

Jarred S. Freeman, Esq. (Attorney ID 022362009)  
Freeman & Patel LLC  
3840 Park Avenue, Suite 202A  
Edison, NJ 08820  
Phone (732) 494-7900/ Fax (732) 494-7904  
Email: jarred.freemanlaw@gmail.com  
Attorneys for Plaintiff Halina Podlas

**HALINA PODLAS**

**Plaintiff/ Appellant**

v.

**HENRY W. POLLARD and KATHY  
A. FLEMMING, ALLSTATE  
INSURANCE COMPANY,**

**Defendants/ Respondents**

SUPERIOR COURT OF NEW  
JERSEY  
APPELLATE DIVISION

App. Docket No. A-002133-24 T1

Docket No.: UNN-L-453-23

ON APPEAL FROM SUPERIOR  
COURT OF NEW JERSEY

Law Division

Civil Action

Sat Below: Hon. Daniel R.  
Lindemann, J.S.C.

---

**MERIT'S BRIEF IN SUPPORT OF APPELLANT HALINA PODLAS'S  
APPEAL**

---

TABLE OF CONTENTS

TABLE OF JUDGEMENTS ..... iv

TABLE OF AUTHORITIES ..... v

STATEMENT OF FACTS AND PROCEDURAL HISTORY ..... 1

LEGAL ARGUMENT

    POINT I: THE TRIAL COURT ERRED BY GRANTING DEFENDANT ALLSTATE’S MOTION FOR SUMMARY JUDGMENT BECAUSE THE SUMMARY JUDGMENT STANDARD WAS NOT MET (March 5, 2025 Order and Opinion) ..... 7

    POINT II: THE TRIAL COURT ERRED BY HOLDING MS. PODLAS IS NOT AN INSURED UNDER DEFENDANT ALLSTATE’S POLICY AND BY GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT ALLSTATE. (March 5, 2025 Order and Opinion) ..... 9

    POINT III: THE TRIAL COURT ERRED BY HOLDING THE NEW JERSEY STATUTE DOES NOT REQUIRE UIM COVERAGE FOR PEDESTRIANS (March 5, 2025 Order and Opinion) ..... 14

        A. The Trial Court erred by Finding a Distinction Between a Commercial and Personal Auto Policy (March 5, 2025 Order and Opinion) ..... 19

    POINT III: THE TRIAL COURT ERRED BY NOT REVIEWING THE INSURED’S REASONABLE EXPECTATIONS OF COVERAGE. (March 5, 2025 Order and Opinion) ..... 20

CONCLUSION ..... 29

## TABLE OF JUDGMENTS

March 5, 2025 Order Granting Summary Judgment .....	Pa62
---	------

## TABLE OF AUTHORITIES

### Statutes

<u>N.J.C.R.</u> 4:46-3 (b) .....	8
<u>N.J.S.A.</u> 17:28-1.1 .....	6, 9, 12, 14-15, 18-19
<u>N.J.S.A.</u> 39:6A-14 .....	9

### Cases

<u>Allstate N.J. Prop. &amp; Cas. Ins. Co. v. Estate of McBride</u> , No. A-2139-17T2 (App. Div. Aug. 29, 2019) .....	22
<u>Anderson v. Liberty Lobby, Inc.</u> , 477 <u>U.S.</u> 242, 251-52 (1986) .....	7
<u>Araya v. Farm Family Cas. Ins. Co.</u> , 353 <u>N.J. Super.</u> 203, 211 (App. Div. 2002) ..	25
<u>Aubrey v. Harleysville Ins. Cos.</u> , 140 <u>N.J.</u> 397, 403 (1995) .....	23-24
<u>Beek v. Ohio Casualty Insurance Co.</u> , 73 <u>N.J.</u> 185 (1977) .....	12, 18
<u>Bowler v. Fidelity Casualty Co.</u> , 53 <u>N.J.</u> 313 , 326 (1969) .....	18
<u>Brill v. Guardian Life Ins. Co.</u> , 142 <u>N.J.</u> 520, 540 (1995) .....	7-8
<u>Ciecka v. Transamerica Insurance Group</u> , 81 <u>N.J.</u> 421 (1979) .....	12
<u>Cook-Sauvageau v. PMA Group</u> , 295 <u>N.J. Super.</u> 620 (App. Div. 1996) .....	23-24
<u>Fernandez v. Selected Risks Insurance Co.</u> , 82 <u>N.J.</u> at 240 .....	14-16, 18
<u>James v. New Jersey Mfrs. Ins. Co.</u> , 216 <u>N.J.</u> 552, 566, (2014) .....	19
<u>Katchen v. Government Employees Insurance Company</u> , 457 <u>N.J. Super.</u> 600, 605 (App. Div. 2019) .....	6, 21

Lehrhoff v. Aetna Cas. and Sur. Co., 271 N.J. Super. 340 (App. Div. 1994) .. 22-23

Longworth v. Van Houten, 223 N.J. Super 175 (App. Div. 1988) ... 3, 7, 13, 15, 17

Lundy v. Aetna Cas. Sur. Co., 92 N.J. 550 (N.J. 1983) ..... 9, 14-15, 17-18

Motor Club of America Insurance Co. v. Phillips, 66 N.J. 277 (1974) ..... 12

Murphy v. Milbank Mut. Ins. Co., 438 N.W.2d 390, 395 (Minn.Ct.App.1989) .... 24

Robbins v. Jersey City, 23 N.J. 229, 240-41 (1957) ..... 8

Rutgers Cas. Ins. Co. v. Collins, 313 N.J. Super. 79 (App. Div. 1998) ..... 22

Sosa v. Mass. Bay Ins. Co., 458 N.J. Super. 639 (App. Div. 2019) ..... 22

Werner Indus. v. First State Ins. Co., 112 N.J. 30, 35 (1988) ..... 23-24

Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001) ..... 21

## STATEMENT OF FACTS AND PROCEDURAL HISTORY<sup>1</sup>

This matter arises out of a motor vehicle accident that occurred on January 8, 2022. Pa 2. Plaintiff/ Appellate Halina Podlas (Ms. Podlas) was standing in the front walkway of one of her residences at 721 E. Elizabeth Avenue, Linden, New Jersey. Pa 8. Mr. Podlas also resides with her son at 1327 Essex Avenue, Linden. Pa 22, Pa 24.

While Ms. Podlas was cleaning her front steps with a small brush and dustpan, she was struck by a vehicle owned and operated by Defendant Henry W. Pollard (Defendant Pollard). Pa 22-23, Pa 44. The vehicle, owned and operated by Defendant Pollard, careened out of control at a high rate of speed, drove up on the walkway where Mr. Podlas was standing and threw her back several feet into an adjacent brick wall. Pa 22-23, Pa 44-46, Pa 431-432.

The incident was captured on Ring Doorbell cameras. The Linden Police Department responded to the scene. Pa 431-432. Ms. Podlas was still breathing but bleeding from the head, face, and badly injured. An ambulance transported her to the hospital, where she lost consciousness before regaining it. Pa 431- 432. At the hospital she was admitted to the Intensive Care Unit after receiving emergency surgical intervention for her injuries. Pa 431- 432.

---

<sup>1</sup> The Statement of Facts and Procedural History overlap, therefore for the sake of judicial economy they are being addressed together.

The ambulance records note that Plaintiff's right foot was wrapped in clingwrap to keep her great toe in place. Pa 431- 432. The right great toe had to be amputated as a result of this loss. Pa 431- 432. Plaintiff suffered other serious injuries including broken ribs, a left ankle fracture, a right ankle fracture, a right foot fracture, multiple ligament tears in the right knee, spinal injuries, head fracture, and injuries to internal organs. Pa 431- 432.

After the incident, Plaintiff remained in the hospital then was transferred to an in-patient rehab for several months. Pa 431- 432.

At the age of 66, Plaintiff is unable to work again and needs constant care and help with activities of daily living. Pa 4, Pa 433.

After the crash, the Linden Police interviewed the Defendant Pollard who provided a recorded statement. Defendant Pollard indicated he was feeling lightheaded the morning of the accident, but drove anyway. He lost consciousness behind the wheel, veered off the road at a high rate of speed and hit Ms. Podlas. Mr. Pollard was not criminally charged because the investigation revealed he was not intoxicated. Pa 429-441.

Ms. Podlas filed a Complaint on February 8, 2023 and an Amended Complaint on June 14, 2024 naming Allstate New Jersey Insurance Company (Defendant Allstate) as a defendant. Pa 1, Pa21. Ms. Podlas' Amended Complaint seeks declaratory judgment for UM/UIM coverage in Count Two and alleges a breach of

contract against Allstate in Count Three. Pa 21-27.

Ms. Podlas settled with Defendant Pollard for his auto policy limit of \$300,000.00 and extended a signed release and stipulation of dismissal. Pa 57

Ms. Podlas' son, Lucas Podlas, is the policy holder of three Allstate policies. One personal policy and two commercial policies. Pa 70-245, Pa 246-316, 1T 4:1-25<sup>2</sup>. The personal policy was not triggered for purposes of this loss because it carries limits less than the tortfeasor. The remaining two Allstate policies are the subject of this litigation.

Ms. Podlas sent Defendant Allstate a Longworth v Van Houten letter on August 9, 2024 for the \$500,000 policy ending in 5779 and the \$1 Million dollars policy ending in 3384. Pa 58.

Defendant Allstate acknowledged both policies and denied coverage. Pa 60, Pa330. Plaintiff is entitled to underinsured motorist ("UIM") benefits from Defendant Allstate and the trial court erred by granting summary judgment in favor of Defendant Allstate. Pa 62-63.

Ms. Podlas' son, Lukas Podlas, is the policy holder for both Allstate business policies which are the subject of this litigation. 1T 4:1-25. Lucas Podlas owns Lucas HVAC LLC and Lucas Air Corp. The two businesses own four vehicles together.

---

<sup>2</sup> 1T refers to the February 14, 2025 motion hearing transcript, 2T refers to the February 28, 2025 motion hearing transcript.

1T 4:1-25.

Various employees of the business use the vehicles. All the vehicles are registered at 1327 Essex Ave. The business address for Lucas HVAC, LLC and Lucas Air Corp. is 1327 Essex Ave. Pa 23-26. In the years leading up to the incident of January 8, 2022, Plaintiff had established residences at two separate addresses. Plaintiff lived at 1327 Essex Ave. in Linden and at 721 East 13 Elizabeth Ave. in Linden. She split her time between the two houses, ate meals at both, and kept her personal belongings at both. Pa 23-26. When Plaintiff lived at 1327 Essex Ave., she would work and be compensated for her work by Lucas HVAC, LLC at the rate of \$500 per week. Pa 25-26.

Ms. Podlas was employed as a housekeeper for the business. Her duties included cleaning the office, the bathroom, and cooking for the employees of the business. 1T 15:16, 2T 6:18-25. According to the declaration page, Business Policy # 1 insures a Range Rover and Business Policy # 2 insures a Ford F350. It is unclear where the vehicles were parked on January 8, 2022. Pa 85. However, for purposes of coverage, it is not relevant whether the vehicles were parked at either of the above-mentioned addresses or out in the field.

Defendant Allstate denied Ms. Podlas' claim for underinsured motorist (UIM) benefits because she was not occupying a motor vehicle at the time of this loss. Pa 330. Since she was a pedestrian, Defendant Allstate claims they are not responsible

for her loss. Pa 330.

Defendant Allstate filed a motion for summary judgment on or around January 17, 2025. Ms. Podlas filed opposition on February 4, 2025 and Defendant Allstate filed a reply on February 10, 2025. The trial court heard oral arguments on February 14, 2025. 1T 1:3, Pa 74-76. During oral arguments the trial court requested the parties provide additional briefs on the UIM issue. 1T 30:32, 78. Ms. Podlas filed a supplemental brief on February 21, 2025 and Defendant Allstate filed a supplemental reply on February 27, 2025. The trial court held additional oral arguments on February 28, 2025. 2T 1:2, Pa62.

The trial court entered an order and opinion on March 5, 2025 granting summary judgment in favor of Defendant Allstate. Pa 62- 69. The trial court held that under the plain language of the policy, summary judgment should be granted.

The trial court found the business auto policy stated that:

We will pay all sums the “insured” is legally entitled to recover as compensatory damages from the owner or driver of an “uninsured motor vehicle” or an “underinsured motor vehicle.” The damages must result from the ownership, maintenance or use of an “uninsured motor vehicle” or an “underinsured motor vehicle.”

Pa 66-67. The trial court looked to the business auto policy to answer the question of who is an insured. The trial court found the policy provided:

**B. Who is An Insured**

If the Named Insured is designated in the Schedule or  
Declarations as:

2. A partnership, limited liability company, corporation or any other form of organization, then the following are “insureds”:

- a. Anyone “occupying” a covered “auto” or a temporary substitute for a covered “auto.” The covered “auto” must be out of service because of its breakdown, repair, servicing, “loss” or destruction.
- b. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured”
- c. The Named Insured for “property damage” only.

66-67. As a result, the trial court held summary judgment should be granted in favor of Defendant Allstate.

The trial court held that caselaw did not support Ms. Podlas’ argument that Defendant Allstate was required to provide UIM coverage. Pa 68. The trial court held that “Plaintiff conflates N.J.S.A. 17:28-1.1’s requirement for UM coverage with those for UIM coverage.” Pa 68-69. The trial court held the case law demonstrates a difference between UIM and UM coverage. Pa 68. “Thus, not only did the Court in Katchen differentiate between N.J.S.A. 17:28-1.1’s requirement for UM and UIM coverage, but it also made no reference to Plaintiff’s purported requirement that NJ insurers provide UIM coverage.” Pa 68. The trial court found the case law held there was no compelling reason to treat “UM and UIM identically under N.J.S.A. 17:28-1.1, the Court must construe the subject Business Auto Policy in accordance with NJ’s well-established principal that the clear language in the policy should be

interpreted as written.” Pa 68.

