif. granted 162 N.J. 132, appeal dismissed, 164 N.J. 187 (holding hiring of motor vehicle by DOT authorized motor carrier and used in interstate commerce deemed to be a lease for purposes of federal statutes and regulations). Discovery was required to determine the legal relationship between NV Service and the DOT authorized motor carriers and the history of use of the subject vehicle, and whether the vehicle had the potential to be used in interstate commerce.

B. Reservation of Rights

The law is clear in New Jersey with respect to an insurance company's obligation to properly reserve its rights should it choose to provide for the insured's defense while maintaining its right to deny coverage. Merchants Ind. Corp. of New York v. Eggleston, 37 N.J. 114, 127 (1962); accord, Griggs v. Bertram, 88 N.J. 347 (1982). An insurance company is in a conflict of interest in defending an insured while maintaining its right to deny coverage. In order to control the defense while

reserving its rights, it has to inform the insured as to the potential conflict and obtain the insured's consent to defend while reserving its rights. Here, the parties could not determine what action was taken by Prime with respect to reserving its rights. Discovery was necessary. Accordingly, under no circumstances should Prime's affirmative motion for summary judgment been granted.

C. Late Notice

Prime contended that its policy required "immediate written notice, as soon as possible and in no event no later than 72 hours, of any incident, event, occurrence, loss or accident, which might give rise to a claim covered by this policy." Prime argued that the accident occurred on July 8, 2021 and that it was not informed of the accident until August 20, 2021. Under New Jersey law, an insurance company must establish ***appreciable prejudice*** to deny coverage based upon late notice. Cooper v. Government Employees Ins. Co., 51 N.J. 86 (1968). Here, the parties were permitted no discovery with respect to the asserted "late notice" claim by Prime.

Here, Prime moved for summary judgment on October 25, 2024 in the face of a scheduled trial date in the underlying personal injury action filed more than two years earlier. No consideration was rendered to the fact that Prime waited until the "last minute" to seek a coverage determination. The injured parties filed their Answer on December 13, 2024 while the Fuji parties filed their Answer on December 19, 2024. Yes, Prime technically was within time to file its motion as the

defendants had been served with the pleadings. Faced with the pending motion, the injured parties were confronted with the decision whether to engage in the idle gesture of serving discovery only to be met with Prime's argument that discovery was being served as a ruse to defeat the motion, or opting to argue the need for discovery and the areas of inquiry that potentially would serve to preclude summary judgment. Choosing the latter option, the trial court refused the injured parties' request for discovery referencing the Mendoza-Bastidas deposition in the underlying cases and holding that the Fuji Parties failed to provide responses to discovery demands relating to "intrastate/interstate travel of the subject vehicle." The problem with the trial court's ruling is that the injured parties were shut out from any discovery in the declaratory judgment action because of the trial court's perception of the actions of the Fuji Parties with respect to discovery.

Indeed, Prime's motion for summary judgment was filed as provided under the Court Rules, but that did not justify the trial court's abuse of discretion in denying the injured parties' entitlement to discovery before substantive consideration of Prime's motion.

CONCLUSION

For the reasons expressed above it is urged that this Court reverse the judgment of the trial court. Indisputably, New Jersey has adopted the federal financial responsibility standard requiring autobuses with passengers of 16 or more inclusive of the driver requiring $5.0 million in liability coverage. Indisputably, Prime was required to cover permissive users under its policy as that has been the law for more than sixty-five (65) years mandating the extension of the $5.0 million policy limit.

Finally, should the Court not agree with one or the other of the two points above, the injured parties should at the least have been afforded the opportunity to take discovery to determine whether the autobus involved in the accident was also used in interstate commerce such as to mandate application of the federal financial responsibility standards.

