SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET No. A-003019-24

CIVIL ACTION

MICHAEL SCOTT, Plaintiff-Appellants, **v.** **FALLON SNYDER, ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY, JOHN DOES, MARY DOES, ABC PARTNERSHIPS and XYZ CORPORATIONS, jointly, severally and in the alternative,** Defendants-Respondents.	APPEAL OF ORDERS OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION ATLANTIC COUNTY DOCKET NUMBER: ATL-L-1968-24 SAT BELOW: Hon. Sarah Beth Johnson, J.S.C.

BRIEF ON BEHALF OF PLAINTIFF MICHAEL SCOTT IN SUPPORT OF HIS APPEAL FROM FINAL JUDGMENTS OF THE SUPERIOR COURT, LAW DIVISION

D'Arcy Johnson Day
3120 Fire Road, Suite 100
Egg Harbor Township, New Jersey 08234
609-641-6200

ON THE BRIEF:

Richard J. Albuquerque, Esquire
Attorney ID No.: 025091996
RA@DJD.LAW

Dominic R. DePamphilis, Esquire
Attorney ID No.: 023292008
DD@DJD.LAW

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PRELIMINARY STATEMENT

After Plaintiff Michael Scott was injured in an automobile accident, he filed suit against the tortfeasor and Defendant Allstate. Plaintiff claimed underinsured motorist (UIM) benefits under his girlfriend's policy with Allstate which (1) identified Plaintiff as a "listed driver," (2) insured the vehicle Plaintiff was operating at the time of the accident, (3) identified Plaintiff as the primary operator of the covered vehicle Plaintiff was operating at the time of the accident, and (4) for which an identical amount was charged by Allstate as premiums for UIM benefits for both covered vehicles. This Allstate policy provided for $100,000 in UIM benefits.

Allstate contended a step-down provision buried deep in the UIM endorsement controlled and that Plaintiff was only entitled to $25,000 in UIM benefits, an amount less than the tortfeasor's $50,000 limits.

Allstate moved for summary judgment seeking to have the Court rule as a matter of law that the step-down provision applied. Plaintiff cross-moved for summary judgment seeking to have the Court rule as a matter of law that Plaintiff was entitled to the full amount of $100,00 in UIM benefits.

The Trial Court granted Allstate's motion and denied Plaintiff's cross-motion, extinguishing Plaintiff's UIM claim. This appeal follows.

PROCEDURAL HISTORY

On September 25, 2024, Plaintiff filed a Complaint against Defendant Fallon Snyder and Defendant Allstate New Jersey Property and Casualty Insurance Company. (Pa001). Defendant Allstate filed an Answer on October 23, 2024. (Pa008). Defendant Snyder filed an Answer on November 19, 2024. (Pa019).

A Stipulation of Dismissal signed by Plaintiff's Counsel and defense counsel for Defendant Snyder on February 13, 2025 relating to Plaintiff's claims against Snyder was later filed with the Court. (Pa223).

On January 29, 2025, Defendant Allstate moved for summary judgment seeking to dismiss Plaintiff's underinsured motorist (UIM) Complaint against it. (Pa024). On February 18, 2025, Plaintiff filed a cross-motion for summary judgment. (Pa126). On February 24, 2025, Defendant Allstate filed an opposition to plaintiff's cross-motion for summary judgment. (Pa140).

The trial court heard oral argument on March 7, 2025, and the court reserved decision.[1] On May 7, 2025, the court entered an Order (1) granting Defendant Allstate's motion for summary judgment and dismissing Plaintiff's Complaint against Allstate with prejudice and (2) denying Plaintiff's cross-

[1] The transcript of the March 7, 2025, oral argument is designated as 1T.

motion for summary judgment. (Pa208). A written memorandum of decision accompanied the court's Order. (Pa209).

On May 29, 2025, Plaintiff filed a Notice of Appeal. (Pa219).

STATEMENT OF FACTS

This personal injury action arises out of a motor vehicle accident which occurred on June 10, 2023, in Mays Landing, New Jersey. (Pa032). At the time of the accident, Plaintiff was operating a 2016 Jeep Patriot registered to his girlfriend, Katie Opfer. (Pa032). Opfer had insured the 2016 Jeep Patriot under an auto policy with Defendant Allstate. (Pa133; Pa136).

At the time of the subject accident, Plaintiff resided with Opfer at 865 Green Ave., Williamstown, NJ 08094. (Pa110; Pa134).

Both Plaintiff and Opfer are identified as "listed drivers" on the declarations page for Opfer's auto policy with Allstate. (Pa134).

The 2016 Jeep Patriot is noted on the declarations page as being rated to be primarily driven by Plaintiff Michael Scott (the 37-year-old male noted on page 2 of 9). (Pa136).

Allstate charged a UIM premium of $43.79 for both the Jeep and the second vehicle insured under the policy, a Toyota Truck Highlander. (Pa135; Pa136).

The Allstate Declarations Page cautioned Plaintiff and Opfer about the risk of losing coverage in the event drivers who reside in the household are not disclosed and not listed on the policy: "There are circumstances under which a

loss may not be covered by this policy because the auto was being operated by someone residing at your house who is not listed on the policy." (Pa134).

The phrase "listed driver" is not defined in the Definitions Section of the subject Allstate policy. (Pa076; Pa077).

The term "you" is defined as "the policyholder(s) listed as Named Insured(s) on the policy declarations and the resident spouse including civil union partner under New Jersey law of any such Named Insured." (Pa077).

The term "policyholder" is not defined in the definitions section of the Allstate policy. (Pa076; Pa077).

The subject Allstate policy provides for UIM benefits in the amount of $100,000 per person and $300,000 per accident. (Pa136).

The subject Allstate policy contains the following UIM endorsement:

> **New Jersey**
> **Uninsured Motorists Insurance-Coverage SS –**
> **ACR277**
>
> **General Statement Of Coverage**
> 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.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of an uninsured auto or underinsured auto. We will pay damages under this coverage arising out of an accident with an underinsured auto only after the limits of liability under any applicable liability bonds or policies have been exhausted by payment of judgments or settlements. We will not pay any punitive or exemplary damages, fines or penalties under Uninsured Motorists Insurance.

Additional Definitions For Uninsured Motorists Insurance

1. Insured Auto means an auto you own which is described on the Policy Declarations and for which a premium is shown for Uninsured Motorists Insurance. This also includes:
   a) its replacement auto;
   b) an additional auto;
   c) a substitute auto; or
   d) a non-owned auto.

2. Insured Person(s) means:
   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.

[(Pa101; Pa102).]

The Limits of Liability section provides:

> **Limits of Liability**
> For an insured person who is the named insured, resident spouse or civil union partner of the named insured on this policy and any resident relative who is not the named insured, spouse or civil union partner of a named insured on another insurance policy, and who is in, on, getting into or out of an insured auto or non-owned auto, the Uninsured Motorists Insurance-Bodily Injury limit shown on the Policy Declarations for:
> 1. "each person" is the maximum that we will pay for damages arising out of bodily injury to one person in any one motor vehicle accident, including all damages sustained by anyone else as a result of that bodily injury.
> 2. "each accident" is the maximum we will pay for damages arising out of all bodily injury in any one motor vehicle accident. This limit is subject to the limit for "each person."
>
> The Uninsured Motorists Insurance-Property Damage coverage limit shown on the Policy Declarations for "each accident" is the maximum that we will pay for property damage arising out of any one motor vehicle accident. However, Uninsured Motorists Insurance-Property Damage does not include any decrease in the property's value, however measured, resulting from the loss and/or repair or replacement.
>
> Our payment will be reduced by the deductible of $500 applicable to the property of each insured person.
>
> If the named insured, civil union partner, or resident spouse of the named insured, or any resident relative is in, on, getting into or out of a motor vehicle of any type owned by that person, or a resident relative, or is available or furnished for the regular use of that person or a resident relative which is not an insured auto and is insured for similar coverage under another insurance policy, or for

> which similar coverage is available, then the limits of liability for this coverage will be the mandatory minimum limits for this coverage specified by the laws of New Jersey.
>
> For any other insured person, the limits of liability for this coverage will be the mandatory minimum limits for this coverage specified by the laws of New Jersey.
>
> [(Pa103).]

At the time of the accident defendant Fallon Snyder was insured with USAA with liability limits of $50,000 per person and $100,000 per accident. (Pa122). Snyder eventually tendered its policy limits and, after Plaintiff obtained Longworth approval, that claim settled. (Pa120; Pa223).