The trial court further held that the case of Longworth v. Van Houten, 223 N.J. Super 175 (App. Div. 1988) held the legislature intended UM and UIM coverage to be congruent does not apply to this case because it does not involve “the statutory coverage requirements at issue here.” Pa 68-69. Therefore, the trial court granted Defendant Allstate’s motion for summary judgment. This appeal follows.

## LEGAL ARGUMENT

### POINT I

#### **THE TRIAL COURT ERRED BY GRANTING DEFENDANT ALLSTATE’S MOTION FOR SUMMARY JUDGMENT BECAUSE THE SUMMARY JUDGMENT STANDARD WAS NOT MET (March 5, 2025 Order and Opinion)**

The trial court erred by granting Defendant Allstate’s motion for summary judgment because the summary judgment standard was not met. Summary judgment will be granted when the evidential materials viewed in the light most favorable to the non-moving party show there is no question that a rational fact finder would decide in favor of the moving party. Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). Thus, the proper inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Brill, at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)). “[T]he motion judge [must] consider

whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill, supra at 540.

The summary judgment motion, on the one hand, affords every litigant who has a *bona fide* cause of action or defense the opportunity to fully expose his or her case; on the other hand, protection is afforded against groundless claims and frivolous defenses, not only to save antagonists the expense of a protracted litigation, but also to reserve judicial manpower and facilities to cases which meritoriously command attention. See Robbins v. Jersey City, 23 N.J. 229, 240-41 (1957).

Pursuant to N.J.C.R. 4:46-3 (b), the court may enter an order and allow time for completion of discovery and specifically identify the disputed factual issues.

Here, the trial court erred by granting summary judgment in favor of Defendant Allstate because discovery was not complete in this matter, Ms. Podlas meets the definition of an insured, UM/UIM benefits apply to both commercial and personal auto policies, Plaintiff had selected and paid for UIM coverage, public policy dictates that victims that have elected UIM coverage should be protected, and Ms. Podlas reasonably relied on the declaration page of the Allstate policies.

## POINT II

### **THE TRIAL COURT ERRED BY HOLDING MS. PODLAS IS NOT AN INSURED UNDER DEFENDANT ALLSTATE'S POLICY AND BY GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT ALLSTATE.** (March 5, 2025 Order and Opinion)

The trial court erred by holding Ms. Podlas is not an insured under the Business Auto Policy and by granting summary judgment in favor of Defendant Allstate. Automobiles insured in New Jersey are required to be covered with uninsured motorist coverage, no fault comparative negligence coverage. See N.J.S.A. 39:6A-14, N.J.S.A. 17:28-1.1, Lundy v. Aetna Cas. Sur. Co., 92 N.J. 550, 553. In other words, New Jersey statutes require uninsured motorist coverage in New Jersey for both personal and business policies.

The underinsured motorist (UIM) statute, N.J.S.A. 17:28-1.1e, provides that a motor vehicle is underinsured when the sum of the limits of liability under all bodily injury and property damage liability bonds and insurance policies available to a person against whom recovery is sought for bodily injury or property damage is, at the time of the accident, less than the applicable limits for underinsured motorist coverage afforded under the motor vehicle insurance policy held by the person seeking that recovery. Defendant Pollard carried \$300,000 liability limits. Ms. Podlas' damages exceed that amount and as such, plaintiff seeks UIM coverage from Allstate.

N.J.S.A § 17:28-1.1 provides:

b. Uninsured and underinsured motorist coverage shall be provided, as an option by an insurer to the named insured electing a standard automobile insurance policy, up to at least the following limits: \$250,000.00 each person and \$500,000.00 each accident for bodily injury; \$100,000.00 each accident for property damage or \$500,000.00 single limit, subject to an exclusion of the first \$500.00 of such damage to property for each accident, except that the limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury and property damage, respectively. Rates for uninsured and underinsured motorist coverage for the same limits shall, for each filer, be uniform on a Statewide basis without regard to classification or territory.

c. Uninsured and underinsured motorist coverage provided for in this section shall not be increased by stacking the limits of coverage of multiple motor vehicles covered under the same policy of insurance nor shall these coverages be increased by stacking the limits of coverage of multiple policies available to the insured. If the insured had uninsured motorist coverage available under more than one policy, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.

d. Uninsured and underinsured motorist coverage shall be subject to the policy terms, conditions and exclusions approved by the Commissioner of Banking and Insurance, including, but not limited to, unauthorized settlements, non-duplication of coverage, subrogation and arbitration.

e. For the purpose of this section,(1) "underinsured motorist coverage" means insurance for damages because of bodily injury and property damage resulting from an accident arising out of the ownership, maintenance, operation or use of an underinsured motor vehicle. Underinsured motorist coverage shall not apply to an uninsured motor vehicle. A motor vehicle is underinsured when the sum of the limits of liability under all bodily injury and property damage liability bonds and insurance policies available to a person against whom recovery is sought for bodily injury or property damage is, at the time of the

accident, less than the applicable limits for underinsured motorist coverage afforded under the motor vehicle insurance policy held by the person seeking that recovery. A motor vehicle shall not be considered an underinsured motor vehicle under this section unless the limits of all bodily injury liability insurance or bonds applicable at the time of the accident have been exhausted by payment of settlements or judgments. The limits of underinsured motorist coverage available to an injured person shall be reduced by the amount he has recovered under all bodily injury liability insurance or bonds;(2) "uninsured motor vehicle" means:(a) a motor vehicle with respect to the ownership, operation, maintenance, or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident;(b) a motor vehicle with respect to the ownership, operation, maintenance, or use of which there is bodily injury liability insurance in existence but the liability insurer denies coverage or is unable to make payment with respect to the legal liability of its insured because the insurer has become insolvent or bankrupt, or the Commissioner of Banking and Insurance has undertaken control of the insurer for the purpose of liquidation;(c) a hit and run motor vehicle as described in section 18 of P.L. 1952, c.174 (C.39:6-78); or (d) an automobile covered by a special automobile insurance policy pursuant to section 45 of P.L. 2003, c. 89(C.39:6A-3.3) ...

f. Notwithstanding the provisions of this section or any other law to the contrary, a motor vehicle liability policy or renewal of such policy of insurance, insuring against loss resulting from liability imposed by law for bodily injury or death, sustained by any person arising out of the ownership, maintenance or use of a motor vehicle, issued in this State to a corporate or business entity with respect to any motor vehicle registered or principally garaged in this State, shall not provide less uninsured or underinsured motorist coverage for an individual employed by the corporate or business entity than the coverage provided to the named insured under the policy. A policy that names a corporate or business entity as a named insured shall be deemed to provide the maximum uninsured or underinsured motorist coverage available under the policy to an individual employed by the corporate or business entity, regardless of whether the individual is an additional named insured under that policy or is a named insured or is covered under any other policy providing uninsured or underinsured motorist coverage.

N.J.S.A. § 17:28-1.1.

Under N.J.S.A. 17:28-1.1 automobile liability policies must include a provision that the insured or his legal representative shall be entitled to recover damages sustained in an accident with an uninsured automobile if the owner or operator of the uninsured automobile is legally responsible. This liability exists irrespective of whether the insured vehicle was involved in the accident. This interpretation of the statute has been adopted by this Court in Motor Club of America Insurance Co. v. Phillips, 66 N.J. 277 (1974), Beek v. Ohio Casualty Insurance Co., 73 N.J. 185 (1977), and Ciecka v. Transamerica Insurance Group, 81 N.J. 421 (1979). The statute does not distinguish between personal policies and business policies.

In the Business Auto policy Defendant Allstate defines “insured” as someone who occupied a certain vehicle at the time of the loss. The trial court erred by allowing Defendant Allstate to not consider pedestrians insured by UM/UIM coverage under the Business Auto Policy. The trial court improperly found that because the policy is issued to a business, an “insured” can be defined only as someone occupying a vehicle at the time of loss.

The Business Auto policy states that :

We will pay all sums the “insured” is legally entitled to recover as compensatory damages from the owner or driver of an “uninsured motor vehicle” or an “underinsured motor vehicle.” The damages must result from

“bodily injury” sustained by the “insured,” or “property damage” caused by an “accident.” The owner’s or driver’s liability for these damages must result from the ownership, maintenance or use of an “uninsured motor vehicle” or an “underinsured motor vehicle.

Pa 77. The Business Auto Policy defines and insured as:

B. Who is An Insured

If the Named Insured is designated in the Schedule or Declarations as:

2. A partnership, limited liability company, corporation or any other form of organization, then the following are “insureds”:
  - a. Anyone “occupying” a covered “auto” or a temporary substitute for a covered “auto.” The covered “auto” must be but of service because of its breakdown, repair, servicing, “loss” or destruction.
  - b. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured.”
  - c. The Named Insured for “property damage” only.

PA 77. Allstate’s policy language violates the New Jersey statute which requires UM/UIM coverage to be offered. Once a policy holder elects the UM/UIM coverage, coverage should be provided in accordance with the law. This requirement must be met regardless of whether the policy is a commercial or personal auto policy. Public policy and Longworth dictate that when an insured elects UIM coverage, that coverage is treated the same as UM coverage. The only difference between UIM and UM is that the tortfeasor does not carry insurance in a UM scenario. Everything else, including coverage as is relates to pedestrians is the same for UIM and UM coverage.

By failing to define pedestrians as insured, Allstate's policy violates the requirement of providing UIM coverage to all autos insured by it. New Jersey requires UM/UIM coverage to be provided to all autos on the road, commercial and personal. There is no distinction between a personal policy and a commercial policy. see N.J.S.A. 17:28-1.1. Further, treating UM and UIM coverage differently is against the public policy of protecting New Jersey citizens from uninsured financially irresponsible drivers. See Fernandez v. Selected Risks Insurance Co., 82 N.J. at 240, Lundy v. Aetna Cas. Sur. Co., 92 N.J. 550 (N.J. 1983). See also Point III *infra*. Unlike liability insurance, underinsured motorists' coverage is not linked to accidents that occur while the insured is operating or occupying a specified vehicle. Therefore, the trial court erred by granting summary judgment in favor of Defendant Allstate and the Appellate Division should reverse the March 5, 2025 order.

### POINT III

#### **THE TRIAL COURT ERRED BY HOLDING THE NEW JERSEY STATUTE DOES NOT REQUIRE UIM COVERAGE FOR PEDESTRIANS (March 5, 2025 Order and Opinion)**

The trial court erred by holding New Jersey statutes do not require UIM coverage for pedestrians under commercial auto policies. Public policy demands that UM and UIM coverage be treated the same. "The essential distinction between UM and UIM coverage is that if an uninsured tortfeasor is involved, his victim is able to

seek initial and primary recourse from his own liability carrier. If an underinsured tortfeasor is involved, however, his victim may not pursue his contractual UIM right against his own liability insurer until he has first recovered the tortfeasor's liability limit by settlement or judgment.” Longworth v. Van Houten, 223 N.J. Super. 174, 178 (App. Div. 1988).

By defining “insureds” only as someone who occupies a vehicle during the loss, to qualify for UM/UIM coverage, Allstate’s policy violates the New Jersey insurance code and a progeny of cases interpreting the parameters of UM/UIM coverage.

N.J.S.A. § 17:28-1.1 “specifically and unambiguously requires an insurer to provide coverage for such sums . . . which the insured would be able to recover from the operator of an uninsured automobile whether the insured was walking, standing, running, riding a motorcycle or occupying an uninsured motor vehicle.” Fernandez v. Selected Risks Ins. Co., 82 N.J. 236, 240 (1980) (internal quotations omitted).

Justice Handler pointed out in Fernandez that: “[t]he statute contains no language requiring . . . that the insured have any special relationship with the vehicle that he is operating or in which he is a passenger.” Id. at 241. All that N.J.S.A. 17:28-1.1 demands is that the insured demonstrate that he has sustained injuries which were caused by an uninsured automobile. Lundy v. Aetna Cas. Sur. Co., 92

N.J. 550 (1983). Therefore, the court concluded that UM coverage, which is limited to the amount contained in the insured's policy, is "personal" to the insured. Coverage is linked to the injured person, not the covered vehicle. Fernandez v. Selected Risks Ins. Co., 82 N.J. 236, 241 (1980).

The court noted that a finding that UM coverage is attached to the person is consistent with the legislative intent of the statute, which was "designed to grant protection to persons in order to "subserve the socially desirable policy of adequate indemnification of innocent automobile accident victims" and it should be construed and applied to effectuate this policy. Id. at 241

The trial court erred by finding that there is a distinction between UM and UIM coverage. The trial court held the statute referred to mandatory UM coverage in section (a) and optional UM/UIM coverage in sections (b) and (d). The trial court found that the statute only requires an option for UIM coverage and that Defendant Allstate provided the option. However, the trial court failed to consider that when the option is exercised it should be applied in accordance with the law which covers both occupants of vehicles and pedestrians.

The purpose of both UM and UIM is the public policy to protect victims from the negligence of individuals who did not have automobile insurance or who did not have enough insurance. Fernandez, 163 N.J. Super. at 274. By allowing an insurance company to contract away the protections of the UIM coverage, the public policy

behind the scheme is frustrated. Therefore, UM and UIM coverage should be considered the same when deciding coverage. Longworth was decided in 1988, five years after the 1983 legislation that required insurance companies to offer UIM coverage option for purchase. The New Jersey Supreme Court decided that UM and UIM coverage were congruent.

The court in Longworth held:

We are of the view that the legislative scheme in respect of UM and UIM coverage was intended to be basically congruent in affording the insured a contractual right against his own insurer to compensate at least in part for the tortfeasor's insurance inadequacy. Whether that inadequacy is no insurance at all or underinsurance has no conceptual consequence since, under the legislative scheme, the insured victim's contractual recovery is in both cases limited to the amount of the coverage purchased from his own carrier.