Respectfully submitted,

/s/ Francis X. Garrity

Dated: July 16, 2025 FRANCIS X. GARRITY

PRIME PROPERTY & CASUALTY INSURANCE, INC., Plaintiff, vs. NV SERVICE INC.; NV BUS SERVICE INC.; FUJI LINE INC.; QUICK TRANSIT MANAGEMENT AGENCY LLC; THREE ACE'S TRANSPORTATION INC.; B.K.T.E. EXPRESS CO. LLC; FUJI EXPRESS, INC.; ADEL SAADALLA; MARCO MENDOZA-BASTIDAS; VALENTIN LOPEZ-CULAJAY; DAYANARA ANTUNEZ; and/or JOHN DOES 1-10 (fictitious persons and/or entities) AND JOHN/JANE DOES 1-10, Defendant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No.: A-002034-24 – T4 Civil Action On Appeal from: Superior Court of New Jersey Law Division, Bergen County Docket No.: BER-L-4500-24 Sat Below: Hon. Gregg A. Padovano, J.S.C.

REPLY BRIEF OF DEFENDANTS-APPELLANTS IN FURTHER SUPPORT OF APPEAL

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POINT I

PRIME HAS FAILED TO REFUTE THAT THE TRIAL COURT ERRED IN FAILING TO RULE THAT THE PRIME POLICY IS AN ILLEGAL CONTRACT

A. Introduction

In its Response Brief, Prime concedes that the driver, Marco Mendoza-Bastidas ("Mendoza-Bastidas"), was a permissive user. However, Prime claims, for the first time, that as a permissive user Mendoza-Bastidas was only afforded what Prime deems to be the minimum coverage because "the Prime Policy had numerous indications that the Policy would 'step-down' to mandated minimums." (Pb22).

There can be no step-down in coverage for permissive users because permissive users were never provided mandated omnibus coverage under the Prime Policy in the first place. Although the Prime Policy provides a limit of liability of $5.0 million, Prime never extended coverage to permissive users to those policy limits, a violation of sixty-five (65) years of well-established case law rendering the Prime Policy an illegal contract violative against public policy.

There is no question that Prime undermined statutory provisions and issued a policy conflicting with the mandate under N.J.S.A. 39:6B-1, yet Prime contends that as a permissive user Mendoza-Bastidas is only afforded minimum coverage of $25,000 under the Approved Drivers Endorsement. Nowhere in the Prime Policy is

there such a "step-down" provision limiting coverage to permissive users. In fact, the Prime Policy only identifies "Insureds" as persons or entities designated as "Named Insureds" or any "Approved Driver." (Ja73). The purported step-down provision in the Approved Driver Endorsement only applies to persons or entities qualifying as "Insureds." (Ja93). Since permissive users are not identified as "Insureds," the step-down provision in the Approved Driver Endorsement does not apply. (Ja73). Therefore, Prime's argument that there is a valid step-down provision is not supported by the terms of the Prime Policy or by law.

Prime's failure to provide coverage to permissive users to the policy limits of $5.0 million requires reformation of the Prime Policy under the Supreme Court case of Potenzone v. Annin Flag Company, 191 N.J. 147 (2007). Prime violated the law, unnecessarily causing Defendant-Appellants (hereinafter the "Fuji Defendants" and "Saadalla") to be financially responsible for the underlying loss, and forced the Fuji Defendants and Saadalla to pay thousands of dollars in legal fees to challenge the coverage denial. In light of its illegal contract, Prime seeks to avoid providing coverage to the policy limits of the Prime Policy and asks this Court to protect it by making a better contract than what was drafted by adopting an illegal step-down in coverage. Lacking no coverage to permissive users, or any kind of valid step-down provision limiting coverage to permissive users, such an outcome should not be countenanced.

Despite Prime's argument, the Fuji Defendants are not seeking to have a court write a better policy than the one purchased. To the contrary, the Prime Policy cannot be enforced as written because it is an illegal policy that does not comply with the law. Reforming an illegal policy is not an attempt to write a better one.