Plaintiff's Complaint against Defendant Allstate seeks compensatory damages in the form of UIM benefits as the USAA $50,000 liability limits are less than the Allstate $100,000 UIM limits. (Pa004).

LEGAL ARGUMENT

Plaintiff makes three arguments in support of his appeal. First, the trial court erred as a matter of law in its interpretation of the contractual provisions of the subject Allstate policy.

Second, the trial court err by not following existing New Jersey case law which extends UIM coverage to listed and covered drivers identified on the applicable automobile insurance declarations page.

Finally, Plaintiff had a reasonable expectation of coverage because the language of the subject Allstate policy, including the subject step-down provision, is ambiguous when compared to the Allstate declarations page.

POINT I

THE TRIAL COURT ERRED AS A MATTER OF LAW IN ITS INTERPRETATION OF THE CONTRACTUAL PROVISIONS OF THE SUBJECT ALLSTATE POLICY (Pa217; Pa218)

Appellate review of a summary judgment order is *de novo*. Mem'l Props., LLC v. Zurich Am. Ins. Co., 210 N.J. 512, 524 (2012). Additionally, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citations omitted).

In deciding a motion for summary judgment, the court is "required to engage in same type of evaluation, analysis or sifting of evidential materials as required by R. 4:37-2(b) [motions for involuntary dismissal] in light of the burden of persuasion that applies if matter goes to trial." Id. at 539-540. The court must determine whether the competent evidential materials, 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. Id. at 540. However, if the summary judgment turns on a question of law, or if further factual development is unnecessary in light of the issues presented, then summary judgment need not be delayed. United Savings Bank v. State, 360 N.J. Super. 520, 525 (App. Div. 2002).

"Interpretation of an insurance policy also presents a legal question" likewise subject to *de novo* review on appeal. Abboud v. Nat'l Union Fire Ins. Co., 450 N.J. Super. 400, 406 (App. Div. 2017) (citing Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med. & Physical Therapy, 210 N.J. 597, 605 (2012)).

"[I]nsurance policies are contracts of adhesion and as such, are subject to special rules of interpretation." Gibson v. Callaghan, 158 N.J. 662, 669 (1999) (citing Longobardi v. Chubb Ins. Co., 121 N.J. 530, 537 (1990); Meier v. N.J. Life Ins. Co., 101 N.J. 597, 611-12 (1986)). "Policies should be construed liberally in the insured's favor to the end that coverage is afforded to the fullest extent that any fair interpretation will allow." Lee v. General Acc. Ins. Co., 337 N.J. Super. 509, 513 (App. Div. 2001) (citing Kievit v. Loyal Protective Life Ins. Co., 34 N.J. 475, 482 (1961). In construing an insurance policy, courts must "ensur[e] [its] conformity to public policy and principles of fairness." Voorhees v. Preferred Mut. Ins. Co., 128 N.J. 165, 175 (1992).

"When the terms of an insurance contract are clear, we are to enforce it as written." Lee v. General Acc. Ins. Co., 337 N.J. Super. at 513 (citing Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960)). "Where the policy language supports two meanings, one favorable to the insurer and the other to the insured, the interpretation favoring coverage should be applied." Lundy v.

Aetna Cas. & Sur. Co., 92 N.J. 550, 559 (1983) (citing Butler v. Bonner & Barnewall, Inc., 56 N.J. 567, 576 (1970)). "Ambiguities are to be resolved against the insurance company which drafted the printed form contract, the policy being '*unipartite* in nature.'" Lundy v. Aetna Cas. & Sur. Co., 92 N.J. at 559 (citing Bowler v. Fidelity & Casualty Co., 53 N.J. 313, 326 (1969)).

The Supreme Court of New Jersey has explained two general rules for courts when interpreting language of insurance policies:

> First, in enforcing an insurance policy, courts will depart from the literal text and interpret it in accordance with the insured's understanding, even when that understanding contradicts the insurer's intent, if the text appears overly technical or contains hidden pitfalls, [...] cannot be understood without employing subtle or legalistic distinctions, [...] is obscured by fine print, [...] or requires strenuous study to comprehend[.] Second, the plain terms of the contract will be enforced if the "entangled and professional interpretation of an insurance underwriter is [not] pitted against that of an average purchaser of insurance," [...], or the provision is not so "confusing that the average policyholder cannot make out the boundaries of coverage[.]"
>
> [Zacarias v. Allstate Ins. Co., 168 N.J. 590, 601 (2001) (citations omitted).]

The purpose of underinsured motorist insurance (UIM) is to provide as much coverage to an insured as he or she is willing to purchase, up to the available limits, against the risk of an underinsured vehicle. Nikiper v. Motor Club of America Cos., 232 N.J. Super. 393, 399 (App. Div. 1989). In this

sense, UIM coverage operates as first-party excess coverage as to an underinsured claim. Id. "UIM coverage... 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) (citation omitted). "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)).

The plain language of the subject Allstate policy extends UIM coverage to Plaintiff. Specifically, the Allstate UIM endorsement provides Allstate "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... bodily injury sustained by an insured person and caused by an accident[.]" (Pa101).

Here, Plaintiff qualifies as an insured person under the policy. First, Plaintiff was identified on the Allstate Policy as a "listed driver." (Pa134). Second, the 2016 Jeep Patriot operated by Plaintiff at the time of the accident was an "insured vehicle" covered under the Opfer policy insured by Allstate,

(Pa133), and said vehicle was assigned to Plaintiff by Allstate as the primary operator. (Pa136).

In Lehrhoff v. Aetna Cas. & Sur. Co., 271 N.J. Super. 340 (App. Div. 1994), the Court clearly and unequivocally held that the listing of a driver on the declaration page of a policy would raise the expectation that the driver was "entitled to all of the coverages and all of the protections afforded by the policy[,]" Id. at 348, and those reasonable expectations "cannot be contradicted by the boilerplate (of the policy) unless the declaration page clearly so warns the insured[,]" Id. at 349.

To this end, the language of the Allstate Declarations Page reinforced that Plaintiff – as a listed driver – was entitled to coverage under the policy and could reasonable expect to be covered. In fact, the Declarations Page cautioned Plaintiff and Opfer about the risk of losing coverage in the event drivers who reside in the household are not disclosed and not listed on the policy: "There are circumstances under which a loss may not be covered by this policy because the auto was being operated by someone residing at your house who is not listed on the policy." (Pa134). Again, Plaintiff Michael Scott was specifically listed as the driver of the subject Jeep Patriot. (Pa136).

In the context of Lehroff, the Allstate Declarations Page controls and a reasonable objective review leads to extending UIM coverage for Plaintiff as a

listed driver on the Declaration Page. Accordingly, no genuine dispute exists on the motion record precluding the entry of summary judgment in favor of Plaintiff. Plaintiff is therefore entitled as a matter of law to UIM benefits under the subject Allstate policy. The decision of the Trial Court should be revered. Plaintiff's cross-motion for summary judgment should be granted and Allstate's motion denied.

POINT II

THE TRIAL COURT ERR BY NOT FOLLOWING EXISTING NEW JERSEY CASE LAW WHICH EXTENDS UIM COVERAGE TO LISTED AND COVERED DRIVERS IDENTIFIED ON THE APPLICABLE AUTOMOBILE INSURANCE DECLARATIONS PAGE (Pa214)

Exiting New Jersey case law has extended UIM coverage to "covered drivers" who are not named insureds. In Motil v. Wausau Underwriters Ins. Co., the Appellate Division affirmed a trial court's order extending UIM coverage to a "covered driver," despite the existence of a step-down provision in the policy. Motil v. Wausau Underwriters Ins. Co., 478 N.J. Super. 328 (App. Div. 2024).

The plaintiff in Motil was injured in a motor vehicle accident and settled her injury claim with the tortfeasor's carrier for $15,000. Id at 332. The plaintiff then sought $100,000 in UIM benefits under her parent's auto policy with the defendant-carrier where she was identified as a "covered driver" on her parents' declaration page and she was operating a "covered vehicle" also listed on that declarations page. Id at 333. The defendant-carrier denied the UIM claim on the grounds that (1) the plaintiff was a non-resident family member, (2) the plaintiff was not a "named insured," and (3) the plaintiff was therefore subject to the "limit of liability" step-down on her parent's UIM

policy. Id at 334. The plaintiff filed a declaratory judgment action and the parties cross-moved for summary judgment. Id at 335.