Longworth v. Van Houten, 223 N.J. Super. 174, 193(1988). Although Longworth involved a subrogation clause, a consent to settle clause, and an exhaustion clause as part of their UIM cover, the Legislative goals and the policy of protecting against drivers without enough insurance coverage remains. Such extensions further the statutory purpose of protecting persons injured by uninsured cars. Lundy v. Aetna Cas. Sur. Co., 92 N.J. 550, 553-54. The UIM coverage extends to plaintiff regardless of whether their injuries were sustained in an insured vehicle. The Statute does not suggest that any insurer may absolve itself from its literal statutory obligation after accepting a premium and declaring coverage on the declaration page.

Traditional rules of construction of insurance policies favor a reading advantageous to the insured. Ambiguities are to be resolved against the insurance company which drafted the printed form contract, the policy being "unipartite in nature." Bowler v. Fidelity Casualty Co., 53 N.J. 313 , 326 (1969), see Lundy at 559.

Here, the trial court erred by granting summary judgment in favor of Defendant Allstate because the UIM provision of the Business Auto Policy violated N.J.S.A. 17:28-1.1. There is a strong public policy to provide broad protection for victims of automobile accidents caused by the negligence of uninsured and underinsured. See Fernandez v. Selected Risks Insurance Company, 163 N.J. Super. 270, 274 (App. Div. 1978). Although, many of the cases in New Jersey discuss UM, the purpose of both UM and UIM is the same, to protect victims from drivers who do not have enough insurance.

Therefore, if UIM benefits are selected by the insured, coverage must be provided in accordance with the law. Any attempt by an insurer, in this case Allstate, to restrict the liability on a UIM endorsement after charging a premium for the endorsement is repugnant to both the intent and the meaning of the statute. see Beek v. Ohio Casualty Insurance, 135 N.J. Super. 1, 5 (App. Div. 1975). The trial court erred by finding a distinction between UM and UIM and by granting summary judgment in favor of Defendant Allstate. The Appellate Division must reverse the March 5, 2025 order.

**A. The Trial Court erred by Finding a Distinction in UM/UIM Coverage Between a Commercial and Personal Auto Policy (March 5, 2025 Order and Opinion)**

The trial court erred by finding a distinction between a commercial and personal auto policy. The plain language of N.J.S.A. § 17:28-1.1 treats both business and personal auto policies the same.

A policy that names a corporate or business entity as a named insured shall be deemed to provide the maximum uninsured or underinsured motorist coverage available under the policy to an individual employed by the corporate or business entity, regardless of whether the individual is an additional named insured under that policy or is a named insured or is covered under any other policy providing uninsured or underinsured motorist coverage. The trial court erred by finding that Ms. Podlas was not entitled to coverage under the business policy.

If the policy only lists the employer as the “named insured,” its employees are eligible for maximum coverage. James v. New Jersey Mfrs. Ins. Co., 216 N.J. 552, 566, (2014). N.J.S.A. 17:28-1.1 (f) “prohibits providing an employee with less coverage than the named insured on a corporate or business entity’s commercial automobile liability policy.” Id. A policy that names a corporate or business entity as a named insured shall be deemed to provide the maximum uninsured or underinsured motorist coverage available under the policy to an individual employed

by the corporate or business entity, regardless of whether the individual is an additional named insured under that policy.

Lucas HVAC purchased the auto policy for the business. They had a reasonable expectation that their employees will be covered in case of a loss. Ms. Podlas is not merely family member, she is also an employee of the business. There was no dispute at the trial level that Ms. Podlas was not an employee of the business. Therefore, she is covered under the Business Auto Policy. The trial court erred by finding that at the time of the accident Ms. Podlas was not covered by the Business Auto Policy. Therefore, the Appellate Court should reverse the trial court's order of summary judgment in favor of Defendant Allstate.

### **POINT III**

#### **THE TRIAL COURT ERRED BY NOT REVIEWING THE INSURED'S REASONABLE EXPECTATIONS OF COVERAGE.** (March 5, 2025 Order and Opinion)

The trial court erred by not reviewing Lucas HVAC's reasonable expectations of coverage. When a plaintiff relies on the declaration page for coverage, the Courts give it much deference when deciding a coverage issue. Although Defendant Allstate's policy provides UM/UIM coverage for anyone in a covered auto at the time of loss, the statute provides broader coverage. Allstate's policy does not explicitly "exclude" pedestrians, however, the result is the same with pedestrians being excluded from the Allstate policy. Additionally, the issue of the insured's

reasonable expectation of coverage is a factual inquiry, which should be decided by the jury. The trial court erred by allowing Allstate to circumvent UIM coverage for pedestrians.

The declaration page indicates that the policy provides coverage for UM and UIM separately. The premium charged for UM and UIM endorsement also appears separately. A reasonable person reviewing this policy would believe that his employees are covered by UM and UIM endorsements and policy language or interpretation thereof to the contrary must be construed against the insurance company.

N.J.S.A. § 17:28-1.1(f) provides that:

A policy that names a corporate or business entity as a named insured shall be deemed to provide the maximum uninsured or underinsured motorist coverage available under the policy to an individual employed by the corporate or business entity, regardless of whether the individual is an additional named insured under that policy or is a named insured or is covered under any other policy providing uninsured or underinsured motorist coverage.

Courts have emphasized the importance of the declaration page when interoperating coverage.

Although the Court has held that when an insurance policy is “clear and unambiguous,” the “plain, ordinary meaning” of the words should be used, this does not take into account the declaration page. Katchen v. Government Employees Insurance Company, 457 N.J. Super. 600, 605 (App. Div. 2019) quoting Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001). The declaration is the single most

important documents which sets the reasonable expectation of coverage held by the insured.

In Lehrhoff v. Aetna Cas. and Sur. Co., 271 N.J. Super. 340 (App. Div. 1994), the family's adult son, who had been residing with his parents in New Jersey, took the insured car to California where he temporarily worked for a few months. He was hit by an unidentified motorcycle while he was a pedestrian. The court made several important rulings: The "signal importance" of the declaration page in "defin[ing] the insured's reasonable expectations of coverage." Id.

The inability of "the average policyholder [to] successfully chart his own way through the shoals and reefs of exclusions, exceptions to exclusions, conditions and limitations, and all the rest of the qualifying fine print, whether or not in so-called plain language." Sosa v. Mass. Bay Ins. Co., 458 N.J. Super. 639 (App. Div. 2019). "The declaration page cannot be contradicted by the policy's boilerplate unless the declaration page itself clearly so warns the insured." Allstate N.J. Prop. & Cas. Ins. Co. v. Estate of McBride, No. A-2139-17T2 (App. Div. Aug. 29, 2019), Pa 221. A "corollary of the reasonable-expectation doctrine, at least in respect of the consumer market, is that reasonable expectations will, in appropriate circumstance, prevail over policy language to the contrary. Rutgers Cas. Ins. Co. v. Collins, 313 N.J. Super. 79 (App. Div. 1998).

In Lehroff, the Court held that the policy's fine print qualification of the definition of persons entitled to UM coverage was insufficient to overcome the reasonable expectation of coverage raised by the declaration page and by the express terms of the UM coverage itself. The Court ruled that UM coverage applied to a pedestrian located in California even though he was not occupying a covered auto. Lehroff v. Aetna Cas. and Sur. Co., 271 N.J. Super. 340, 348 (App. Div. 1994)

UM/UIM coverage follows the person, not the vehicle. UIM insurance is personal to the insured. Cook-Sauvageau v. PMA Group, 295 N.J. Super. 620 (App. Div. 1996). “UIM coverage, which is limited to the amount contained in the insured's policy, is "personal" to the insured. Coverage is linked to the injured person, not the covered vehicle.” Aubrey v. Harleysville Ins. Cos., 140 N.J. 397, 403 (1995). “UIM coverage provides as much coverage as the insured is willing to purchase, for his or her protection subject only to the owner's policy liability limits for personal injury and property damages to others.” Id. quoting Prudential Property & Casualty Ins. Co. v. Travelers Ins. Co., 264 N.J. Super. 251, 259-60 (App. Div. 1993) (internal quotations omitted)

Courts will interpret policies “with the objectively reasonable expectations of the insured.” Aubrey v. Harleysville Ins. Cos., 140 N.J. 397, 404 (1995) quoting Werner Indus. v. First State Ins. Co., 112 N.J. 30, 35 (1988). “Limiting UIM coverage to the amount chosen by the insured comports with the insured's reasonable

expectations.” Aubrey, 140 N.J. at 404. Since UIM coverage is discretionary, a purchaser would reasonably expect that election of UIM coverage would protect him and his family. Clegg v. New Jersey Auto. Full Underwriting Ass'n By and Through Cigna Ins. Co., 254 N.J. Super. 634, 640 (1992).

In Cook-Sauvageau v. PMA Group, 295 N.J. Super. 620 (App. Div. 1996), an employee was injured during the course of his employment and sought UIM coverage from his employer’s commercial auto policy. Plaintiff also had a personal auto policy with UIM coverage. The defendant argued that plaintiff was only entitled to UIM coverage from his personal policy and not their commercial policy. The Court ruled in favor of the plaintiff to provide UIM coverage from the commercial auto-policy because the scope of the UIM benefits provided under an automobile liability policy is determined by the language of the policy and the reasonable expectations of the persons insured thereunder. Id. at 624. "The employees of an insured corporation are in actuality the objects of the corporation's automobile liability coverage." Cook-Sauvageau v. PMA Group, 295 N.J. Super. 620, 627(1996) quoting Murphy v. Milbank Mut. Ins. Co., 438 N.W.2d 390, 395 (Minn.Ct.App.1989).

In Araya v. Farm Family Cas. Ins. Co., 353 N.J. Super. 203, 211 (App. Div. 2002), the Court held that when a business auto policy fails to designate the insured business entity's human agent or agents entitled to receive UIM benefits, we will

look to the Declarations Page as the best indicator of the insured's reasonable expectations of coverage. Any ambiguity created by boilerplate provisions found elsewhere in the policy will be resolved against the drafters of the policy and in favor of coverage. In this case, the declarations page provide the best indication of who is to receive UIM benefits. A corporate cannot directly yield the benefits of a UIM endorsements and UIM coverage only applies to its human agents. Lucas HVAC LLC's employees are entitled to UIM benefits because the business auto policy fails to designate the insured business entity's human agent or agents. When a declaration page fails to identify individuals, Court's will look at the declaration page and the expectation of coverage by the injured party, as the best indicator of coverage and when someone entitled to receive UIM benefits. Here, plaintiff is entitled to coverage as the business's human agent. No one is named as an agent of the business and therefore, the employees such as the ones in Plaintiff's position, are entitled to UIM benefits.

Here, the policy holder, Lucas HVAC LLC, reasonably expected UIM coverage from Allstate's policy. Ms. Podlas is both a household member and employee of Lucas HVAC. Section F. 5. of the Business Auto policy provides additional definitions and parameters of UIM coverage under the policy. The policy language does not exclude coverage to pedestrians and the policy language seems to expand the meaning of who is covered under the UIM endorsement.

The Business Auto policy defines UIM as:

5. “Underinsured motor vehicle” means the following:

a. With respect to an “insured” who:

(1) Is not the individual Named Insured under this Policy;

(2) Is an individual Named Insured under one or more other policies providing similar coverage; and

(3) Is not an “employee” of a business or corporate entity designated in the Schedule or Declarations as a Named Insured;

“underinsured motor vehicle” means a land motor vehicle or “trailer” of any type to which liability bond or policy applies to at the time of the “accident,” but its limit of liability is less than the highest applicable limit of liability under any Coverage Form or policy providing coverage to that “insured” as an individual Named Insured.

Pa 169. Under section 5(a)(1) UIM coverage could apply to non-employees or household members. Ms. Podlas is not a named insured, only the business is the named insured. Under section 5(a)(3) an insured can be someone who is not an employee of the named business entity. Allowing Ms. Podlas to be excluded from UIM coverage is against the public policy of protecting New Jersey citizens from uninsured financially irresponsible drivers.

The UIM endorsement of the Allstate policy does not define “insured” as someone occupying a covered auto at the time of the loss. Under section C, the UIM coverage language reads, “with respect to any other “insured” who is not described in Paragraph a. or b. above, “underinsured motor vehicle” means a land motor vehicle or “trailer” of any type to which a liability bond or policy applies at the time

of an “accident,” but its limit of liability is less than the limit of Insurance for this coverage. However, an “underinsured motor vehicle” does not include any vehicle,” such as those owned by government entities.

Section 5(c) of the Business Auto Policy states:

c. With respect to any other “insured” who is not described in Paragraph a. or b. above, “underinsured motor vehicle” means a land motor vehicle or “trailer” of any type to which a liability bond or policy applies at the time of an “accident,” but its limit of liability is less than the limit of Insurance for this coverage. However, an “underinsured motor vehicle” does not include any vehicle:

(1) Owned or operated by a self-insurer under any applicable motor vehicle law; ...

(6) Owned by or Furnished or available for the regular use of the Named Insured or, if the Named Insured is an individual, any “family member”

Pa 169.

Ms. Podlas is covered under Section 5(b) of the Business Auto Policy because she is not an individual named insured, she is insured as a family member under the personal policy, and she is an employee of the designated business. Section 5(b) of the Business Auto Policy says:

b. With respect to an “insured” who:

(1) Is not the individual Named Insured under this Policy or any other policy;

(2) Is insured as a “family member” under one or more other policies providing similar coverage; and

(3) Is not an “employee” of a business or corporate entity designated in the Schedule or Declarations as a Named Insured;

“underinsured motor vehicle” means a land motor vehicle or “trailer” of any type to which a liability bond or policy applies at the time of an “accident,”

but its limit of liability is less than the highest applicable limit of liability under any Coverage Form or policy providing coverage to that “insured” as a “family member”

Pa 169. Under section 5(b) an “insured” who is not the individual Named Insured under the Policy or any other policy, which Ms. Podlas is; is insured as a “family member” under one or more other policies providing similar coverage, which Ms. Podlas is; and is not an “employee” of a business or corporate entity designated in the Schedule or Declarations as a Named Insured, which Ms. Podlas is not. Ms. Podlas is an employee of the business. Therefore, the insured expected Ms. Podlas to be covered by the policy.