Prime was obligated to offer a premium based on mandated omnibus coverage to permissive users. Instead, Prime chose to issue a policy without the mandated coverage, leaving the Prime Policy open to reformation regardless of whether Prime collected the full premium for the additional exposure to permissive users. On the one hand, if Prime failed to offer coverage to permissive users without an increased premium, then the Fuji Defendants were deprived of the opportunity to pay an additional premium and accept statutorily mandated coverage from Prime or seek the coverage elsewhere. On the other hand, if Prime failed to offer the coverage but charged an increased premium, then Fuji Defendants paid for statutorily mandated coverage it never received. Under either scenario, the Prime Policy and the corresponding indemnity and personal guarantee provisions are void and unenforceable. Given that the Prime Policy violates public policy, it cannot be enforced for the benefit of Prime to the Fuji Defendants and Saadalla's detriment.

B. Prime's Failure to Provide Coverage to Permissive Users Requires Reformation of the Prime Policy

Prime's reliance on the unpublished Appellate Division decision of Alvarez v. Norwood, 2012 WL 1414116 (App. Div. Apr. 25, 2021), is unavailing. Rule 1:36-

3 clearly states that "[n]o unpublished opinion shall be cited by any court." Rule 1:36-3. Meanwhile, there are countless New Jersey Supreme Court cases holding that unreported decisions "serve no precedential value, and cannot reliably be considered part of our common law." Trinity Cemetery v. Wall Twp., 170 N.J. 39, 48 (2001) (emphasis added).

The case that is binding on the issue of reforming an insurance policy in the context of permissive users is not Alvarez, but Potenzone v. Annin Flag Company, 191 N.J. 147 (2007). While Potenzone involved an exclusion for loading and unloading under a commercial auto policy, the Supreme Court reformed the policy in Potenzone to the stated policy limits, not the statutory minimum, because the offending provision violated Ryder/P.I.E. Nationwide v. Harbor Bay Corporation, 119 N.J. 402 (1990), which had been decided sixteen (16) years earlier. Potenzone, supra, 191 N.J. at 154-55.

In Ryder, the Supreme Court held "that the obligation to provide coverage in a 'loading and unloading' accident arises from statute and therefore cannot be limited by contract," and that "an insurer would be required to provide coverage in a 'loading and unloading' accident to the limits of its policy - - often an amount greater than the statutory minimum." Ryder, supra, 119 N.J. at 413. Given the holding in Ryder, the Supreme Court in Potenzone held that insurers "should have reasonably expected that the full policy limit for an accident during a loading or

unloading operation was required." Potenzone, supra, 191 N.J. at 155. Therefore, since the insurer in Potenzone had sufficient notice that its policy provision violated the sixteen (16) year holding in Ryder, the Supreme Court imposed the full policy limits and emphasized that "the insurance industry . . . had ample time to adjust its rates and policy terms" but failed to do so. Id. at 155-56.

More importantly, the Potenzone Court reaffirmed that "[u]nder the terms of an ordinary policy, an insurer would be required to provide coverage in a loading and unloading accident to the limits of its policy - - often an amount greater than the statutory minimum." Potenzone, supra, 191 N.J. at 155 (emphasis added). Recognizing the impact in imposing the statutory minimum instead of the policy limits, the Supreme Court concluded, "[i]f the insurer intended to provide the statutory minimum coverage for loading or unloading accidents, it should have amended its policy to expressly provide for such step-down coverage. The failure to provide any step-down amounts results in the full policy limits." Id. at 155-56.

Like the loading/unloading requirement in Potenzone and Ryder, Prime had sufficient notice – based on sixty-five (65) years of precedent – that insurers are required to provide coverage to permissive users. Mattis v. Nationwide Mut. Ins. Co., 33 N.J. 488, 496-497 (1960). Having sufficient notice of its obligation to provide coverage to permissive users, Prime violated well-established case law by failing to provide such omnibus coverage in the Prime Policy.

Pursuant to Ryder and Potenzone, it is well-settled that the obligation to afford coverage to permissive users "arises from statute," "cannot be limited by contract," and requires an insurer to provide coverage "to the limits of its policy . . ." Potenzone, supra, 191 N.J. at 152-53 (quoting Ryder, supra, 119 N.J. at 413). The Prime Policy offends all these requirements – the Prime Policy violates N.J.S.A. 39:6B-1 **(**the "Omnibus Clause") by failing to provide the statutorily required omnibus coverage to permissive users; the Prime Policy illegally attempts to limit coverage to permissive users by not offering coverage to permissive users at all; and the Prime Policy never afforded coverage to permissive users to the limits of its policy.