The trial court granted the plaintiff's motion and afforded UIM coverage on the grounds that "'the reasonable expectations of coverage raised by the declaration [pages]... cannot be contradicted by the policy's boilerplate' language and 'the declaration [pages]... did not clearly warn the insured.'" Id at 335. Defendant moved for reconsideration which the trial court denied, explaining: "defendant could not 'profit off of plaintiff and her family by selling them insurance and telling them it covers all of them but then... tell plaintiff she should buy her own insurance if she really wants the coverage.'" Id. Defendant appealed.

The Appellate Division affirmed, recognizing that the plaintiff was identified on the declarations page as a "covered driver" and she was operating a "covered vehicle" at the time of the accident. Id at 339-340. The Appellate Court further explained that "[w]hile defendant maintains plaintiff was only entitled to step-down UIM benefits, the declaration does not alert her—a covered driver operating a [covered] vehicle [...] —that she did not qualify as a "family member" who was a "resident of [her parent's] household." Id at 340. The Court also noted the policy language did not define the phrase "covered driver." Id. The Appellate Court ultimately held the "lack of clarity and

distinction in the declaration and policy created ambiguity and fairly leads to the presumption that a covered driver is entitled to UIM coverage, regardless of the UIM step-down provision." Id. "Pursuant to the language of the declaration, the policyholder had the reasonable expectation that plaintiff, as a covered driver, was entitled to the same UIM policy coverage. Because the ambiguity and contradiction between the declaration and the policy obfuscates the application of the step-down, the 'reasonable expectations doctrine' controls." Id at 341.

Here, similar to the facts of Motil, Plaintiff was a listed driver on the subject policy and he was operating a covered auto that the declaration pages assigned to him as the primary operator. For these reasons, Plaintiff had a reasonable expectation that he was entitled to the $100,000 of UIM coverage listed on the declaration pages as an insured under the Allstate policy. Plaintiff is therefore entitled to UIM benefits under the subject Allstate policy as a matter of law.

Additionally, Allstate charged Opfer for coverage for Plaintiff as a listed driver. Specifically, Allstate charged the same premium for the $100,000 of UIM coverage covering both vehicles, one which Allstate knew would be primarily driven by Opfer and the other which they knew would be primarily driven by Plaintiff. Despite this, Allstate contends Plaintiff is not entitled to

the $100,000 of underinsured motorists coverage listed on the declaration pages. This is precisely what the Motil Court held insurers could not do:

> Here, the declaration listed plaintiff as a *covered* driver. Further, the declaration illustrated the Motils paid the same $103 premium per vehicle for the four identified vehicles and $100,000 in UIM coverage for "[e]ach [p]erson." An objective review of the declaration indicates that because the UIM coverage premiums were the same for each vehicle, the provided UIM coverage would be the same for a named insured, family member, or covered driver, particularly since the declaration included an alternate garaging address for the Jeep.
>
> [Id. at 339-340 (emphasis in original).]

Here, Michael Scott is listed on the declaration pages as a covered driver. He is also listed as the primary operator of the 2016 Jeep Patriot. The UIM premium charged for the Jeep is the same $43.79 charged for the UIM coverage of the 2021 Toyota primarily driven by the named insured, Katie Opfer. There is nothing on the declaration pages to notify Mr. Scott or Ms. Opfer that Mr. Scott as a listed driver operating the vehicle assigned to him on the policy would not be entitled to the $100,000 of underinsured motorists coverage listed on the declarations page. Fairness precludes Allstate from charging the exact same premium for both vehicles but then arguing that one of the listed drivers assigned to that vehicle actually does not get the benefit of the purchased coverage. That position is abhorrent to the public policy of liberal interpretation of providing insurance coverage to injured parties.

POINT III

PLAINTIFF HAD A REASONABLE EXPECTATION OF COVERAGE BECAUSE THE LANGUAGE OF THE SUBJECT ALLSTATE POLICY, INCLUDING THE SUBJECT STEP-DOWN PROVISION, IS AMBIGUOUS WHEN COMPARED TO THE ALLSTATE DECLARATIONS PAGE. (Pa213; Pa217)

Allstate's reliance on its step-down language does not entitle it to summary judgment where the subject step-down provision is ambiguous when compared to the Allstate declarations page.

With regard to the interpretation of asserted policy exclusions, the Supreme Court of New Jersey has explained: "[i]n general, insurance policy exclusions must be narrowly construed; the burden is on the insurer to bring the case within the exclusion. As a result, exclusions are ordinarily strictly construed against the insurer and if there is more than one possible interpretation of the language, courts apply the meaning that supports coverage rather than the one that limits it." Flomerfelt v. Cardiello, 202 N.J. 432, 442 (2010) (citations and quotations omitted).

Here, for the reasons expressed *supra*, the Allstate Declarations Page controls and a reasonable objective review leads to extending UIM coverage for Plaintiff as a listed driver on the Declaration Page. See, e.g., Lehrhoff v. Aetna Cas. & Sur. Co., 271 N.J. Super. at 349. Additionally, as recognized by the Motil court, that the premiums charged for the underinsured motorists

coverage was the same for both vehicles. The 2016 Jeep Patriot is even noted on the declarations page as being rated to be primarily driven by Plaintiff Michael Scott (the 37 year old male noted on page 2 of 9). (Pa136).

The ambiguity is further highlighted by the Declaration's Page warning of the risk of losing coverage in the event drivers who reside in the household are not disclosed and not listed on the policy: "There are circumstances under which a loss may not be covered by this policy because the auto was being operated by someone residing at your house who is not listed on the policy." (Pa134). Again, Plaintiff was a listed Driver and had no reason to think he would lose coverage. Rather, he could reasonably rely upon an expectation to coverage because Opfer affirmatively disclosed his existence to Allstate.

For these reasons, the Allstate policy is ambiguous and the policy should be construed to provide coverage to Plaintiff. See Lundy v. Aetna Cas. & Sur. Co., 92 N.J. at 559. Plaintiff's cross-motion should be granted.

CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court (1) reverse the trial court's Order granting summary judgment to Defendant Allstate, (2) reverse the trial court's Order denying Plaintiff's cross-motion for summary judgment, and (3) enter an order granting Plaintiff's cross-motion for summary judgment.

D'ARCY JOHNSON DAY

By: _____
Richard J. Albuquerque, Esquire

DATED: August 21, 2025

D'ARCY JOHNSON DAY

By: _____
Dominic R. DePamphilis, Esquire

DATED: August 21, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003019-24

CIVIL ACTION

MICHAEL SCOTT,

Plaintiff-Appellant,

VS.

FALLON SNYDER, ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY, JOHN DOES, MARY DOES, ABC PARTNERSHIPS and XYZ CORPORATIONS, jointly and Severally and in the alternative,

Defendants-Respondents.

On Appeal From:

Superior Court of New Jersey
Atlantic County
Docket No. ATL-L-1968-24

Sat Below:

Hon. Sara Beth Johnson, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-RESPONDENT ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY

JOHN C. PRINDIVILLE, ESQ.
ID #041591987
2130 Route 35
Suite 221, Building B
Sea Girt, New Jersey 08750
(732) 974-3535
Email: bandplaw@optimum.net

ON THE BRIEF:
JOHN C. PRINDIVILLE, ESQ.

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PRELIMINARY STATEMENT

Plaintiff, Michael Scott's girlfriend, Katie Opfer, purchased automobile insurance coverage for two automobiles. Ms. Opfer insured a 2016 Jeep Patriot as well as a Toyota Highlander. Ms. Opfer's boyfriend, plaintiff, Michael Scott, was not the named insured on Katie Opfer's policy. He was noted on the policy to be a "listed driver". Ms. Opfer informed Allstate that the 2016 Jeep Patriot would be principally driven by Michael Scott and that she would be the principal driver of the Toyota Highlander. The insurance policy purchased by Ms. Opfer included $100,000.00 in UIM benefits for her as the named insured. The insurance policy included in the declarations page a notice to the named insured as well as the listed driver, plaintiff Michael Scott, that the coverage for uninsured and underinsured motorist coverage may be reduced or excluded and that they were urged to read them in their entirety. Had Mr. Scott read the policy, as he was urged to do in the declarations page, he would have learned that the policy did not provide full UIM coverage of $100,000.00 to him as he was not a named insured and was not a resident relative of a named insured. He would have learned that the exclusion reduced the uninsured motorist coverage from $100,000.00 to the state insurance premium limits of $25,000.00.