Courts will construe insurance policies consistent with the objectively reasonable expectations of the insured. “The fundamental principle of insurance law is to fulfill the objectively reasonable expectations of the parties.” Werner Industries, Inc. v. First State Ins. Co., 112 N.J. 30, 35 (1988). Lucas HVAC has an reasonable expectation of coverage for their employees. The trial court failed to consider section 5 of the Business Auto Policy and the reasonable expectations of the insured. Since public policy demands UM and UIM be treated the same and Lucas HVAC had the expectation that Ms. Podlas was covered under the policy, the trial court erred by granting summary judgment in favor of Defendant Allstate. The Appellate Division must reverse the March 5, 2025 order.

## CONCLUSION

For all the foregoing reasons, it is respectfully requested that Ms. Podlas' appeal be granted and the Appellate Division find that the trial court erred in granting summary judgment in favor of Defendant Allstate. The Appellate Division should reverse the March 5, 2025 order and allow this matter to continue through discovery.

Respectfully Submitted,

/s/ Jarred S. Freeman \_\_\_\_\_

Jarred S. Freeman, Esq.  
Attorney ID No.: 022362009  
Freeman & Patel LLC  
Attorney for Plaintiff Halina Podlas

---

**HALINA PODLAS**

**Plaintiff/ Appellant,**

**v.**

**HENRY W. POLLARD and  
KATHYA. FLEMMING,  
ALLSTATE INSURANCE  
COMPANY,**

**Defendants/ Respondents.**

---

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-002133-24 T1**

**Civil Action**

**Submitted On: August 15, 2025**

**On Appeal From:  
Superior Court Of New Jersey  
Law Division: Union County  
Docket No.: UNN-L-453-23**

**Sat Below:  
Hon. Daniel R. Lindemann, J.S.C.**

---

**BRIEF ON BEHALF OF DEFENDANT/RESPONDENT, ALLSTATE  
NEW JERSEY INSURANCE COMPANY, IMPROPERLY IMPEADED  
AS ALLSTATE INSURANCE COMPANY**

---

**CHASAN LAMPARELLO MALLON &  
CAPPUZZO, PC  
300 Lighting Way, Suite 200  
Secaucus, NJ 07094  
(201) 348-6000  
Attorneys for Defendant, Allstate New Jersey  
Insurance Company, i/i/a Allstate Insurance Company**

**JOHN V. MALLON – 016071994  
[jymallon@chasanlaw.com](mailto:jymallon@chasanlaw.com)  
Of Counsel and On The Brief**

**THOMAS R. LLOYD – 412482024  
[tlloyd@chasanlaw.com](mailto:tlloyd@chasanlaw.com)  
On The Brief**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS .....	i
TABLE OF CITATIONS .....	ii
PRELIMINARY STATEMENT .....	1
PROCEDURAL HISTORY.....	2
STATEMENT OF FACTS.....	3
LEGAL ARGUMENT .....	7
POINT I	
PLAINTIFF DID NOT MEET THE DEFINITION OF AN INSURED AND THEREFORE SHE WAS NOT ENTITLED TO UIM COVERAGE UNDER THE BUSINESS AUTO POLICIES	
Raised Below (Pa62) .....	7
POINT II	
THE BUSINESS AUTO POLICIES CONFORMED TO THE LAW (Raised Below: Pa62).....	15
a. UIM coverage was not mandatory at the time of the accident.....	15
b. The UIM coverage within the Business Auto Policies conformed to statutory and common law.....	19
c. No law requires business auto policies to provide unlimited UIM coverage to all employees .....	22
d. Any expectation that Plaintiff would be entitled to UIM coverage under the Policies for the subject accident would be unreasonable.....	24
e. Additional discovery will not affect the issues herein .....	35
CONCLUSION.....	36

TABLE OF CITATIONS

<b>Cases</b>	<b>Page</b>
<u>Araya v. Farm Fam. Cas. Ins. Co.</u> , 353 N.J. Super. 203 (App. Div. 2002) .....	29, 30, 31, 32
<u>Auster v. Kinoian</u> , 153 N.J. Super. 52, 56 (App. Div. 1977) .....	36
<u>Bardis v. First Trenton Ins. Co.</u> , 199 N.J. 265, 275 (2009) .....	7
<u>Beek v. Ohio Cas. Ins. Co.</u> , 135 N.J. Super. 1, 4 (App. Div. 1975), <u>aff'd</u> , 73 N.J. 185 (1977) .....	19, 21, 22
<u>Bogey's Trucking &amp; Paving, Inc. v. Indian Harbor Ins. Co.</u> , 395 N.J. Super. 59, 67-69 (App. Div. 2007) .....	14, 31
<u>Ciecka v. Transamerica Ins. Grp.</u> , 81 N.J. 421 (1979) .....	19
<u>Cook-Sauvageau v. PMA Group</u> , 295 N.J. Super. 620, 624 (App. Div. 1996) .....	7, 28, 30
<u>De Almeida v. Gen. Acc. Ins. Co. of Am.</u> , 314 N.J. Super. 312, 317 (App. Div. 1998) .....	13, 14, 31
<u>Fernandez v. Selected Risks Ins. Co.</u> , 82 N.J. 236 (1980) .....	19, 20
<u>Goyco v. Progressive Ins. Co.</u> , 257 N.J. 313, 329 (2024) .....	19
<u>James v. New Jersey Manufacturers Ins. Co.</u> , 216 N.J. 552 (2014) .....	23, 24

<b>Cases</b>	<b>Page</b>
<u>Katchen v. Government Employees Insurance Company</u> , 457 N.J. Super. 600, 605 (App. Div. 2019) .....	7, 25
<u>Lehrhoff v. Aetna Cas. and Sur. Co.</u> , 271 N.J. Super. 340, (App. Div. 1994) .....	25, 26, 27
<u>Longworth v. Van Houten</u> , 223 N.J. Super. 174 (App. Div. 1988) .....	6, 19, 20
<u>Lundy v. Aetna Cas. &amp; Sur. Co.</u> , 92 N.J. 550 (1983) .....	19, 21
<u>Macchi v. Connecticut Gen. Ins. Co.</u> , 354 N.J. Super. 64, 71-72 (App. Div. 2002) .....	13, 14, 31
<u>Mondelli v. State Farm Mut. Auto. Ins. Co.</u> , 102 N.J. 167, 171-73 (1986) .....	13, 14, 31
<u>Motor Club of Am. Ins. Co. v. Phillips</u> , 66 N.J. 277 (1974) .....	19
<u>Passaic Valley Sewerage Com'rs v. St. Paul Fire &amp; Marine Ins. Co.</u> , 206 N.J. 596, 608 (2011) .....	25
<u>Thompson v. James</u> , 400 N.J. Super. 286 (App. Div. 2008) .....	13, 14, 29, 31
<u>Torres v. Travelers Indem. Co.</u> , 171 N.J. 147, 148-49 (2002) .....	13, 14, 31
<u>Weedo v. Stone-E-Brick, Inc.</u> , 81 N.J. 233, 247 (1979) .....	8

**Cases**

**Page**

Wellington v. Estate of Wellington,  
359 N.J. Super. 484, 496 (App. Div. 2003) ..... 36

Zacarias v. Allstate Ins. Co.,  
168 N.J. 590, 595 (2001) ..... 7

**Statutes**

N.J.S.A. 17:28-1.1 ..... 16

N.J.S.A. 17:28-1.1(f) ..... 25

N.J.S.A. 17:28-1.3 ..... 19

**PRELIMINARY STATEMENT**

This is a motor vehicle negligence matter involving Plaintiff, Halina Podlas, and Defendant, Henry Pollard. After the subject accident, Plaintiff filed suit against Mr. Pollard. Then, despite the undisputed fact that the subject accident was wholly unrelated to Plaintiff's employment, she amended her pleading to include a claim for underinsured motorist ("UIM") benefits against her employers' business auto insurance carrier, Defendant Allstate Insurance Company ("Allstate"). Allstate disclaimed coverage, explaining to Plaintiff that the policies (the "Policies" or "Business Auto Policies") issued to Plaintiff's son's businesses, Lucas HVAC LLC and Lucas Air Corp (the "Businesses"), provided UIM coverage, in pertinent part, only to individuals occupying a covered vehicle at the time of the accident. While Plaintiff occasionally worked for her son, it is undisputed that Plaintiff was not working, and certainly not occupying her employers' vehicles, or any vehicle, at the time of the accident. Nonetheless, Plaintiff pursued her claim against Allstate, ultimately initiating the instant action. Allstate subsequently filed a motion for summary judgment.

Judge Daniel R. Lindemann granted the motion, dismissing Plaintiff's claims against Allstate with prejudice. In so ruling, Judge Lindemann relied on the plain language of the Policies, which clearly only extends coverage for individuals occupying a covered auto at the time of the accident. Judge

Lindemann also rejected Plaintiff's arguments that generally asserted that statutory and common law require coverage in this case.

On appeal, Plaintiff relies on two sets of authorities in support of her arguments: statute and case law. In every citation to the former, she cites portions of unrelated statutes without addressing the fact that no statute requires policy language that would provide coverage for an individual in Plaintiff's position. And in every citation to the latter, she similarly cites snippets of decisions, either taken out of context or on an issue entirely unrelated to the subject issue, without addressing why no New Jersey court has ever stated that an individual that unquestionably was not occupying one of her employer's vehicles, and was not working, at the time of an accident may nonetheless pursue UIM benefits under her employer's business auto policy. Indeed, contrary to Plaintiff's position that she urges this Court to accept, the Supreme Court and Appellate Division have repeatedly recognized that an individual may not pursue UIM benefits from his or her employer's policy absent a substantial nexus between the covered vehicle and the subject accident.

### **PROCEDURAL HISTORY**

Plaintiff appeals from the trial court's March 5, 2025 order granting summary judgment in favor of Allstate. Pa62.<sup>1</sup> The motor vehicle accident that

---

<sup>1</sup> "Pa" refers to Plaintiff's appendix; "Pb" refers to Plaintiff's brief.

forms the basis of this litigation occurred on January 8, 2022. Pa2. Plaintiff filed a Complaint against the tortfeasor on February 8, 2023. Pa1. On June 14, 2024, Plaintiff filed a First Amended Complaint to name Allstate as a Defendant, seeking UIM benefits. Pa21. Plaintiff settled her claim against the tortfeasor and executed a stipulation of dismissal with prejudice on November 20, 2024. Pa57.

Allstate filed the subject motion for summary judgment on January 17, 2025. Plaintiff and Allstate filed their opposition and reply papers on February 4 and February 10, 2025, respectively. The Trial Court heard oral argument on February 14, 2025. Pursuant to the Court's instruction, Plaintiff and Allstate filed supplemental briefs on February 21 and February 27, 2025, respectively. The Court heard supplemental oral argument on February 28, 2025. In an order and written statement of reasons filed March 5, 2025, the Court granted Allstate's motion for summary judgment. This appeal followed, for which Plaintiff filed a notice of appeal on March 20, 2025.

### **STATEMENT OF FACTS**

On Saturday, January 8, 2022, Plaintiff was involved in a car accident. At the time of the accident, Plaintiff was cleaning the front steps outside of her home. Pb1. It is undisputed that Plaintiff was not working at the time of the accident. Indeed, Plaintiff does not know where any of the Business's vehicles were at the time of the accident. Pb4.

While she was not working at the exact time of the accident, she was employed by her son's two Businesses in 2022. Each Business maintained a commercial auto policy with Allstate: Lucas HVAC LLC, with policy number xxxxxx384<sup>2</sup> that provided \$1,000,000 in uninsured/underinsured motorist ("UM/UIM") coverage, and Lucas Air Corp, with policy number xxxxxx779 that provided \$500,000 in UM/UIM coverage. Pa70, 83, 149, 165. The Business Auto Policies each include the following language:

We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "uninsured motor vehicle" or an "underinsured motor vehicle". The damages must result from "bodily injury" sustained by the "insured", or "property damage" caused by an "accident". The owner's or driver's liability for these damages must result from the ownership, maintenance or use of an "uninsured motor vehicle" or an "underinsured motor vehicle".

Pa93, 175.

Further, the Policies define "insureds" as follows:

B. Who is An Insured

If the Named Insured is designated in the Schedule or Declarations as:

. . . .

2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":

---

<sup>2</sup> The policy numbers are redacted in part pursuant to R. 1:38-7.

- a. Anyone “occupying” a covered “auto” or a temporary substitute for a covered “auto.” The covered “auto” must be out of service because of its breakdown, repair, servicing, “loss” or destruction.
- b. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured”.
- c. The Named Insured for “property damage” only.

Pa93-94, 175-76.

The Policies define “occupying” as “in, upon, getting in, on, out or off.” Pa97, 179.

Plaintiff’s son, Lukasz Podlas, also maintained a personal auto policy through Allstate, under policy number xxxxxx281, with UM/UIM limits of \$100,000 per person and \$300,000 per accident. Pa246, 253. That personal auto policy includes the following language regarding UM/UIM benefits:<sup>3</sup>

If a premium is shown on the Policy Declarations for Uninsured Motorists Insurance, we will pay damages which an insured person is legally entitled to recover from the owner or operator of an uninsured auto or underinsured auto because of:

1. bodily injury sustained by an insured person and caused by an accident:

---

<sup>3</sup> The personal policy bolds certain terms to notify the reader that they are defined elsewhere in the policy. This brief does not bold those terms.

and

2. property damage caused by an accident except an accident involving a hit-and-run vehicle whose operator or owner cannot be identified and which hits or causes an accident without hitting:
  - a) you or any resident relative;
  - b) a vehicle which you or any resident relative are occupying; or
  - c) your insured auto.