There is a complete void in the Prime Policy for coverage to permissive users, rendering the Prime Policy an illegal contract. Here, Prime ignores, and the trial court failed to realize, the effect of withholding omnibus coverage – permissive users such as Mendoza-Bastidas were never provided coverage to the limits of the Prime Policy. Thus, unlike in Alvarez, the Approved Driver Endorsement in this case is not a valid exclusion to coverage because there was never coverage for permissive users in the first place. There being no doubt that Prime had sufficient notice of the mandated coverage for permissive users, Prime was well aware of the policy terms it was required to provide and the corresponding premium to charge for such coverage, yet it failed to do so. See Potenzone, supra, 191 N.J. at 155-56.

The Fuji Defendants purchased a policy of insurance with limits of $5 million in coverage, but permissive users were never afforded the benefit of the full policy limits. Ignoring this point, Prime instead argues on one hand that whether Mendoza-Bastidas was a permissive user "is a non-issue" because the trial court found him to be one. (Pb1, Pb27). On the other hand, Prime argues that Mendoza-Bastidas was not "truly a 'permissive user' under the coverage grant due to the Approved Drivers Endorsement, which gave "indications that the Policy would 'step-down' to mandated minimums." (Pb22). Neither argument is valid.

That the trial court considered Mendoza-Bastidas a permissive user entirely misses the mark because the Prime Policy does not provide coverage to permissive users to the limits of the Prime Policy. Here, the trial court held, "the court finds that the Policy must provide coverage to Mendoza and/or the Fuji Defendants under the omnibus provisions of the Policy given that Mendoza was a permissive user . . ." (Ja31). On that basis, the trial court should have reformed the Prime Policy to include coverage for permissive users to the $5.0 million policy limits and prevented the shifting of liability onto the Fuji Defendants and Saadalla. However, the trial court did not. Instead, the trial court merely labeled Mendoza-Bastidas as a permissive user (despite never having coverage as a permissive user in the first place), but then held there was no coverage because Mendoza-Bastidas was not an "Approved Driver," unjustly exposing the Fuji Defendants and Saadalla to

indemnify and reimburse Prime whatever it pays on the underlying personal injury claim, including legal fees and costs. (Ja106).

By virtue of not covering permissive users, Prime is not entitled to benefit from its illegal policy and enforce the indemnification provision and personal guarantee against the Fuji Defendants and Saadalla to their detriment. Prime cannot be permitted to rely on a policy that it knows does not comply with the law to shift the burden of loss to the policyholder. If Prime prevails, every insurer issuing a policy at odds with statutorily mandated coverage would be able to disclaim coverage, force upon its insured an illegal contract with an illegal step down in coverage, and have its insured bear the unfavorable financial consequences. Such an outcome exceeds all bounds of acceptance, let alone well-established law.

C. There is no Step-Down in Coverage for Permissive Users in the Prime Policy

No different than Potenzone, had Prime intended to provide the statutory coverage for permissive users, it only then could have expressly provided for a step-down in coverage. Potenzone, supra, 191 N.J. at 155-56. Here, the Approved Driver Endorsement falls short of providing an express step-down in coverage. The Approved Driver Endorsement states, in pertinent part, that Prime "will have no duty to defend or indemnify any 'insured' for any Claim or 'loss', with exception to the minimum amount of insurance required by any applicable federal or state financial responsibility law." (Ja93) (emphasis added).

Under its express terms, the Approved Driver Endorsement has no application to permissive users under omnibus coverage. The Approved Driver Endorsement applies only to an "Insured" which is narrowly defined under "Section III - - Who Is An Insured" to include a "Named Insured" or an "Approved Driver." (Ja73). However, permissive users are not identified as an "Insured." Therefore, there is no step-down in coverage applicable to permissive users under the Prime Policy.