PROCEDURAL HISTORY

Defendant, Allstate New Jersey Property and Casualty Insurance Company hereby adopts the Procedural History contained in the Brief submitted by Plaintiff.

STATEMENT OF FACTS

On March 14, 2023, Allstate sent their insured, Katie L. Opfer, an offer to review her existing automobile insurance policy. (Pa34). The insurance ID cards as issued by Allstate to Ms. Opfer in anticipation of her renewal, listed both the 2016 Jeep Patriot as well as the 2021 Toyota Highlander. The cards named Katie Opfer only and did not name Michael Scott as the named insured on either vehicle. (Pa37). Ms. Opfer elected to accept the renewal effective 4/22/23 which was six weeks prior to the 6/10/23 motor vehicle accident out of which this suit arises. (Pa39). The very first page of the policy declarations included the name, address and telephone number along with the email address of Ms. Opfer's Allstate insurance agent. It also included a note advising Ms. Opfer "some or all the information on your policy declarations is used in the rating of your policy or it could affect your eligibility for certain coverages. Please notify us immediately if you believe that any information on your policy declarations is incorrect. We will make corrections once you have notified us and any resulting rate adjustments will be made only for the current policy period or for future policy periods. Please also notify us immediately if you believe any coverages are not listed or are inaccurately listed." (Pa39). The policy clearly identifies the named insured as Katie Opfer and further notes that the listed drivers of the two vehicles on the policy are Katie Opfer and Michael Scott. (Pa40).

Finally, the policy notes **"Following notices regarding uninsured motorist insurance coverage which includes uninsured and underinsured motorist coverage.**

NOTICE; The availability and limits of uninsured and underinsured motorist coverage and other coverages of the insurance policy may be reduced or excluded by the provisions of the insurance policy and policy endorsements and you are urged to read them in their entirety. Your coverages may have been changed by these provisions." (Pa44).

The subject Allstate policy contained the following UIM endorsement:

> **New Jersey**
> **Uninsured Motorist Insurance-Coverage SS - ACR277**
>
> **General Statement of Coverage**
> If a premium is shown on the Policy Declarations for Uninsured Motorists Insurance, 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.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of an uninsured auto or underinsured auto. We will pay damages under this coverage arising out of an accident with an underinsured auto only after the limits of liability under any applicable liability bonds or policies have been exhausted by payment of judgments or settlements. We will not pay any punitive or exemplary damages, fines or penalties under Uninsured Motorist Insurance.

Additional Definitions for Uninsured Motorists Insurance

1. Insured Auto means an auto you own which is described on the Policy Declarations and for which a premium is shown for Uninsured Motorists Insurance. This also includes:
   a) its replacement auto;
   b) an additional auto;
   c) a substitute auto; or
   d) a non-owned auto.

2. Insured Person(s) means:
   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.

The Limits of Liability section provides:

Limits of Liability

For an insured person who is the named insured, resident Spouse or civil union partner of the named insured on this Policy and any resident relative who is not the named Insured, spouse or civil union partner of a named insured On another insurance policy, and who is in, on, getting into or out of an insured auto or non-owned auto, the Uninsured Motorists Insurance-Bodily Injury limit shown on the Policy Declarations for:

1. "each person" is the maximum that we will pay for damages arising out of bodily injury to one person in any one motor vehicle accident, including all damages sustained by anyone else as a result of that bodily injury.
2. "each accident" is the maximum we will pay for damages arising out of all bodily injury in any one motor vehicle accident. This limit is subject to the limit for "each person."

The Uninsured Motorists Insurance-Property Damage Coverage limit shown on the Policy Declarations for "each accident" is the maximum that we will pay for property damage arising out of any one motor vehicle accident. However, Uninsured Motorists Insurance-Property Damage does not include any decrease in the property's value, however, measured, resulting from the loss and/or repair or replacement.

Our payment will be reduced by the deductible of $500 Applicable to the property of each insured person.

If the named insured, civil union partner, or resident spouse of the named insured, or any resident relative is in, on, getting into or out of a motor vehicle of any type owned that person, or a resident relative, or is available or furnished for the regular use of that person or a resident relative which is not an insured auto and is insured for similar coverage under another insurance policy, or for

> which similar coverage is available, then the limits of liability for this coverage will be the mandatory minimum limits for this coverage specified by the laws of New Jersey.
>
> For any other insured person, the limits of liability for this coverage will be the mandatory minimum limits for this coverage specified by the laws of New Jersey. (Pa97; Pa98; Pa99)

There is no evidence before the Court that Allstate insured, Katie Opfer ever read the policy declarations or the insurance policy. There is no evidence before the Court that insured Katie Opfer contacted her Allstate insurance agent regarding any questions she had regarding the policy. There is no evidence before the Court that Michael Scott, who was a listed driver on the policy, ever read the declaration pages or the insurance policy. There is no evidence before the Court that Michael Scott ever contacted the Allstate insurance agent with any questions regarding insurance coverage that was provided to him under the policy.

Plaintiff, Michael Scott, eventually settled his claim with the tortfeasor, Fallon Snyder. Ms. Snyder had automobile insurance coverage through USAA with liability limits of $50,000.00 per person and $100,000.00 per accident. (Pa120). USAA subsequently tendered its policy limits to the plaintiff who then requested Longworth approval from Allstate. (Pa118). Plaintiff did not receive Longworth

approval from Allstate to accept the USAA policy limits of $50,000.00 because Michael Scott was not a resident relative of the Allstate Insured, Katie Opfer such that the Under Insured Motorist coverage would be triggered.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT'S INTERPRETATION OF THE INSURANCE POLICY WAS CORRECT AND IN KEEPING WITH EXISTING CASE LAW

The plaintiff, Michael Scott does not dispute in this case that he was not a named insured on the Allstate insurance policy issued to Katie Opfer. Plaintiff, Michael Scott, does not dispute that there is a distinction made in the policy between the named insured and a listed driver. Our existing case law stands for the proposition that the mere fact that a person is listed as a driver on a declaration page, does not necessarily mean that the person is an insured person for all purposes under the policy. Severino v. Malachi, 409 N.J. Super 82 (App. Div.) (certification denied) 200 N.J. 500 (2009). In Severino the injured plaintiff took the position that because he was listed as a driver under the policy in question, he was entitled to UM/UIM benefits for injuries suffered while a pedestrian. The Court rejected the argument. Id. at 94. The effect of the Court's decision was a determination that despite the fact that the individual in question had been identified as a driver on the policy, that individual was not entitled to coverage as a "named insured". The Court stated the plaintiff's name appears on the declarations page but he is only mentioned to explain

the rates applicable to the vehicles covered under the policy. Thus, there is nothing in the declaration page that would give the plaintiff a reasonable expectation that the listed driver was entitled to the same coverage as the named insured. The declaration page does not say the listed driver is entitled to the full UIM benefit. Zacarias v. Allstate Insurance Company, 168 N.J. 590, 595 (2001) holds where there is no ambiguity, the Court should not write for the insured a better policy of insurance than the one purchased. Gibson v. Callahan, 158 N.J., 662, 675 (1999).

As stated by the Court in Progressive v. Hurley, 166 N.J. 260 (1999) a genuine ambiguity arises only where the phrasing of the policy is so confusing that the average policy holder cannot make out the boundaries of coverage. At 274.

When an insured purchases a policy of insurance, the insured is expected to read it and the law may fairly impose upon him such restrictions, conditions and limitations as the average insured would ascertain from such reading. Morrison v. AM. Intern. Ins. Co. of AM, 381 N.J. Super 532, 542 (App. Div. 2005). If the policy terms are clear, Courts should interpret the policy as written and avoid writing a better insurance policy than the one purchased. President v. Jenkins, 180 N.J. 550, 552 (2004) It is only when the language is ambiguous that one needs to construe it or to invoke the objectively reasonable expectations of the insured. Zacarias, Supra 168 at 595.