Pa309.

The policy defines “insured person” for the purpose of UM/UIM benefits as follows:

- a) you and any resident relative or civil union partner under New Jersey law.
- b) any other person while in, on, getting into or out of, or getting on or off, an insured auto with your permission.
- c) any other person who is legally entitled to recover because of bodily injury to you, a resident relative, or an occupant of your insured auto with your permission.

Pa310.

After filing a lawsuit against the tortfeasor, Plaintiff sent Allstate a letter, pursuant to Longworth v. Van Houten, 223 N.J. Super. 174 (App. Div. 1988), advising of her tentative settlement with the tortfeasor for his bodily injury

policy limits. Pa58. Allstate responded by taking no position as to that settlement given the lack of UIM coverage under the Policies for this accident. Pa60. Plaintiff and the tortfeasor then settled. The litigation between Plaintiff and Allstate continued, ultimately ending in the Trial Court granting Allstate's motion for summary judgment that is the subject of this appeal.

## LEGAL ARGUMENT

### POINT I

**PLAINTIFF DID NOT MEET THE DEFINITION  
OF AN INSURED AND THEREFORE SHE WAS  
NOT ENTITLED TO UIM COVERAGE UNDER  
THE BUSINESS AUTO POLICIES.**

---

**(Raised Below: Pa62)**

The nature of a UIM claim is contractual, “arising out of the insurance policy issued to plaintiff by his [or her] own insurer.” Bardis v. First Trenton Ins. Co., 199 N.J. 265, 275 (2009). So long as an insurer offers statutorily mandated coverage, the plain language of an insurance policy determines the scope of UIM coverage in a given case. Cook-Sauvageau v. PMA Group, 295 N.J. Super. 620, 624 (App. Div. 1996). When provisions in an insurance policy are “clear and unambiguous,” courts use the “plain, ordinary meaning” of the words used. Katchen v. Government Employees Insurance Company, 457 N.J. Super. 600, 605 (App. Div. 2019) (quoting Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001)). And to be ambiguous, the terms of an insurance policy must

be “so confusing that the average policyholder cannot make out the boundaries of coverage.” *Ibid.* (quoting *Weedo v. Stone-E-Brick, Inc.*, 81 N.J. 233, 247 (1979)).

The Business Auto Policies here clearly set forth the parameters for a valid UIM claim. In short, and as discussed below, an individual pursuing such a claim under the Policies must have occupied a covered auto at the time of the accident. It is undisputed that Plaintiff was not occupying a covered auto, and thus dismissal of her claims by way of summary judgment was proper.

The Business Auto Policies each include the following language:

We will pay all sums the “insured” is legally entitled to recover as compensatory damages from the owner or driver of an “uninsured motor vehicle” or an “underinsured motor vehicle”. The damages must result from “bodily injury” sustained by the “insured”, or “property damage” caused by an “accident”. The owner’s or driver’s liability for these damages must result from the ownership, maintenance or use of an “uninsured motor vehicle” or an “underinsured motor vehicle”.

Pa93, 175.

Further, the Policies define “insureds” as follows:

B. Who is An Insured

If the Named Insured is designated in the Schedule or Declarations as:

.....

2. A partnership, limited liability company, corporation or any other form of organization, then the following are “insureds”:
  - a. Anyone “occupying” a covered “auto” or a temporary substitute for a covered “auto.” The covered “auto” must be out of service because of its breakdown, repair, servicing, “loss” or destruction.
  - b. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured”.
  - c. The Named Insured for “property damage” only.

Pa93-94, 175-76.

Finally, the Policies define “occupying” as “in, upon, getting in, on, out or off.”  
Pa97, 179.

It is undisputed that Plaintiff was not (a) occupying a covered auto, or any auto, at the time of the accident, (b) someone who sustained damages by another insured, or (c) the named insured. As such, her claim falls outside of the scope of the Business Auto Policies.

Contrasting Plaintiff’s son’s personal auto policy with Business Auto Policies reveals the different purposes of personal and commercial auto policies. Plaintiff’s son’s personal auto policy reads, in pertinent part, as follows:

If a premium is shown on the Policy Declarations for Uninsured Motorists Insurance, we will pay damages which an insured person is legally entitled to recover

from the owner or operator of an uninsured auto or underinsured auto because of:

1. bodily injury sustained by an insured person and caused by an accident:

and

2. property damage caused by an accident except an accident involving a hit-and-run vehicle whose operator or owner cannot be identified and which hits or causes an accident without hitting:

- a) you or any resident relative;
- b) a vehicle which you or any resident relative are occupying; or
- c) your insured auto.

Pa309.

The policy defines “insured person” for the purpose of UM/UIM benefits as follows:

- a) you and any resident relative or civil union partner under New Jersey law.
- b) any other person while in, on, getting into or out of, or getting on or off, an insured auto with your permission.
- c) any other person who is legally entitled to recover because of bodily injury to you, a resident relative, or an occupant of your insured auto with your permission.

Pa310.

As such, the personal auto policy provides broader coverage: “[W]e will pay damages . . . because of . . . bodily injury sustained by an insured person and caused by an accident.” Conversely, the Business Auto Policies provide narrower coverage, which, unsurprisingly, cover damages sustained only when occupying one of the Businesses’ vehicles: “We will pay all sums the ‘insured’ is legally entitled to recover as compensatory damages from the owner or driver of an ‘uninsured motor vehicle’ or an ‘underinsured motor vehicle,’” where “insured” is defined in relevant part as “[a]nyone ‘occupying’ a covered ‘auto’ or a temporary substitute for a covered ‘auto.’” If Plaintiff was seeking UIM benefits under a personal auto policy, coverage would not be a question. Indeed, she implies that she would have pursued her son’s personal auto policy if the tortfeasor’s liability coverage was less than her son’s UIM coverage. Pb3. That broader coverage fulfills the purpose of a personal auto policy to protect the insured individual. To the contrary, the Business Auto Policies do not provide coverage here because Plaintiff was not occupying one of the Businesses’ vehicles at the time of the accident. Providing coverage only for occupants of business vehicles fulfills the purpose of a commercial auto policy, which is to protect the employees of the insured business while they are occupying the business vehicles.

New Jersey courts have analyzed cases analogous to the case at bar. In every on-point decision, that is, in cases where there was an identical or similar policy, and where the UIM claimant was not clearly occupying the subject vehicle, the cases turned on the issue of occupancy. See infra pp. 12-13. There is no case that suggests that a non-named insured, non-occupant of a covered auto may benefit from a policy's UIM coverage where such policy required the claimant to be either a named insured or occupant of a covered auto. Such lack of case law makes sense—it would go against basic contract principles, repeatedly recognized in New Jersey courts' decisions, to allow a UIM claimant to prevail in a circumstance where she clearly is not entitled to UIM benefits under the plain language of the policy.

Perhaps the model on-point case is the Appellate Division's decision in Thompson v. James, 400 N.J. Super. 286 (App. Div. 2008). In Thompson, the plaintiff's employer maintained a business auto policy, in which the business was the only named insured, and in which “the policy's uninsured and underinsured motorist provision provided coverage to persons ‘occupying’ the vehicle, and defined ‘occupying’ as ‘upon, getting in, on, out or off’ the covered vehicle.” Id. at 288. Thus, the pertinent policy language was identical to the instant matter.

The Thompson plaintiff drove a vehicle provided to him by his employer to a store to purchase food and a drink. He then walked approximately 350 feet away to search for an item that he had reason to believe was in that area. The plaintiff was then struck by an uninsured motorist. The issue on appeal was whether the plaintiff was “occupying” the vehicle at the time of the accident. The court discussed the long history of New Jersey cases that analyzed similar or identical UIM provisions in business auto policies, each of which turned on the question of whether the plaintiff was occupying the subject auto. Id. at 292-95; Mondelli v. State Farm Mut. Auto. Ins. Co., 102 N.J. 167, 171-73 (1986) (holding that leaning on a vehicle while conversing with the driver constituted “occupying”); De Almeida v. Gen. Acc. Ins. Co. of Am., 314 N.J. Super. 312, 317 (App. Div. 1998) (finding an employee who had just exited his vehicle for the purpose of loading traffic cones into same vehicle “never relinquished his ‘occupancy’ status”); Torres v. Travelers Indem. Co., 171 N.J. 147, 148-49 (2002) (concluding that an employee who had recently exited his company vehicle to search the cargo of an adjacent truck and was returning to his company vehicle when he was struck was “occupying” his company vehicle because there was a “substantial nexus” between the accident and the subject vehicle); Macchi v. Connecticut Gen. Ins. Co., 354 N.J. Super. 64, 71-72 (App. Div. 2002) (finding that a plaintiff who had recently stopped and exited a covered vehicle

to check on another vehicle that had just been in an accident was “occupying” the covered vehicle where she had left the covered vehicle running and had “every intention of returning to the vehicle”); Bogey's Trucking & Paving, Inc. v. Indian Harbor Ins. Co., 395 N.J. Super. 59, 67-69 (App. Div. 2007) (holding that an employee at a construction site was “occupying” the covered vehicle where he had just exited the passenger seat and was about to guide the driver in making a turn when he was struck).

In holding that the plaintiff did not occupy the covered vehicle and therefore was not entitled to UIM coverage under the relevant business auto policy, the Thompson court reasoned that the plaintiff had not established a “substantial nexus’ between his use of the car and the injuries he eventually sustained.” Id. at 295.

Here too, Plaintiff clearly was not occupying a covered auto at the time of the accident. Indeed, she does not know where the covered vehicles were on the day of the accident. See Pb4. Thus, she does not meet the definition of insured, and she therefore does not enjoy UIM coverage for this accident under the Business Auto Policies. Plaintiff cannot justify her position with the Thompson decision. She similarly cannot justify her position with Mondelli, De Almeida, Torres, Macchi, or Bogey’s, all cited above, or any other case that concerns the policy language at issue here. In essence, she certainly does not satisfy the

contractual criteria to enjoy UIM benefits under the Policies, and she provides no reason to overcome the myriad times that the Supreme Court and Appellate Division have analyzed this issue and concluded that a plaintiff is not covered under a commercial auto policy absent a substantial nexus between the accident and a company vehicle. As such, Plaintiff's claims against Allstate must remain dismissed.

## POINT II

### **THE BUSINESS AUTO POLICIES CONFORMED TO THE LAW.**

---

**(Raised Below: Pa62)**

In addition to challenging her lack of status as an insured under the plain language of the Business Auto Policies, Plaintiff also argues that the Policies failed to conform to the law in several respects. Notwithstanding the fact that the Policies include language identical or virtually identical to the insurance policies in the numerous cases cited in above, none of which even questioned the validity of the language of the policies themselves, Plaintiff's arguments fail for the reasons set forth below.

#### **a. UIM coverage was not mandatory at the time of the accident.**

Plaintiff has confused uninsured and underinsured motorist coverage in every brief, whether in the Trial or Appellate Court, that she has filed in this matter. While the disposition of this matter does not turn on this issue, Plaintiff

has repeatedly discussed UM coverage in her briefing. E.g., Pb9-14. In at least one instance in her appellate brief, Plaintiff squarely misrepresented that insurance carriers were required to provide UIM coverage at the time of the accident. Pb14 (“New Jersey requires UM/UIM coverage to be provided to all autos on the road, commercial or personal”). To be clear, as further discussed below, New Jersey statutes at the time of the accident did not require auto insurance policies to include UIM coverage. This confusion is significant because UM coverage was mandated by statute and therefore was governed by slightly more exacting common law than UIM coverage.

Notably, Plaintiff has confused the exact statutory language several times. Plaintiff’s appellate brief recites two pages worth of the language of N.J.S.A. 17:28-1.1, the statute that requires UM coverage, and since August 2022, UIM coverage. Significantly, Plaintiff omits the portion of the statute that actually mandates UM and/or UIM coverage—subsection (a). At the time of the accident, subsection (a) read, in pertinent part, as follows:

Except for a basic automobile insurance policy, no motor vehicle liability policy or renewal of such policy of insurance, including a standard liability policy for an automobile as defined in section 2 of P.L.1972, c. 70 (C.39:6A-2), insuring against loss resulting from liability imposed by law for bodily injury or death, sustained by any person arising out of the ownership, maintenance or use of a motor vehicle, shall be issued in this State with respect to any motor vehicle registered or principally garaged in this State unless it

includes coverage in limits for bodily injury or death as follows:

(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, under provisions approved by the Commissioner of Banking and Insurance, for payment of all or part of the sums which the insured or his legal representative shall be legally entitled to recover as damages from the operator or owner of an **uninsured motor vehicle**, or hit and run motor vehicle . . .

L. 2007, c. 163, § 1 (emphases added).

Only after the accident (which occurred on January 8, 2022) was the statute amended to read (with an effective date of August 5, 2022), in pertinent part, as follows:

Except for a basic automobile insurance policy, no motor vehicle liability policy or renewal of such policy of insurance, including a standard liability policy for an automobile as defined in section 2 of P.L.1972, c. 70 (C.39:6A-2), insuring against loss resulting from liability imposed by law for bodily injury or death, sustained by any person arising out of the ownership, maintenance or use of a motor vehicle, shall be issued in this State with respect to any motor vehicle registered or principally garaged in this State unless it includes coverage in limits for bodily injury or death as follows:

(1) an amount or limit of \$15,000 for plans issued or renewed prior to January 1, 2023, \$25,000 for plans issued or renewed on or after January 1, 2023 but prior to January 1, 2026, and \$35,000 for plans issued or renewed on or after January 1, 2026, 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 for plans issued or renewed prior to January 1, 2023, \$50,000 for plans issued or renewed on or after January 1, 2023 but prior to January 1, 2026, and \$70,000 for plans issued or renewed on or after January 1, 2026, exclusive of interest and costs, on account of injury to or death of more than one person, in any one accident, under provisions approved by the Commissioner of Banking and Insurance, for payment of all or part of the sums which the insured or his legal representative shall be legally entitled to recover as damages from the operator or owner of an **uninsured motor vehicle, underinsured motor vehicle**, or hit and run motor vehicle . . .