D. To the Extent the Appellate Division considers Alvarez v. Norwood, it is Distinguishable[1]

Aside from having no precedential or binding effect on a court, Alvarez v. Norwood is distinguishable from the present case. Unlike the Prime Policy which does not afford coverage to permissive users to the stated policy limits, in Alvarez "[t]he insurance policy included an omnibus clause that generally extended coverage to anyone using the vehicle with the named insured's permission." (Ja295). Despite Prime's argument otherwise, the insurance policy in Alvarez clearly provided statutorily-imposed omnibus coverage. (Ja295; Pb22). Having first provided coverage to permissive users pursuant to the omnibus clause of the policy, the policy in Alvarez and the Prime Policy are distinguishable. The Prime Policy does not offer

[1] Huggins v. Aguilar, 246 N.J. 75, 92 (2021), is also distinguishable from this case because the insurer did not have "sufficient notice" of the unlawfulness of the policy provision to warrant imposing the full limits of the policy. In the absence of sufficient notice, the policy was not reformed to its limits.

omnibus coverage to permissive users at all. On the other hand, the policy in Alvarez contained an exclusion limiting coverage to permissive users (the Scheduled Driver Endorsement and Named Driver(s) Exclusion Endorsement). Thus, unlike the present case, there was omnibus coverage for permissive users in Alvarez.

The differences between Alvarez and the instant case cannot be overstated. In this matter, there was never omnibus coverage in the Prime Policy to the policy limits, which is a violation of longstanding law. Prime had every expectation that the full policy limits for permissive users was required since the requirement to provide omnibus coverage to permissive users has been settled for decades. On the other hand, Alvarez involved an exclusion that barred coverage for unnamed and unapproved drivers, which is not "comparable grounds" to the facts in Potenzone for an insurer to reasonably expect that the full policy limit was required.

Another distinguishing factor between Alvarez and this case is that the subject step-down endorsements in Alvarez required "the insurer's approval of the driver[,]" giving the insurer in Alvarez complete discretion to decline specific drivers instead of charging a higher premium. (Ja295). When considering the public interest, Alvarez reasoned that extending full policy limits for omitted drivers was a disincentive to insureds and insurers to scrutinize driver qualifications. (Ja298-Ja299).

Conversely, the Approved Driver Endorsement in the Prime Policy does not require Prime's approval of drivers that do not meet the qualifications under the endorsement. (Ja93-Ja94). Rather, if the driver did not meet the qualifications, then Prime only required "an associated additional premium and/or surcharge paid in advance of the driver qualifying as an 'approved driver' . . ." (Ja94). In the absence of a requirement that Prime actually approve drivers based on driver qualifications, Prime cannot advocate for the same public interest considerations raised in Alvarez since a disqualifying driver under the Prime Policy is afforded coverage as long as the surcharge is paid. (Ja94, Ja261). In the absence of Prime declining drivers based on qualifications, there is no mechanism favoring public safety under the Prime Policy. Rather, the only condition to covering unqualified drivers is monetary; as long as the requisite surcharge is paid, a driver will qualify as an "Approved Driver" under the Prime Policy. (Ja94). This outcome is very different from the public policy concerns Prime would like this Court to believe it is trying to protect.

E. The Fuji Defendants' Reliance on N.J.S.A. 39:6B-1 is Proper

Prime argues that the Fuji Defendants' reliance on the Omnibus Clause is misguided because the limits of coverage under that statute are $15,000 or $30,000. (Pb19-Pb20). However, the Fuji Defendants cite to the Omnibus Clause not to advocate for those minimum limits, but to underscore New Jersey's adoption of compulsory motor vehicle insurance, which extends mandatory omnibus