The Lehrhoff v. Aetna Cas. & Sur. Co., 271 N.J. Super 340 (App. Div. 1994) decision does not support plaintiff's basis for appeal. The Lehrhoff case required that the declaration page warned the insured of any changes within the policy. As set forth in Judge Johnson's decision, the Allstate policy did exactly that. It also clearly identified the named insured and the listed driver in the declaration page. The Allstate insurance ID cards also described the named insured as being Ms. Opfer and the card for the vehicle principally driven by Mr. Scott also listed the insured as Ms. Opfer. Even if he did not read the insurance policy or the declaration page, plaintiff Michael Scott knew when he put the insurance card in the vehicle that he was not the named insured. There is, therefore, no basis to suggest Mr. Scott would be considered a named insured under the policy and thereby entitled to the same coverages that were available to Ms. Opfer.

In addition, since plaintiff Scott does not claim that he read the policy and was in some way confused by it, there is no basis for arguing that he reasonably expected to have the same coverage as Ms. Opfer had as it pertained to the Underinsured Motorist coverage. Likewise, there is no support for the contractual argument plaintiff makes for charging the same amount for UM/UIM coverage on both cars somehow reflects that same was meant to include Michael Scott on that portion of

the coverage. The policy does not say that the fee charged for UM/UIM coverage is for Michael Scott as a listed driver. Ms. Opher was the owner of both cars and the named insured for both cars. She chose to purchase the policy in her name only and listed her boyfriend as a driver of one of her cars. The fee for coverage as cited reflects that UM/UIM coverage is personal to the named insured and Ms. Opfer would then have UM/UIM coverage for her regardless which of the two cars she was driving in the event she had been in an accident.

POINT II

THE TRIAL COURT CORRECTLY DISTINQUISHED BETWEEN THE ALLSTATE POLICY UNDER REVIEW WITH THE APPELLATE DIVISION DECISION IN MOTIL V. WAUSAU UNDERWRITERS INS. CO.,

In the case now under review, Judge Sarah Beth Johnson, J.S.C. had not only the Allstate policy for review but also had the Liberty Mutual policy from the Motil v. Wausau Underwriters Ins. Co., 478 N.J. Super 328 (App. Div.2024) case available as well. She demonstrated that she read the respective policy provisions. A review of the Liberty policy declaration pages reflects that no notice or warning was given to the plaintiff in Motil that there could be changes to the coverage afforded to them and that they could be different from those set forth in the declaration sheet. (Pa135-147). The Liberty Mutual policy in Motil never provides a written notice in the declaration page that the Uninsured Motorist coverage may be reduced or excluded by the provisions in the insurance policy endorsements. Judge Johnson correctly noted that the Allstate policy did provide a warning to the

The Liberty Mutual policy in the Motil case never informed the plaintiff that because she was not a resident relative and because the vehicle was garaged off premises that she would not qualify for Underinsured Motorist coverage under the Liberty policy. Motil was given no notice of this potential change whereas

the plaintiff Scott was informed in the declaration page, as required, by Allstate. Plaintiff Scott's argument that he had not been clearly warned of the potential changes fails to reflect the reality that the declaration page did inform him of the potential that the coverage was different and told him to read that part of the policy. As required by Motil, the Allstate declaration page did alert plaintiff Scott that the Underinsured Motorist coverage may have been changed by the Underinsured Motorist endorsement contained in the policy. Plaintiff's argument that there is nothing on the declaration pages to notify Mr. Scott or Ms. Opfer that the vehicle he was driving would not have the same underinsured motorist benefits fails to reflect what the Allstate declaration page actually says. As noted in Severino and as reiterated in Motil, the declaration sheet alerts the insured that the coverages and limits of liability are subject to the provisions of the policy. Further, nothing in the insurance declaration pages tells plaintiff Scott that he, as a listed driver, is entitled to the same UIM coverage as the named insured, Ms. Opfer.

In her opinion, Judge Johnson duly noted that the Court in Motil found that the carrier in that case could have include language in the declaration pages or in the policy alerting that a covered driver using a covered auto with an identified alternate garage address was subject to the step-down clause. The declaration page

itself was not required in Motil to alert the insured to the step-down and noted that it could have been placed in the policy itself. Motil, Supra at 340. The declaration page needed to alert the insured to that change in coverage which is exactly what occurred in the Allstate policy in the case now under review. Judge Johnson also duly noted that being a named insured is different than being a listed driver, pursuant to New Jersey Case Law. In Body v. CNA Insurance Co., 361 N.J. Super 217, 226 (App. Div. 2003) The Court noted that the named insured is, obviously, the actual insured but there are other insureds who may be entitled to coverage but the named insured clearly has coverage. Unlike the policy in Motil, the Allstate policy did warn plaintiff of the step-down provision.

In her comprehensive written opinion, Judge Johnson directly addressed the issue of the Motil case as was argued by plaintiff in support of the Cross-Motin for Summary Judgment. Judge Johnson went through the factual basis for the Motil case. She reviewed the policy language as set forth in Motil. The Court has been provided with the actual policy in support of Defendant Allstate's Motion. The Judge reviewed the definitions as well as the insuring agreement. She then went directly to the step-down provision as outlined in Motil's policy. The Court obviously had the Allstate policy for comparison. Based upon the searching review of both policies as well as the arguments as set forth in the respective

Motions, the Court pointed out the differences between the Allstate policy and the Liberty policy in Motil. The Court first noted that the language of the Allstate policy specifically put the insured on notice that "your coverages may have been changed by these provisions". She noted that a warning was underlined in the declaration page as well. Secondarily, Judge Johnson noted that the Allstate policy was clear as compared to the Liberty policy in Motil. Judge Johnson pointed out that in the Allstate policy "an insured person who is the named insured, resident spouse or civil union partner of the named insured on this policy and any resident relative who is not the named insured, spouse, or civil union partner of the named insured on another insurance policy and who is on, getting into or out of the insured auto or non-owned auto". Plaintiff Michael Scott was not a named insured, nor resident relative or resident spouse of Ms. Opfer. As such, pursuant to the policy, for any other person, the limits of liability of this coverage will be the mandatory minimums for this coverage specified by the laws of New Jersey." Mr. Scott acknowledges that he was not a resident spouse or resident relative of Ms. Opfer and as was correctly pointed out by Judge Johnson.

The third point Judge Johnson made as it pertained to the differences between the policy in Motil and the Allstate policy herein, as she clearly identified herein,

that Michael Scott was "any other person" and was, therefore, subject to the step-down provision. Judge Johnson went on to note that the charging of the same UIM premium for both vehicles is not ambiguous and did not suggest that Michael Scott would not be subject to the step-down provision.

It is clearly evident that Judge Johnson had a thorough understanding of the arguments and the applicable case law. Both parties had the opportunity during oral argument to further outline their respective claims. The Court's analysis is well reasoned and in keeping with the case law and should be upheld.

POINT III

THE TRIAL COURT CORRECTLY CONCLUDED THAT THERE WAS NO AMBIGUITY IN THE ALLSTATE INSURANCE COMPANY POLICY

In Point III, plaintiff argues that the step-down provision within the policy is ambiguous when compared to the Allstate declaration page. Plaintiff's argument, however, never sets forth what portion of the step-down policy provision is ambiguous nor how it is ambiguous. Plaintiff set forth no details describing what the policy itself provides with a comparison to what the declaration page provides. Plaintiff argues that the declaration page controls and that a reasonable objective review would extend UIM coverage to this plaintiff. There is, however, no comparison made in the argument that addresses the declaration page as compared to the step-down provision itself.

Plaintiff argues that he lost his UIM coverage but fails to acknowledge that plaintiff was afforded other coverage under the policy by way of PIP benefits. Any potential UIM benefits were subject to the step-down provision as contained in the policy. He did, however, have the State minimum UIM benefits under the policy. The Brief goes on to argue acknowledgment of a warning in the declaration page as it related to coverage for drivers who reside in the household. The Brief, however, does not acknowledge the warning contained in the declaration page regarding the

issue of changes to the UIM coverage. That he was encouraged to read. Plaintiff also was provided contact information on the declarations page where he could write, call or email the agent for any questions he had. Plaintiff never contacted Allstate and advised he was confused by the policy language.

It is well settled law in New Jersey that the words of an insurance policy are to be given their "plain, ordinary meaning," Zacarias v. Allstate Insurance Company, 168, N.J. 590, 595 (2001) Where there is no ambiguity, the Court should not write for the insured a better policy of insurance than the one purchased. Gibson v. Callahan, 158, N.J. 662, 675 (1999) As stated by the Court in Progressive v. Hurley, 166 N.J. 260 (1999) A genuine ambiguity arises only where the phrasing of the policy is so confusing that the average policy holder cannot make out the boundaries of coverage. At 274. When an insured purchases a policy of insurance the insured is expected to read it and the law may fairly impose upon him such restrictions, conditions and limitations as the average insured would ascertain from such reading. Morrison v. AM. Intern. Ins. Co. of AM, 381 N.J. Super 532, 542 (App. Div. 2005).