L. 2022, c. 87 § 1 (emphases added).

Thus, UIM coverage was not required when the accident occurred.

To be clear, the outcome of this matter would be the same regardless of the coverage sought, UM or UIM, because Plaintiff does not qualify as an insured under the Business Auto Policies. As discussed in Point I, it is entirely indisputable that she does not meet the definition of an insured under the Policies, and there is no legal authority anywhere to suggest that an unambiguous insurance policy provision, written consistent with the law, should

be rewritten by a court to extend coverage to a claimant. However, to the extent that Plaintiff relies on the UM case law<sup>4</sup> to show that this Court should rewrite the subject Policies, such reliance is misplaced because this matter does not involve UM coverage.

**b. The UIM coverage within the Business Auto Policies conformed to statutory and common law.**

Plaintiff generally argues that the Business Auto Policies violate the law by failing to provide coverage for non-occupants/pedestrians. Pb12-18. She states, in conclusory fashion, that “[o]nce a policy holder elects the UM/UIM coverage, coverage should be provided in accordance with the law,” and “[t]he trial court erred by holding New Jersey statutes do not require UIM coverage for pedestrians under commercial auto policies.” Pb13, 14. But Plaintiff does not offer any direct support for those statements. Indeed, though she states “New Jersey statutes,” she fails to cite any statute that requires UIM coverage for pedestrians.<sup>5</sup> That is because there is no such statute. And to the extent that Plaintiff cites case law, she misrepresents the courts’ statements at every turn. For example, she cites Longworth v. Van Houten, 223 N.J. Super. 174, 178

---

<sup>4</sup> Plaintiff relies on the following cases that deal exclusively with UM provisions: Lundy v. Aetna Cas. & Sur. Co., 92 N.J. 550 (1983), Motor Club of Am. Ins. Co. v. Phillips, 66 N.J. 277 (1974), Beek v. Ohio Cas. Ins. Co., 135 N.J. Super. 1, 4 (App. Div. 1975), aff’d, 73 N.J. 185 (1977), Ciecka v. Transamerica Ins. Grp., 81 N.J. 421 (1979), and Fernandez v. Selected Risks Ins. Co., 82 N.J. 236 (1980).

<sup>5</sup> Plaintiff argued below that N.J.S.A. 17:28-1.3 requires UIM coverage for pedestrians. In the event that she renews her argument in reply to this brief, that statute it is inapplicable because it applies only to (1) personal injury protection coverage benefits and (2) motorcycles. See Goyco v. Progressive Ins. Co., 257 N.J. 313, 329 (2024) (stating that the statute addresses motorcycles only).

(App. Div. 1988) to state that “[i]f an underinsured tortfeasor is involved, however, his victim may not pursue his contractual UIM right against his own liability insurer until he has first recovered the tortfeasor's liability limit by settlement or judgment.” Pb 15. But she fails to inform the reader that the “victim” that the court in Longworth was discussing was an “insured.” 223 N.J. Super. at 178. And Plaintiff in the instant matter, as discussed at length in Point I, is not an insured. Thus, the commentary she relies on in Longworth simply does not bear on her case. Further, a common-sense reading of the quoted passage reveals that it is simply one sentence in the court’s background discussion of UIM provisions in auto insurance policies.

Plaintiff misrepresents the Supreme Court’s decision in Fernandez v. Selected Risks Ins. Co., 82 N.J. 236 (1980). Specifically, she cites part of one sentence to show that a UIM claimant need not be occupying a vehicle at the time of the subject accident. Pb15. She neglects to mention that earlier in the same paragraph that she cites from the Fernandez decision, the Court stated that “Selected [the insurance carrier] has drafted an insurance policy which by its terms provides coverage for members of the named insured’s household.” 82 N.J. at 240. So, as one would expect, and contrary to Plaintiff’s contention, the Supreme Court was not making a blanket statement that any individual associated with an insurance policy is entitled to UIM benefits if they are

involved in an accident while a pedestrian. Rather, the Court relied upon the specific insurance policy language in that matter—which provided UIM coverage for the named insured’s household members—in rendering its decision. Even more clear, the Court stated that “[Selected] has conceded that the claimants here all qualify as insureds under the terms of its insurance contract.” Ibid. Here, again, the terms of the Business Auto Policies contain plain language that provides that Plaintiff is not entitled to UIM coverage under the circumstances of the subject accident.

Without elaborating on the case’s connection to her arguments, Plaintiff also repeatedly cites Lundy v. Aetna Cas. And Sur. Co., 92 N.J. 550 (1983). Regardless of the reason for her citation to that case, it is notable that the Supreme Court in Lundy recognized that the terms of the insurance policy control: “This statutory protection [mandatory UM coverage] may also be extended to persons other than the named insured when the insuring company has contractually extended the coverage in the policy.” Id. at 555. It is indisputable that Plaintiff was not a named insured on either of the Business Auto Policies. Because Allstate did not contract to provide UIM coverage in this circumstance, Plaintiff is not entitled to it.

Finally, Plaintiff also refers to Beek v. Ohio Cas. Ins. Co., 135 N.J. Super. 1 (App. Div. 1975) to state that any attempt to restrict UIM coverage is

repugnant. Pb18. Notwithstanding the fact that Plaintiff does not ground Beek to her argument in any way, she specifically fails to mention that the plaintiff in that case was, unsurprisingly, a named insured under the policy at issue. Id. at 3. Again, Plaintiff here was not a named insured, nor does she qualify as an “insured person,” and she therefore is not entitled to UIM coverage.

**c. No law requires business auto policies to provide unlimited UIM coverage to all employees.**

In misunderstanding Allstate’s position, Plaintiff argues that any business auto policy must provide “maximum” UIM coverage to all employees of the business. Pb19. Notwithstanding that Plaintiff fails to define “maximum,” her argument is without merit because she misunderstands the difference between a business auto policy and a personal auto policy. Generally, as was the case here, the former provides UIM coverage for (a) the named insured, typically the business itself, and (b) occupants of covered vehicles. As such, in accidents where a business auto policy is implicated, UIM coverage will be afforded to a business’s employees where they were occupying a covered auto at the time of the accident. To the contrary, personal auto policies generally provide coverage to the named insured, which is almost always a natural person, as well as resident relatives, regardless of whether they were occupying a covered auto at the time of the accident. Therefore, the scope of coverage for bodily injury under a personal auto policy may well cover an individual in Plaintiff’s position. Indeed,

her son's personal auto policy would have provided her UIM benefits if his UIM limits exceeded those of the tortfeasor in this matter.

Plaintiff's argument for "maximum" UIM coverage is not supported by the case law she cites. For this argument, she relies on James v. New Jersey Manufacturers Ins. Co., 216 N.J. 552 (2014) to support the proposition that "[i]f the policy only lists the employer as the 'named insured,' its employees are eligible for maximum coverage." Pb19. That statement grossly misrepresents the Supreme Court's decision. In James, the plaintiff, who "was injured in an automobile accident while driving a vehicle owned by his employer," eventually settled with the tortfeasor for the tortfeasor's policy limit of \$100,000. 216 N.J. at 557 (emphasis added). The plaintiff then sought UIM benefits from his employer's auto insurance policy, which had a UIM limit of \$500,000. The employer's carrier denied the claim because a policy provision capped an insured's UIM benefits at the limit of his or her own personal policy UIM limit, and the plaintiff in James had a personal policy with a UIM limit of \$50,000. The issue in front of the Supreme Court was whether a statute that prohibited such capping provision, also known as a step-down provision, which was enacted after the accident occurred, applied retroactively. The Court held that the statute did not apply retroactively, and thus the step-down provision in James was properly invoked to deny the plaintiff's claim. In so holding, the Court

examined the subject statute. The Court stated, among other things, that the statute’s “straightforward language prohibits providing an employee with less coverage than the named insured on a corporate or business entity's commercial automobile liability policy.” Id. at 566.

The holding and statutory analysis in James do not support Plaintiff’s position in any way. Her use of the Court’s statement that the purpose of the statute is to provide an employee with the same coverage as the corporate named insured takes such statement entirely out of context. It was undisputed in James that the plaintiff was occupying a business vehicle at the time of the accident and was therefore an insured person. The litigated dispute was whether a certain step-down provision could be applied in light of a recently enacted statute. But the issue in the instant matter is not the amount of coverage to be afforded to Plaintiff. It is whether Plaintiff was an insured person at all. And the plain language of the Policies makes clear that she is not an insured person because she was not occupying a covered vehicle at the time of the accident. Thus, the statute at issue in James, which merely prohibits certain step-down provisions in certain auto insurance policies, is inapplicable.

**d. Any expectation that Plaintiff would be entitled to UIM coverage under the Policies for the subject accident would be unreasonable.**

Plaintiff argues that she is entitled to UIM coverage because her employers, Lucas HVAC LLC and Lucas Air Corp, reasonably expected for her

to receive such coverage in the event she was involved in an accident as a pedestrian. As a preliminary matter, Plaintiff again errs in her citation to statute. N.J.S.A. 17:28-1.1(f) relates to a prohibition of step-down provisions in certain insurance policies. Plaintiff provides no context with her block quotation of this statute on page 21 of her brief, but to the extent that she argues that it supports her position in any way, such argument is misplaced because the statute relates only to the discrete issue of step-down provisions.

To the more central point of Plaintiff's argument, "an insured's reasonable expectations only matter when the court finds the relevant language ambiguous." Katchen v. GEICO, 457 N.J. Super. 600, 607 (App. Div. 2019) (citing Passaic Valley Sewerage Com'rs v. St. Paul Fire & Marine Ins. Co., 206 N.J. 596, 608 (2011)). And the relevant language in this matter is exceedingly clear: "[Allstate] will pay all sums the 'insured' is legally entitled to recover as compensatory damages from the owner or driver of an . . . 'underinsured motor vehicle,'" and "insured" is defined as "[a]nyone 'occupying' a covered 'auto.'" Pa93-94, 175-76. Plaintiff fails to identify the alleged ambiguity. This is likely because the language is unambiguous. Plaintiff was not occupying a covered auto, or any auto, at the time of the accident. The analysis ends there.

Nonetheless, Plaintiff again relies heavily on readily distinguishable case law. First, in Lehrhoff v. Aetna Cas. and Sur. Co., 271 N.J. Super. 340, (App.

Div. 1994), the court addressed the issue of whether an individual, who was the son of the named insured of a personal auto policy, and was listed as a driver on that policy's declarations page, was entitled to UM coverage in light of a requirement that the individual be a resident relative of the named insured, and where the plaintiff had moved out of the named insured's house after the effective date of the policy. The court held in the affirmative, reasoning that the reader of the "personal automobile insurance policy" would "understand and expect from the declarations page of this policy that each of the listed drivers was entitled to all of the coverages and all of the protections afforded by the policy." Id. at 346, 48.

Several facts noted by the Lehrhoff court are paramount in comparing that case with the instant case. First, the plaintiff was listed on the declarations page. Here, Plaintiff was not listed on the declarations page, or anywhere else, in either of the Policies. Second, the court stated that "nothing in the UM coverage section of the policy suggests to the contrary either. Indeed, the insured's expectation would be reinforced if he got as far as reading the UM provision by its apparently unqualified reference to family member as a covered person." Id. at 349. Specifically, in the policy at issue in Lehrhoff, a definition not cross-referenced in the UM provision is what caused the carrier to deny coverage. If Plaintiff here were to read the UIM provision, it would be clear that she would

not be covered unless she was occupying a covered auto at the time of the accident. Third, the plaintiff in Lehrhoff was a resident relative when that policy was issued, and therefore he was entitled to the full benefit of coverage at that time. Moreover, the policy premium was calculated to assume his residency. Here, at no point during the consideration of this policy, before or after its effective date, would Plaintiff be covered as an insured under the terms of the policy under the circumstances of this accident.

In its conclusion, the court in Lehrhoff noted as follows:

Our point is plain. When Steven took the car to California he and his family had every reason to believe that both driver and vehicle were fully covered by all the protections of the insurance policy. The declaration page gave them that reasonable belief. The text of the UM coverage supported that belief.

Id. at 350.

And finally, the court indicated that use of the reasonable expectation doctrine is limited: “As we have noted, judicial consideration of the significance of the declaration page of the policy in this context is sparse.” Ibid. In the instant matter, it would be improper to allow Plaintiff to enjoy the benefit of coverage where she was not listed on the declarations page, and where the UIM coverage provision clearly includes only those occupying a covered auto at the time of the accident. In short, any belief that she would be covered for this accident

would not be reasonable, and would certainly not rise to the level of vacating the plain language of the policy.

Plaintiff also heavily relies on Cook-Sauvageau v. PMA Group, 295 N.J. Super. 620 (App. Div. 1996), to support her argument that this Court should consider her reasonable expectation of coverage. In Cook-Sauvageau, an employee was in an accident while occupying one of his employer's vehicles and in the course of employment and eventually sought UIM benefits from his employer's commercial auto insurance carrier. The carrier denied the claim, asserting that only the corporate entity, which was the named insured, was entitled to UIM benefits. The court found otherwise, reasoning that the plaintiff would reasonably expect UIM benefits while occupying a company vehicle and operating within the scope of his employment. The court stated that “the essential risk for which [the employer's] business automobile policy was intended to provide coverage was an accident involving an employee's operation of one of the employer's vehicles.”