coverage to permissive users. See e.g., Selected Risks Ins. Co. v. Zullo, 48 N.J. 362, 366-367 (1966) (holding that permissive users must be provided coverage under the Omnibus Clause); see also Proformance Ins. Co. v. Jones, 185 N.J. 406, 414 (2005) (referencing New Jersey's "comprehensive insurance scheme of mandating automobile insurance" through the omnibus statute, N.J.S.A. 39:6B-1); Huggins, supra, 246 N.J. at 88 (stating, "there are numerous examples where the law requires certain vehicles to maintain higher compulsory liability insurance than is called for under N.J.S.A. 39:6B-1(a)."). In fact, the primary case that Prime petitions this Court to adopt, Alvarez v. Norwood, highlights the application of the Omnibus Statute even though that case involved a question of coverage for a taxi cab driver. See Alvarez, 2012 WL 1414116 at *4 (stating, "a complete bar to coverage for a claim by a third-party victim injured through the use of the taxicab by an unnamed driver would run afoul of the public policy underlying both the general compulsory automobile liability insurance law, N.J.S.A. 39:6B-1, and the law specifically requiring liability insurance for licensed taxicabs, N.J.S.A. 48:16-3."). (Ja297).

Indeed, the plain language of the Omnibus Clause requires every owner (not driver) of a vehicle to maintain liability insurance, and the initial permission rule "best effectuates the legislative policy of providing certain and maximum coverage, and is consistent with the language of the standard omnibus clause in automobile

liability insurance policies." Proformance Ins. Co., 185 N.J. at 412 (citing Mattis, supra, 33 N.J. at 496).

POINT II

THE TRIAL COURT ERRED IN DENYING DISCOVERY

As a preliminary matter, Prime argues that whether the trial court abused its discretion in denying discovery is not before this Court. Prime provides no support for this argument, other than its mischaracterization of the issues on appeal.

Equally unavailing is Prime's effort to downplay the reality that there was no real opportunity for discovery at the trial court level. Here, Prime ignores the fact that from the time Prime's declaratory judgment action was filed on August 2, 2024, to the time the Fuji Defendants' counsel filed a Notice of Appearance on November 12, 2024, Saadalla and the Fuji Defendants were self-represented. (Ja37, Ja137). Even further, Saadalla certified that he was confused on whether defense counsel in the underlying personal injury case was representing him in the coverage litigation, and acknowledged after the fact that he was unrepresented until in or around November 11, 2024, by which time Prime had served its discovery, the requests for admissions were overdue, and Prime had filed its summary judgment motion. (Ja224, Ja261). On the issue of discovery, and what should or should not have been done, Saadalla should not be held to an unfair standard of having to develop a record in an insurance coverage action, especially where he believed he may have been

represented but ultimately realized he was not.

The Fuji Defendants do not dispute that issues of coverage for permissive users and the appropriate policy limits are legal questions. However, there were grounds for discovery at the trial court level that were improperly denied. Here, whether the trial court decided facts regarding the permissive user issue is irrelevant. Prime completely ignores that there are questions of fact bearing on the enforceability of the Prime Policy (or lack thereof) that warrant discovery.

As it stands, Prime issued an illegal policy because it did not extend coverage to permissive users. There are questions of fact regarding whether Prime ever offered a policy extending coverage to permissive users. No doubt, if Prime failed to offer coverage to permissive users at an increased premium, then the Fuji Defendants and Saadalla were deprived of the opportunity to accept statutorily mandated coverage from Prime or seek it elsewhere, the negative effect of which is that Prime can shift the burden of loss onto the policyholder. If Prime failed to offer coverage to permissive users at an increased premium, then the Prime Policy is void ab initio, and it may be determined through discovery that the indemnity and personal guarantee provisions of the Prime Policy are not be enforceable, and the Fuji Defendants would be entitled to the reimbursement of their premium from

Prime. Depriving the Fuji Defendants and Saadalla of discovery on these critical issues would offend the interests of justice.

CONCLUSION

For the reasons set forth in their initial Brief, as well as those set forth herein, the Fuji Defendants and Saadalla respectfully request that this Court reverse the ruling of the trial court on the grounds that the Prime Policy violates public policy as a matter of law, thereby rendering the Prime Policy void ab initio, with the indemnity and personal guarantee provisions stricken. Prime should not be able to rely on a policy it know violates the law and shift the burden of loss onto the Fuji Defendants and Saadalla.

Respectfully submitted,

By: */s/ Anthony Bianco*
Anthony Bianco, Esq.

Dated: September 16, 2025