As noted by the Trial Court, the policy is not ambiguous and the warning is clearly identified in the declaration pages. That is all the carrier was obligated to do. Including every possible circumstance of how the policy could apply to all people

under various circumstances would turn the declaration page into the policy itself. The declaration page is a summary or snapshot of what the policy contains. A listed driver should not be heard to complain when he does not get the coverage he thought he had if he elected not to read it and understand it. If he actually sat for a few minutes and read the policy declarations, he would have been alerted to the step-down clause. Instead of reading the policy, he could have called the Allstate agent and asked how the policy coverages applied to him. There is no evidence he did anything like this so as to understand the policy. Being unaware of what the insurance policy covers is not a basis for claiming a reasonable expectation of coverage.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that the plaintiff's appeal should be denied.

Respectfully submitted,

John C. Prindiville

JOHN C. PRINDIVILLE

Dated: October 21, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET No. A-003019-24

CIVIL ACTION

MICHAEL SCOTT, Plaintiff-Appellants, **v.** **FALLON SNYDER, ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY, JOHN DOES, MARY DOES, ABC PARTNERSHIPS and XYZ CORPORATIONS, jointly, severally and in the alternative,** Defendants-Respondents.	APPEAL OF ORDERS OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION ATLANTIC COUNTY DOCKET NUMBER: ATL-L-1968-24 SAT BELOW: Hon. Sarah Beth Johnson, J.S.C.

REPLY BRIEF ON BEHALF OF PLAINTIFF MICHAEL SCOTT IN SUPPORT OF HIS APPEAL FROM FINAL JUDGMENTS OF THE SUPERIOR COURT, LAW DIVISION

D'Arcy Johnson Day
3120 Fire Road, Suite 100
Egg Harbor Township, New Jersey 08234
609-641-6200

ON THE BRIEF:

Richard J. Albuquerque, Esquire
Attorney ID No.: 025091996
RA@DJD.LAW

Dominic R. DePamphilis, Esquire
Attorney ID No.: 023292008
DD@DJD.LAW

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POINT I

THE ALLSTATE DECLARATION'S PAGE ESTABLISHES PLAINTIFF'S REASONBALE EXPECATION OF COVERAGE (Pa213)

Plaintiff's girlfriend, Katie Opfer, contracted with Defendant Allstate for $100,000 of UIM coverage to protect herself and Plaintiff Michael Scott against damages caused by an underinsured tortfeasor. In doing so, Allstate promised to step into the shoes of the underinsured motorist and to pay damages that Plaintiff would be legally entitled to obtain from that underinsured motorist, up to the UIM limits.

Other New Jersey cases – in addition to the Lehrhoff and Motil opinions cited in Plaintiff's Brief in Support of his Appeal – support the extension of UM/UIM coverage to listed drivers. See, e.g., Rider Ins. Co. v. First Trenton Cos., 354 N.J. Super. 491, 493 (App. Div. 2002). ("[T]he declaration page of Jones's mother's First Trenton policy names Jones as a driver. There were no indications or warnings on the declaration page that would lead Jones to conclude that he would not be eligible for UM coverage by First Trenton.").

Here, the declarations page informs Plaintiff's reasonable expectation of coverage and a plain language reading of the declarations page reveals that Plaintiff is entitled to UIM coverage. First, the declarations page identifies Plaintiff as a "listed driver." (Pa134). Second, the declarations page identifies

the 2016 Jeep Patriot operated by Plaintiff at the time of the accident as an "insured vehicle" covered under the policy, (Pa133). Finally, the declarations page reflects that Plaintiff is assigned as the primary operator to the 2016 Jeep Patriot. (Pa136). The language of the Allstate Declarations Page reinforced that Plaintiff – as a listed driver – was entitled to coverage under the policy and could reasonable expect to be covered.

The Severino case cited by Allstate is distinguishable. There, the plaintiff argued that he was a "named insured" because he was identified as a driver on the declarations page. See Severino v. Malachi, 409 N.J. Super. 82, 95-96 (App. Div. 2009) (Plaintiffs "assert that... [the policy holder] reasonably expected that Severino would be covered as a "named insured."). Here, Plaintiff contends he is entitled to coverage as an "insured person" despite not being identified as a "named insured." Indeed, even the Trial Court found Plaintiff to be an "insured person." (Pa217) ("Under the terms of the policy, Plaintiff is an insured person[.]").

Defendant has not pointed to any language on the declarations page which would limit Plaintiff's entitlement to UIM coverage. The absence of any limiting language on the declarations page is important. Again, the Lehrhoff court clearly and unequivocally held the listing of a driver on the declaration page of a policy would raise the expectation that the driver was "entitled to all of the coverages and all of the protections afforded by the policy[,]" see

Lehrhoff v. Aetna Cas. & Sur. Co., 271 N.J. Super. 340, 348 (App. Div. 1994), and those reasonable expectations "cannot be contradicted by the boilerplate (of the policy) **unless the declaration page clearly so warns the insured**[.]" Id. at 349 (emphasis added).

Though Allstate contends Plaintiff's expectation of coverage is unreasonable in light of the language of the UIM step-down, the Allstate step-down provision is one of the "hidden pitfalls" disfavored by the New Jersey Supreme Court. See, e.g., Kievit v. Loyal Prot. Life Ins. Co., 34 N.J. 475, 482 (1961) ("When members of the public purchase policies of insurance they are entitled to the broad measure of protection necessary to fulfill their reasonable expectations. They should not be subjected to technical encumbrances or to **hidden pitfalls** and their policies should be construed liberally in their favor to the end that coverage is afforded 'to the full extent that any fair interpretation will allow.'") (emphasis added).

POINT II

PLAINTIFF'S REASONABLE EXPECTATION OF UIM COVERAGE CONTROLS BECAUSE THE ALLSTATE POLICY IS AMBIGUOUS (Pa213)

The subject Allstate policy is ambiguous because the UIM endorsement takes away coverage provided by the declarations page.

The Supreme Court of New Jersey has explicitly instructed that "if an insured's 'reasonable expectations' contravene the plain meaning of a policy, **even its plain meaning can be overcome.**" Voorhees v. Preferred Mut. Ins. Co., 128 N.J. 165, 175 (1992) (citing Werner Indus. v. First State Ins. Co., 112 N.J. 30, 35-36 (1988)) (emphasis added).

Here, Plaintiff's reasonable expectation of coverage, based on the terms of the declarations page noted above, controls over the step-down language of the UIM endorsement. There exists an inherent ambiguity in an insurance contract if coverage confirmed by a declarations page is rendered illusory by the application of a language buried deep in the policy.

For these reasons, the Allstate policy is ambiguous and the policy should be construed to provide coverage to Plaintiff. See Lundy v. Aetna Cas. & Sur. Co., 92 N.J. 550, 559 (1983)

CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court (1) reverse the trial court's Order granting summary judgment to Defendant Allstate, (2) reverse the trial court's Order denying Plaintiff's cross-motion for summary judgment, and (3) enter an order granting Plaintiff's cross-motion for summary judgment.

D'ARCY JOHNSON DAY

By: _____
Richard J. Albuquerque, Esquire

DATED: November 7, 2025

D'ARCY JOHNSON DAY

By: _____
Dominic R. DePamphilis, Esquire

DATED: November 7, 2025

MICHAEL SCOTT, Plaintiff-Appellant, v. FALLON SNYDER, ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY, JOHN DOES, MARY DOES, ABC PARTNERSHIPS and XYZ CORPORATIONS, jointly severally and in the alternative, Defendants-Respondents.	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION** DOCKET NO. A-003019-24 Civil Action On Appeal from Superior Court of New Jersey Law Division: Atlantic County Docket No. ATL-L-1968-24 Sat Below: Hon. Sarah Beth Johnson, J.S.C.