To the contrary, in the present case, it is undisputed that Plaintiff was neither occupying a company vehicle nor operating within the scope of her employment at the time of the accident. Following the rationale of Cook-Sauvageau, and following common sense, it would be patently unreasonable for Plaintiff to expect coverage under her the Business Auto Policies.

The final case that Plaintiff relies on for illustrative purposes is Araya v. Farm Fam. Cas. Ins. Co., 353 N.J. Super. 203 (App. Div. 2002). She argues that Araya stands for the proposition that “when a business auto policy fails to designate the insured business entity's human agent or agents entitled to receive UIM benefits, we [the court] will look to the Declarations Page as the best indicator of the insured's reasonable expectations of coverage.” Pb 24-25. Absent from Plaintiff’s discussion of the case is the fact that the insurance policy there was substantially different from the Business Auto Policies or from the policy in Thompson or the related cases cited above. In Araya, the policy extended coverage not only to occupants of covered vehicles, but also to the named insured for any injuries sustained by an underinsured motorist. It defined “insured” as follows:

1. You.
2. If you are an individual, any “family member.”
3. Anyone else “occupying” a covered “auto”....
4. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured.”

353 N.J. Super. at 209.

There was a dispute in that case as to whether the named insured on the policy was the subject business or its owner. The court found that the named insured

was the business. It then held that the plaintiff, an employee of the business who was injured while not in a vehicle but while on the job, was entitled to UIM coverage. The court reasoned that the employee must be afforded coverage because “[w]hen as in this case a business automobile policy is issued to a corporate employer, the actual purchaser of the policy cannot itself suffer bodily injury and thus could not maintain a claim for UIM benefits.” Id. at 207 (citing Cook-Sauvageau, 295 N.J. Super. at 627-28). Thus, under the terms of the policy in Araya, permitting only the business and not its employees to collect UIM benefits would be absurd and would constitute a “no-win scenario.” Id. at 210.

To the contrary, the language of the subject Business Auto Policies defines “insured” differently:

C. Who is An Insured

If the Named Insured is designated in the Schedule or Declarations as:

.....

2. A partnership, limited liability company, corporation or any other form of organization, then the following are “insureds”:

a. Anyone “occupying” a covered “auto” or a temporary substitute for a covered “auto.” The covered “auto” must be out of service because of its breakdown, repair, servicing, “loss” or destruction.

- b. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured”.
- c. The Named Insured for “property damage” only.

Pa93-94, 175-76.

The above language clearly extends UIM benefits, in relevant part, only to occupants of covered vehicles. It does not include the first definition of the Araya policy, “You.” Indeed, the Business Auto Policies are written in a way as to specifically avoid any ambiguity—they make it clear that there are certain definitions of “insured” when the named insured is a business. This difference in policy language justifies the holding in Araya with the holdings in Thompson, Mondelli, De Almeida, Torres, Macchi, and Bogey’s. If the language is like the policy in Araya, then an employee may be covered even if not occupying a vehicle. But if the language is like the policies in the other cases, such as the Policies here, then one is afforded coverage only when he or she is occupying a company vehicle.

Moreover, the plaintiff in Araya was unquestionably in the scope of employment at the time of the accident; his employer was a landscaping company and he was trimming a lawn at the time of the accident. 353 N.J. Super. at 206. As such, regardless of the difference between the policy in that case and the instant Business Auto Policies, Plaintiff cannot maintain that any

expectation of coverage here is reasonable. Simply put, unlike the employee in Araya, it is entirely undisputed that Plaintiff was not within the scope of her employment at the time of the accident. Her position calls for all motor vehicle accident plaintiffs to enjoy the UIM benefits of their employers' commercial auto policies regardless of whether they were working at the time of the accident. That position is patently unreasonable.

In addition to her discussion of the case law—again, cases where the plaintiffs were either in their employer's vehicles or acting within the scope of their employment—Plaintiff presents a final argument: section (F)(5) of the UM/UIM endorsement<sup>6</sup> “seems to expand the meaning of who is covered under the UIM endorsement.” Pb25. As discussed in Point I of this brief, the plain language of the Business Auto Policies indicate that Plaintiff was not an insured at the time of the accident and therefore she is not entitled to UIM benefits. Section (F)(5) simply defines underinsured motor vehicle. Plaintiff's arguments are without merit.

She first asserts that “UIM coverage could apply to non-employees or household members.” Pb26. Allstate does not disagree. As set forth in the language of the Policies on pages 4-5 of this brief, UIM coverage is afforded, in

---

<sup>6</sup> Plaintiff only refers to the Lucas HVAC LLC policy in this part of her brief, Pb25, but for the purpose of this brief Allstate assumes that her argument is to both Policies. Section (F)(5) is identical in each of the UM/UIM endorsements to both of the Business Auto Policies.

addition to the named insured, to anyone occupying a covered auto. The issue that Plaintiff faces is that she does not meet that definition. Thus, she is not entitled to UIM coverage.

She then asserts that “[t]he UIM endorsement of the Allstate policy does not define ‘insured’ as someone occupying a covered auto at the time of the loss.” Pb26. Plaintiff again disputes the indisputable. The Policies, as recited in Plaintiff’s brief itself, state that an insured is defined as “[a]nyone ‘occupying’ a covered ‘auto.’” Pb6; Pa94, 176. The Policies’ definition of “underinsured motor vehicle” does not change the definition of “insured.” Plaintiff then recites a portion of section (F)(5)(c) of the UM/UIM endorsement, which, again, merely defines underinsured motor vehicle. She provides no commentary on that section other than her direct quotation of it.<sup>7</sup> To the extent that she argues that section (F)(5)(c) supports her position, such argument is misplaced because that section only defines underinsured motor vehicle.

She also references section (F)(5)(b), which states as follows:

b. With respect to an "insured" who:

- (1) Is not the individual Named Insured under this Policy or any other policy;

---

<sup>7</sup> Plaintiff mistypes parts of the Policies throughout her brief. While the typos are generally immaterial, Allstate’s brief is based on the exact language of the Policies.

- (2) Is insured as a "family member" under one or more other policies providing similar coverage; and
- (3) Is not an "employee" of a business or corporate entity designated in the Schedule or Declarations as a Named Insured;

"underinsured motor vehicle" means a land motor vehicle or "trailer" of any type to which a liability bond or policy applies at the time of an "accident", but its limit of liability is less than the highest applicable limit of liability under any Coverage Form or policy providing coverage to that "insured" as a "family member".

Pb27, 28; Pa97, 179.

Plaintiff argues that this language proves she is entitled to UIM benefits from Allstate. Notwithstanding the fact that, as specifically stated in Plaintiff's brief at Pb26, this section merely defines "underinsured motor vehicle," several aspects of Plaintiff's brief factual analysis are incorrect. She first states that she is an "insured." Pb27. As discussed already at length, she is not an insured because she was not the occupant of a covered vehicle at the time of the accident.

Then, as part of the same confusing sentence, she states in part the following: "and is not an 'employee' of a business or corporate entity designated in the Schedule or Declarations as a Named Insured, which Ms. Podlas is not." Pb27. It is unclear what Plaintiff means. If she means to say that she is not an employee of a named insured on the declarations page, then she is wrong. The

declarations pages indicate that Lucas HVAC LLC and Lucas Air Corp are the named insureds, Pa83, 164, and her position is predicated on her status as an employee of those entities. If she means to say that she herself is not a named insured, then she is simply confusing the language of the policy, as the term “Named Insured” in that specific line simply must necessarily be read with the words preceding it, “a business or corporate entity designated in the Schedule or Declarations as a Named Insured.”

In sum, the language of the Business Auto Policies is clear. The additional definition of “underinsured motor vehicle” simply does not bear on the fact that Plaintiff did not qualify as an insured. Plaintiff’s confusing analysis does nothing to change that fact.

**e. Additional discovery will not affect the issues herein.**

Plaintiff argues that “the trial court erred by granting summary judgment in favor of Defendant Allstate because discovery was not complete in this matter.” Pb8. She does not elaborate further, other than to state in her conclusion that this matter should proceed through discovery. Discovery has already been conducted, and in fact the case was scheduled for a trial on March 17, 2025, twelve days after Judge Lindemann granted Allstate’s motion for summary judgment. In any event, this matter was ripe for summary judgment. There were no facts in dispute to prevent the Court from deciding the issue of whether

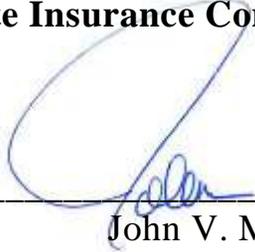
Plaintiff qualified as an insured under the Business Auto Policies. And without stating what further discovery would change the disposition of this matter, Plaintiff cannot argue that the incompleteness of discovery should bar dismissal of her claims. See Wellington v. Estate of Wellington, 359 N.J. Super. 484, 496 (App. Div. 2003) (“[A] plaintiff ‘has an obligation to demonstrate with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action’”) (quoting Auster v. Kionoian, 153 N.J. Super. 52, 56 (App. Div. 1977)).

### **CONCLUSION**

Similar to thousands of other New Jersey litigants in a given year, Plaintiff was involved in a motor vehicle accident while outside the scope of her employment. But unique to this case, she is pursuing a UIM claim against her employers’ auto insurance carrier. Such pursuit defies not only common sense, but the plain language of the Policies. As such, Allstate respectfully requests that this Court affirm the decision of the trial court, dismissing Plaintiff’s claims against Allstate with prejudice.

**Respectfully submitted,**

**CHASAN LAMPARELLO MALLON &  
CAPPUZZO, PC  
Attorneys for Defendant/Respondent,  
Allstate New Jersey Insurance  
Company, improperly impleaded as  
Allstate Insurance Company**

By:  \_\_\_\_\_  
John V. Mallon

By:  \_\_\_\_\_  
Thomas R. Lloyd

Dated: August 15, 2025

Jarred S. Freeman, Esq. (Attorney ID 022362009)  
Freeman & Patel LLC  
3840 Park Avenue, Suite 202A  
Edison, NJ 08820  
Phone (732) 494-7900/ Fax (732) 494-7904  
Email: jarred.freemanlaw@gmail.com  
Attorneys for Plaintiff Halina Podlas

**HALINA PODLAS**

**Plaintiff/ Appellant**

v.

**HENRY W. POLLARD and KATHY  
A. FLEMMING, ALLSTATE  
INSURANCE COMPANY,**

**Defendants/ Respondents**

SUPERIOR COURT OF NEW  
JERSEY  
APPELLATE DIVISION

Docket No.: UNN-L-453-23

ON APPEAL FROM  
SUPERIOR COURT OF NEW  
JERSEY

Law Division

Civil Action

Sat Below: Hon. Daniel R.  
Lindemann, J.S.C.

---

**APPELLANT HALINA PODLAS REPLY BRIEF**

---

**TABLE OF CONTENTS**

LEGAL ARGUMENT

POINT I: THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT ALLSTATE BECAUSE MS. PODLAS IS AN INSURED UNDER DEFENDANT ALLSTATE’S POLICY. (March 5, 2025 Order and Opinion) ..... 1

POINT II: THE TRIAL COURT ERRED BY HOLDING THE NEW JERSEY STATUTE DOES NOT REQUIRE UIM COVERAGE FOR PEDESTRIANS (March 5, 2025 Order and Opinion) ..... 4

    A. New Jersey Statutes Treat Personal and Commercial Auto Policies the Same. (March 5, 2025 Order and Opinion) ..... 7

POINT III: THE TRIAL COURT ERRED BY NOT REVIEWING THE INSURED’S REASONABLE EXPECTATIONS OF COVERAGE. (March 5, 2025 Order and Opinion) ..... 8

CONCLUSION ..... 11

## TABLE OF AUTHORITIES

### Statutes

<u>N.J.S.A. 39:6A-14</u> .....	1
<u>N.J.S.A. 17:28-1.1</u> .....	1 -7

### Cases

<u>Allstate N.J. Prop. &amp; Cas. Ins. Co. v. Estate of McBride</u> , No. A-2139-17T2 (App. Div. Aug. 29, 2019) .....	9
<u>Araya v. Farm Family Cas. Ins. Co.</u> , 353 N.J. Super. 203, 211 (App. Div. 2002) ...	9
<u>Aubrey v. Harleysville Ins. Cos.</u> , 140 N.J. 397, 404 (1995) .....	9
<u>Beek v. Ohio Casualty Insurance Co.</u> , 73 N.J. 185 (1977) .....	2
<u>Bowler v. Fidelity Casualty Co.</u> , 53 N.J. 313 , 326 (1969) .....	6
<u>Ciecka v. Transamerica Insurance Group</u> , 81 N.J. 421 (1979) .....	2
<u>Fernandez v. Selected Risks Insurance Co.</u> , 82 N.J. 236, 240 (1980) .....	3, 5-6
<u>James v. New Jersey Mfrs. Ins. Co.</u> , 216 N.J. 552, 566, (2014) .....	7
<u>Katchen v. Government Employees Insurance Company</u> , 457 N.J. Super. 600, 605 (App. Div. 2019) .....	8
<u>Lehrhoff v. Aetna Cas. and Sur. Co.</u> , 271 N.J. Super. 340, 348 (App. Div. 1994) .....	9
<u>Longworth v. Van Houten</u> , 223 N.J. Super. 174, 178 (App. Div. 1988) .....	4
<u>Lundy v. Aetna Cas. Sur. Co.</u> , 92 N.J. 550 (1983) .....	1, 3, 5, 6
<u>Motor Club of America Insurance Co. v. Phillips</u> , 66 N.J. 277 (1974) .....	2

Werner Indus. v. First State Ins. Co., 112 N.J. 30, 35 (1988) ..... 9

Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001) ..... 8

## LEGAL ARGUMENT

### POINT I

#### **THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT ALLSTATE BECAUSE MS. PODLAS IS AN INSURED UNDER DEFENDANT ALLSTATE’S POLICY.** (March 5, 2025 Order and Opinion)

The trial court erred by holding Ms. Podlas is not an insured under the Business Auto Policy and by granting summary judgment in favor of Defendant Allstate.

New Jersey requires vehicles to have uninsured motorist coverage and no fault comparative negligence coverage. See N.J.S.A. 39:6A-14, N.J.S.A. 17:28-1.1, Lundy v. Aetna Cas. Sur. Co., 92 N.J. 550, 553 (1983) . These requirements are for both individual and business policies.

A motor vehicle is underinsured when the sum of the limits of liability under all policies available is less than the applicable limits for underinsured motorist coverage afforded under the motor vehicle insurance policy held by the person seeking that recovery. N.J.S.A. 17:28-1.1e

In New Jersey automobile liability policies must include a provision that the insured or his legal representative shall be entitled to recover damages sustained in an accident with an uninsured automobile if the owner or operator of the uninsured

automobile is legally responsible. see N.J.S.A. 17:28-1.1 This liability exists irrespective of whether the insured vehicle was involved in the accident. This interpretation of the statute has been adopted by this Court in Motor Club of America Insurance Co. v. Phillips, 66 N.J. 277 (1974), Beek v. Ohio Casualty Insurance Co., 73 N.J. 185 (1977), and Ciecka v. Transamerica Insurance Group, 81 N.J. 421 (1979). The statute does not distinguish between personal policies and business policies.

Here, Under Defendant Allstate's Business Auto Policy, an "insured" is defined as as someone who occupied a certain vehicle at the time of the loss. The trial court erred by not considering pedestrians insured by UM/UIM coverage under the Business Auto Policy. Under the language of the Business Auto Policy pedestrians are considered insured. The Business Auto Policy defines and insured as: "Anyone 'occupying' a covered 'auto' or a temporary substitute for a covered 'auto.' The covered 'auto' must be out of service because of its breakdown, repair, servicing, 'loss' or destruction."

This policy language violates the New Jersey statute which requires UM/UIM coverage to be offered. Once a policy holder elects the UM/UIM coverage, coverage should be provided in accordance with the law. This requirement must be met regardless of whether the policy is a commercial or personal auto policy. Public policy dictates that when an insured elects UIM coverage, that coverage is treated

the same as UM coverage. The only difference between UIM and UM is that the tortfeasor does not carry insurance in a UM scenario. Everything else, including coverage as it relates to pedestrians, is the same for UIM and UM coverage.

Therefore, the trial court improperly held that because the policy was issued to a business, an “insured” can be defined only as someone occupying a vehicle at the time of loss. However, by failing to define pedestrians as insured, Allstate’s policy violates the requirement of providing UIM coverage to all autos insured by it.

In New Jersey there is no distinction between a personal policy and an commercial policy, UM/UIM coverage is required to be provided to all vehicles on the road. N.J.S.A. 17:28-1.1. Further, treating UM and UIM coverage differently is against the public policy of protecting New Jersey citizens from uninsured financially irresponsible drivers. See Fernandez v. Selected Risks Insurance Co., 82 N.J. 236, 240 (1980), Lundy v. Aetna Cas. Sur. Co., 92 N.J. 550 (1983).

Underinsured motorists’ coverage is not linked to accidents that occur while the insured is operating or occupying a specified vehicle. Therefore, the trial court erred by granting summary judgment in favor of Defendant Allstate and the Appellate Division should reverse the March 5, 2025 order.

## POINT II

### **THE TRIAL COURT ERRED BY HOLDING THE NEW JERSEY STATUTE DOES NOT REQUIRE UIM COVERAGE FOR PEDESTRIANS** (March 5, 2025 Order and Opinion)

The trial court erred by holding New Jersey statutes do not require UIM coverage for pedestrians under commercial auto policies. Despite Defendant's arguments to the contrary, Plaintiff does not confuse UM and UIM coverage. Plaintiff acknowledges the "distinction between UM and UIM coverage is that if an uninsured tortfeasor is involved, his victim is able to seek initial and primary recourse from his own liability carrier. If an underinsured tortfeasor is involved, however, his victim may not pursue his contractual UIM right against his own liability insurer until he has first recovered the tortfeasor's liability limit by settlement or judgment." Longworth v. Van Houten, 223 N.J. Super. 174, 178 (App. Div. 1988). The public policy in protecting citizens from individuals that do not have enough insurance who then cause harm, demands that UM and UIM coverage be treated the same. This was also the holding of Longworth. In other words, the Longworth Court held the legislative scheme in respect of UM and UIM coverage was intended to be congruent. See Id. 193.

Allstate's policy violates the public policy of treating UM and UIM coverage the same by defining "insureds" only as someone who occupies a vehicle during the loss. Therefore, the UM and UIM statutes and case law need to be reviewed together.

N.J.S.A. § 17:28-1.1 requires Allstate to provide coverage for amounts Plaintiff would be able to recover from an uninsured automobile when she was walking or standing. See Fernandez v. Selected Risks Ins. Co., 82 N.J. 236, 240 (1980). This should also be applied to motorists that were underinsured and cause injuries to someone walking or standing.

The Court held that the New Jersey statutes do not require any special relationship between the insured and the vehicle, and all that is necessary is the insured sustained injuries which were caused by an uninsured automobile. Id. at 241, N.J.S.A. 17:28-1.1, see also Lundy v. Aetna Cas. Sur. Co., 92 N.J. 550 (1983). Public policy demands that this also include someone who sustains injuries as a result of an underinsured motorist.

The Fernandez court noted that a finding that UM coverage is attached to the person is consistent with the legislative intent of the statute, which was designed to protect innocent accident victims from people without insurance coverage. This is the same purpose as UIM coverage. The legislature intended to protect people from injuries resulting from drivers without enough insurance. Fernandez 82 N.J. at 241.

Here, the trial court erred by finding that there is a distinction between UM and UIM coverage. The trial court held the statute referred to mandatory UM coverage in section (a) and optional UM/UIM coverage in sections (b) and (d). The trial court found that the statute only requires an option for UIM coverage and that

Defendant Allstate provided the option. However, the trial court failed to consider that when the option is exercised, public policy dictates that it should be applied the same as UM coverage, which requires coverage for both occupants of vehicles and pedestrians.

The purpose of both UM and UIM is to further the public policy to protect victims from the negligence of individuals who do not have, or have enough, automobile insurance. Fernandez, 163 N.J. Super. at 274. By allowing an insurance company to contract away the protections of the UIM coverage, the public policy behind the scheme is frustrated. Therefore, UM and UIM coverage should be considered the same when deciding coverage and UIM coverage extends to plaintiff regardless of whether her injuries were sustained in an insured vehicle.

Traditional rules of construction of insurance policies favor a reading advantageous to the insured, therefore ambiguities are to be resolved against the insurance company which drafted the printed form contract. Bowler v. Fidelity Casualty Co., 53 N.J. 313 , 326 (1969), see Lundy at 559.

Here, the trial court erred by granting summary judgment in favor of Defendant Allstate because the UIM provision of the Business Auto Policy violated N.J.S.A. 17:28-1.1. There is a strong public policy to provide broad protection for victims of automobile accidents caused by the negligence of both uninsured and underinsured. See Fernandez v. Selected Risks Insurance Company, 163 N.J. Super.

270, 274 (App. Div. 1978). Although, many of the cases in New Jersey discuss UM coverage, the public policy of both UM and UIM is the same, to protect victims from drivers who do not have enough insurance. Therefore, if UIM benefits are selected, coverage must be provided in accordance with the public policy of protecting pedestrians from motorists who do not have enough coverage. Trial court erred by finding a distinction between UM and UIM and by granting summary judgment in favor of Defendant Allstate. The Appellate Division must reverse the March 5, 2025 order.

**B. New Jersey Statutes Treat Personal and Commercial Auto Policies the Same.** (March 5, 2025 Order and Opinion)

The trial court erred by finding a distinction between a commercial and personal auto policy. The plain language of N.J.S.A. § 17:28-1.1 treats both business and personal auto policies the same and requires a policy that ensures an business entity to also coverage an individual employed by the business entity. The coverage is required regardless of whether the individual is named an insured under the policy or just an employee. James v. New Jersey Mfrs. Ins. Co., 216 N.J. 552, 566, (2014). Therefore, the trial court erred by finding that Ms. Podlas was not entitled to coverage under the business policy.

Here, Lucas HVAC purchased the Allstate auto policy for the business. They had a reasonable expectation that their employees would be covered in case of a loss.

Ms. Podlas is an employee of the business, therefore, she is covered under the Business Auto Policy. The trial court erred by finding that at the time of the accident Ms. Podlas was not covered by the Business Auto Policy. Therefore, the Appellate Court should reverse the trial court's order of summary judgment in favor of Defendant Allstate.

### POINT III

#### **THE TRIAL COURT ERRED BY NOT REVIEWING THE INSURED'S REASONABLE EXPECTATIONS OF COVERAGE.** (March 5, 2025 Order and Opinion)

The trial court erred by not reviewing Lucas HVAC's reasonable expectations of coverage and the public policy that aims to protect people from motorists without enough insurance. Here, Lucas HVAC relied on the declaration page for coverage. The issue of Lucas HVAC's reliance on the declaration page and reasonable reliance of cover is a factual issue that should be decided by a jury.

The declaration page indicates that the policy provides coverage for UM and UIM separately. The premium charged for the UM and UIM endorsement also appears separately. A reasonable person reviewing this policy would believe that his employees are covered by the UM and UIM endorsement.

The trial court erred by allowing Allstate to circumvent UIM coverage for pedestrians. Courts have emphasized the importance of the declaration page when interoperating coverage. see Katchen v. Government Employees Insurance

Company, 457 N.J. Super. 600, 605 (App. Div. 2019), Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001). The declaration is the single most important document which sets the reasonable expectation of coverage held by the insured. “The declaration page cannot be contradicted by the policy's boilerplate unless the declaration page itself clearly so warns the insured.” Allstate N.J. Prop. & Cas. Ins. Co. v. Estate of McBride, No. A-2139-17T2 (App. Div. Aug. 29, 2019), Pa 221. A policy's fine print qualification of the persons entitled coverage is insufficient to overcome the reasonable expectation of coverage raised by the declaration page. Lehrhoff v. Aetna Cas. and Sur. Co., 271 N.J. Super. 340, 348 (App. Div. 1994). Courts will interpret policies “with the objectively reasonable expectations of the insured.” Aubrey v. Harleysville Ins. Cos., 140 N.J. 397, 404 (1995) quoting Werner Indus. v. First State Ins. Co., 112 N.J. 30, 35 (1988). Any ambiguity created by boilerplate provisions found elsewhere in the policy will be resolved against the drafters of the policy and in favor of coverage. Araya v. Farm Family Cas. Ins. Co., 353 N.J. Super. 203, 211 (App. Div. 2002).

Here, the declarations page provided the best indication of UIM benefit coverage. UIM coverage only applies to its human agents therefore, Lucas HVAC LLC’s employees are entitled to UIM benefits. Plaintiff is entitled to coverage as the business’s human agent. No one is named as an agent of the business and therefore, the employees, such as the ones in Plaintiff’s position, are entitled to UIM benefits.

Lucas HVAC LLC, reasonably expected UIM coverage from Allstate's policy. Ms. Podlas is both a household member and employee of Lucas HVAC. The Allstate policy language does not exclude coverage to pedestrians.

Under section 5(a)(3) of the Allstate policy an insured can be someone who is not an employee of the named business entity. Allowing Ms. Podlas to be excluded from UIM coverage is against the public policy of protecting New Jersey citizens from uninsured financially irresponsible drivers. The UIM endorsement of the Allstate policy does not define "insured" as someone occupying a covered auto at the time of the loss. Under section C, the UIM coverage language reads, "with respect to any other "insured" who is not described in Paragraph a. or b. above, "underinsured motor vehicle" means a land motor vehicle or "trailer" of any type to which a liability bond or policy applies at the time of an "accident," but its limit of liability is less than the limit of Insurance for this coverage.

Ms. Podlas is covered under Section 5(b) of the Business Auto Policy because she is not an individual named insured, she is insured as a family member under the personal policy, and she is an employee of the designated business. Pa 169. Under section 5(b) an "insured" who is not the individual Named Insured under the Policy (Ms. Podlas), is insured as a "family member" under one or more other policies providing similar coverage (Ms. Podlas), and is not an "employee" of a business or corporate entity designated in the Schedule or Declarations as a Named Insured (Ms.

Podlas is not) is covered. Therefore, the Lucas HVAC expected Ms. Podlas to be covered by the policy. Pa 169.

Lucas HVAC had an reasonable expectation of coverage for their employees. The trial court failed to consider section 5 of the Business Auto Policy and the reasonable expectations of the insured. Since public policy demands UM and UIM be treated the same and Lucas HVAC had the expectation that Ms. Podlas was covered under the policy, the trial court erred by granting summary judgment in favor of Defendant Allstate. The Appellate Division must reverse the March 5, 2025 order.

#### CONCLUSION

For all the foregoing reasons, it is respectfully requested that Ms. Podlas' appeal be granted and the Appellate Division find that the trial court erred in granting summary judgment in favor of Defendant Allstate. The Appellate Division should reverse the March 5, 2025 order and allow this matter to continue through discovery.

Respectfully Submitted,

/s/ Jarred S. Freeman\_\_\_\_\_

Jarred S. Freeman, Esq.  
Attorney ID No.: 022362009  
Freeman & Patel LLC  
Attorney for Plaintiff Halina Podlas