BRIEF OF NEW JERSEY ASSOCIATION FOR JUSTICE AS *AMICUS CURIAE* IN SUPPORT OF REVERSING THE ORDERS OF THE TRIAL COURT

On the brief and of counsel:

Sherry L. Foley, Esq. (#009821988)
sfoley@appealsnj.com

Timothy J. Foley, Esq. (#042741990)
tfoley@appealsnj.com

FOLEY & FOLEY
600B Lake Street, Suite 2
Ramsey, New Jersey 07446
(973) 304-6003

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PRELIMINARY STATEMENT

The New Jersey Association for Justice (NJAJ) moves for leave to appear as *amicus curiae* in this appeal to address the novel issue of what constitutes a clear and sufficient warning to an insured that expected coverage under the express provisions of the declarations does not actually exist. The trial court erred by finding that language contained on page six of nine pages of declarations, which was equivocal and unclear, was sufficient to defeat the reasonable expectations of the insured that he was covered fully for underinsured motorist (UIM) benefits. That language falls far short of the straightforward and unconditional warning required by our caselaw and public policy.

Lehrhoff v. Aetna Casualty & Surety Co., 271 N.J. Super. 340, 347 (App. Div. 1994), established that the "reasonable expectations of coverage raised by the declaration page cannot be contradicted by the policy's boilerplate unless the declaration page itself clearly so warns the insured." In Motil v. Wausau Underwriters Ins. Co., 478 N.J. Super. 328, 340 (App. Div. 2024), this Court explained what a sufficient warning would have been in that case. "The drafters could have unambiguously included language in either the declaration or the policy alerting that a covered driver using a "covered auto" with an identified alternate garaging address was subject to the step-down in coverage. Specifically, the policy could have clarified that the only qualifying "household" was the residence

of the named insured and an identified alternate address was excluded.**"** The alleged warning at bar does not meet the specificity and clarity required by Lehrhoff and Motil.

Most pertinently, the language is ambiguous. It equivocally states that uninsured motorist (UM), UIM and other coverages "may be reduced or excluded" by other provisions in the policy and the insured should read the policy. There is no reference to a specific provision nor is there an unambiguous expression that UIM coverage is definitely reduced. According to Motil, to be sufficient, the warning should have expressly stated that plaintiff, although a fully disclosed, covered driver, would not get the same UM/UIM benefits as the named insured and that those benefits would be subject to a step-down in coverage. Absent that warning, plaintiff was entitled to full coverage as identified in the declaration pages.

Under the controlling caselaw, the reasonable expectations of the insured should be considered, regardless of the existence of ambiguity in the insurance contract, where, as here, the policy seeks to limit included coverage in an unclear manner. "The interpretation of insurance contracts to accord with the reasonable expectations of the insured, regardless of the existence of any ambiguity in the policy, constitutes judicial recognition of the unique nature of contracts of insurance." Sparks v. St. Paul Ins. Co., 100 N.J. 325, 338 (1985). The court's first

duty in interpreting an insurance contract should be to ensure that it aligns with the reasonable expectations of the insured. At bar, those reasonable expectations entitle plaintiff to full UIM coverage as expressly stated in the declarations. The alleged warning here does not meet the clarity of the warning required by Lehrhoff and Motil. NJAJ respectfully urges this Court to reverse the decision below.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

NJAJ incorporates by reference and relies on the Procedural History and Statement of Facts contained in appellant's opening brief. Pb2-8.

LEGAL ARGUMENT

POINT I

CASELAW AND PUBLIC POLICY REQUIRE A CLEAR, UNEQUIVOCAL WARNING THAT COVERAGE DELINEATED IN THE DECLARATION PAGES IS EXCLUDED OR REDUCED BY OTHER PROVISIONS OF THE INSURANCE POLICY.

A. History of Broad Automobile Insurance Coverage.

Beginning in 1969, the Legislature mandated that uninsured motorist coverage be included in all policies of insurance issued in New Jersey. Riccio v. Prudential Prop. & Cas. Ins. Co., 108 N.J. 493, 499 (1987). "The stated purpose of the enactment was 'to provide greater protection for the victims of the uninsured motorists.'" Ibid. (quoting Gorton v. Reliance Ins. Co., 77 N.J. 563, 571 (1978)). Uninsured motorist insurance has been described as a "gap-filler." "It is 'designed

to afford maximum protection to a state's residents, and to fill gaps in compulsory insurance plans.'" Riccio, 108 N.J. at 499 (quoting 8D Appleman, Insurance Law and Practice, § 5057.45 at 41 (1981)).

Underinsured motorist coverage is optional first-party coverage insuring the policy holder, and others, against the possibility of injury or property damage caused by the negligent operation of a motor vehicle whose liability insurance coverage is insufficient to pay for all losses suffered. The nature of the coverage is defined by N.J.S.A. 17:28-1.1(e). Since 1983, it must be offered as a mandatory option by insurers pursuant to N.J.S.A. 17:28-1.1(b). UIM also has been described as a "stop gap measure" to protect innocent accident victims from being left without a remedy. See French v. N.J. School Bd. Ass'n Ins. Group, 149 N.J. 478, 482 (1997). The UM/UIM statutes are remedial in nature, designed to fill the gaps in New Jersey's compulsory insurance laws. Riccio, 108 N.J. at 499.

"Although the relationship of the insurer and insured is contractual, the source of the obligation to offer UIM coverage is statutory." Zirger v. Gen. Acc. Ins. Co., 144 N.J. 327, 333 (1996). In New Jersey, insureds have the option of purchasing UIM coverage related to the limits chosen for liability coverage. N.J.S.A. 17:28-1.1(b). "The purpose of UIM coverage 'is to provide as much coverage as an insured is willing to purchase, up to the available limits, against the risk of an underinsured claim.'" Gambino v. State Farm Ins. Co., 348 N.J. Super.

204, 207 (App. Div. 2002) (quoting Nikiper v. Motor Club of Am. Cos., 232 N.J. Super. 393, 399 (App. Div.), certif. denied, 117 N.J. 139 (1989)). The legislative mandate, requiring carriers to offer UIM coverage, reveals an "evident perception that in terms of obtaining an adequate recovery from a negligent driver, the victim, especially one sustaining serious injuries, is placed at financial risk not only by uninsured drivers but also by underinsured drivers," especially those carrying only the minimum statutory liability coverage. Longworth v. Van Houten, 223 N.J. Super. 174, 177 (App. Div. 1988). Recently, the Legislature expanded UM/UIM coverage to employees driving corporate cars under corporate auto policies. N.J.S.A. 17:28-1.1(f). The Legislature has recognized that despite mandatory auto insurance, many New Jersey drivers remain uninsured or underinsured.

B. The Reasonable Expectations of the Insured.

1. Kievit v. Loyal Protective Life Ins. Co., 34 N.J. 475 (1961).

As early as 1961, our Supreme Court recognized that policies of insurance must be construed liberally to the extent that a fair interpretation will allow to fulfill an insured's reasonable expectations. At issue in Kievit was the interpretation of an Accident Policy that purported to insure against "loss resulting directly and independently of all other causes from accidental bodily injuries," which contained an exception for "disability or other loss resulting from or contributed to by any disease or ailment." Id. at 477. The insurer provided

payments and then discontinued them on the ground that plaintiff's disability did not result directly and "independently of all other causes" from accidental bodily injuries but was contributed to by a "disease or ailment." The insured commenced suit.

Evidence was adduced by the insurance company at trial that Mr. Kievit had pre-existing Parkinson's disease that contributed to his disability. The trial court found for the defendant, and the Appellate Division affirmed. Our Supreme Court reversed, focusing on "the fair purpose and intendment of the defendant's policy." Id. at 482.

The Kievit Court held:

> When members of the public purchase policies of insurance they are entitled to the broad measure of protection necessary to fulfill their reasonable expectations. They should not be subjected to technical encumbrances or to hidden pitfalls and their policies should be construed liberally in their favor to the end that coverage is afforded 'to the full extent that any fair interpretation will allow.' Francis, J., in Danek v. Hommer, 28 N.J. Super. 68, 76 (App. Div. 1953), affirmed, 15 N.J. 573 (1954). See Schneider v. New Amsterdam Cas. Co., 22 N.J. Super. 238, 242 (App. Div. 1952); Mahon v. American Cas. Co. of Reading, [] 65 N.J. Super. [148,] 165 [(App. Div. 1961)]; cf. Dittmar v. Continental Cas. Co., 29 N.J. 532, 542 (1959); Yannuzzi v. U.S. Casualty Co., 19 N.J. 201, 207 (1955). See also Matits v. Nationwide Mutual Ins. Co., 33 N.J. 488, 495 (1960); Indemnity Ins. Co., etc. v. Metropolitan Cas. Ins. Co. of New York, 33 N.J. 507, 512 (1960).
>
> [Id. at 482-83.]

The Kievit Court noted that a court's goal in construing an insurance policy "is to effectuate the reasonable expectations of the average member of the public

who buys it; he may hardly be expected to draw any subtle or legalistic distinctions based on the presence or absence of the exclusionary clause for he pays premiums in the strong belief that if he sustains accidental injury which results (in the commonly accepted sense) in his disability he will be indemnified and not left empty-handed on the company's assertion that his disability was caused or contributed to by a latent disease or condition of which he was unaware and which did not affect him before the accident." Id. at 489 (citations omitted). The import of the Court's opinion in Kievit is summed up in this one line: "The court ought not to construe a contract so as to defeat rather than promote the purpose of the party in taking out the insurance." Ibid.

2. Sparks v. St. Paul Ins. Co., 100 N.J. 325 (1985).

At issue in Sparks was the enforceability of certain coverage limitations contained in an alleged "claims made" professional liability insurance policy issued by the defendant insurance company. The case arose out of the professional malpractice of the plaintiffs' attorney. The plaintiffs demanded that the insurer provide coverage under the subject policy for the attorney's negligence. The insurer denied coverage claiming notice of the claim was untimely under the policy. The policy, although delineated a "claims made" policy, "afforded the insured only minimal protection against professional liability claims. Only claims asserted during the policy year, based on negligence that occurred during the

policy year, and that were subsequently communicated to the company during the policy year were under the umbrella of coverage." Id. at 339. Without finding ambiguity, the Sparks Court, nevertheless, found the policy "does not conform to the objectively reasonable expectations of the insured." Ibid.

Although noting that courts do not ordinarily interfere with the freedom to contract, the Court addressed the recognition that insurance policies are "contracts of adhesion, prepared unilaterally by the insurer, and have always been subjected to careful judicial scrutiny to avoid injury to the public." Id. at 334 (citing DiOrio v. New Jersey Mfrs. Ins. Co., 79 N.J. 257, 269 (1979), and Allen v. Metropolitan Life Ins. Co., 44 N.J. 294, 305-06 (1965)). As a result, any ambiguities in insurance policies are construed against the insurer. "The recognition that insurance policies are not readily understood has impelled courts to resolve ambiguities in such contracts against the insurance companies." Id. at 336 (citations omitted).

More importantly for purposes of this appeal, unambiguous contracts are enforced according to the reasonable expectations of the insured. "**This recognition has also led courts to enforce unambiguous insurance contracts in accordance with the reasonable expectations of the insured**." Ibid. (emphasis supplied). As an example, the Sparks Court cited Gerhardt v. Continental Ins. Cos., 48 N.J. 291 (1966). In that case, the insured claimed that her comprehensive

homeowner's policy covered a worker's compensation claim by a residential employee injured while working at the insured's home. As to the policy's express exclusion of worker's compensation coverage, the Gerhardt Court noted: "As far as the plaintiff here was concerned, nowhere was there any **straightforward and unconditional statement** that the policy was not intended to protect the insured against a workmen's compensation claim by a residence employee injured at the insured's home." Gerhardt, 48 N.J. at 299 (citation omitted). The Gerhardt Court "determined that the language in issue, while perhaps not ambiguous, **was nevertheless insufficiently clear to justify depriving the insured of her reasonable expectation that coverage would be provided**." Ibid. (emphasis supplied); see Sparks, 100 N.J. at 336 (citing Gerhardt with approval).

To sum up, the Sparks case stands for the proposition that "[t]he interpretation of insurance contracts to accord with the reasonable expectations of the insured, **regardless of the existence of any ambiguity in the policy**, constitutes judicial recognition of the unique nature of contracts of insurance." Sparks, 100 N.J. at 338 (emphasis supplied). It also provides guidance regarding the language required to warn an insured that coverage they reasonably expected to be included was actually excluded or reduced. The statement of excluded or reduced coverage must, per Sparks and Gerhardt, be **straightforward and unconditional**. Sparks, 100 N.J. at 336; Gerhardt, 48 N.J. at 299. Even if

unambiguous, the language must be crystal clear to justify depriving the insured of the reasonable expectation that coverage would be provided.

3. Lehrhoff v. Aetna Cas. & Surety Co., 271 N.J. Super. 340 (App. Div. 1994).

In Lehrhoff, this Court dealt with a similar issue to the case at bar. The plaintiff, Steven Lehrhoff, the adult son of the insured, was named on the declarations page of the policy as a driver of an insured vehicle. During the policy period, Steven, while a pedestrian, was injured in California in a traffic accident he attributed to the fault of an unidentified motorist. He filed a claim for UM benefits under the policy. The insurer rejected the claim, asserting that Steven was no longer a resident of his father's household when the injuries were sustained based on the policy's definition of a "family member" that would be entitled to full UM coverage under the policy. Id. at 342. This Court held that as a "named driver," Steven was entitled to UM coverage regardless of whether he was a member of the named insured's household. Ibid.

Squarely before the Lehrhoff court was the issue of "whether the reasonable expectations of the insured raised by the declarations page of the policy may be defeated by express policy provisions to the contrary." Ibid. The answer was a resounding "No." Simply stated, because Steven was a named driver under the policy and there was no express warning on the declaration page to indicate his

entitlement to UM benefits was reduced or excluded, he was entitled to full UM coverage. Ibid.

In analyzing the insurance documents in Lehrhoff, the Honorable Sylvia B. Pressler, P.J.A.D., writing for this Court, considered the declaration page to be of "signal importance."

> There has been little judicial consideration of the import of the declaration page of an insurance policy in terms of the construction of the policy as a whole and in terms of its capacity to define the insured's reasonable expectations of coverage. We, however, regard the declaration page as having signal importance in these respects. A personal automobile insurance policy is a bulky document, arcane and abstruse in the extreme to the uninitiated, unversed and, therefore, typical policyholder. We are persuaded, therefore, that a conscientious policyholder, upon receiving the policy, would likely examine the declaration page to assure himself that the coverages and their amounts, the identity of the insured vehicle, and the other basic information appearing thereon are accurate and in accord with his understandings of what he is purchasing. We deem it unlikely that once having done so, the average automobile policyholder would then undertake to attempt to analyze the entire policy in order to penetrate its layers of cross-referenced, qualified, and requalified meanings. Nor do we deem it likely that the average policyholder could 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. We are, therefore, convinced that it is the declaration page, the one page of the policy tailored to the particular insured and not merely boilerplate, which must be deemed to define coverage and the insured's expectation of coverage. And we are also convinced that reasonable expectations of coverage raised by the declaration page cannot be contradicted by the policy's boilerplate **unless the declaration page itself clearly so warns the insured**.
>
> [Id. at 346-347 (emphasis supplied).]

Giving effect to the reasonable expectations of the insured is paramount in insurance policy construction "to protect insureds from what Judge Baime has aptly characterized as the insurance industry's 'unholy mantra' of 'we collect premiums; we do not pay claims.'" Id. at 347 (quoting Owens-Illinois, Inc. v. United Ins. Co., 264 N.J. Super. 460 (App. Div. 1993)). The Lehrhoff court recognized and reaffirmed that an "important corollary of the reasonable-expectation doctrine, at least in respect of the consumer market, is that **reasonable expectations will, in appropriate circumstances, prevail over policy language to the contrary**." Ibid. (emphasis supplied). Citing to Kievit, Judge Pressler emphasized Justice Jacobs' opinion that "[w]here particular provisions, if read literally, would largely nullify the insurance, they will be severely restricted so as to enable fair fulfillment of the stated policy objective." Ibid. (quoting Kievit, 34 N.J. at 483).

The Lehrhoff decision also adopted and relied on Justice Stein's discussion of the reasonable-expectations doctrine in Sparks. 271 N.J. Super. at 348. "The objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations." Sparks, 100 N.J. at 338-39 (citations omitted). Relying on those principles, the Lehrhoff court viewed the issue as **"**whether the typical automobile policyholder 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." 271 N.J. Super. at 348. The court concluded: "we look at the declaration page from the point of view of the insured. All that really appears on it is identity of coverages and identity of drivers. The natural, sensible and wholly justifiable inference is that by listing the drivers using the vehicle, including the insured himself, the purchaser of the policy is protecting all of them equally and, presumably, protecting them equally in respect of all the stated coverages without qualification and without limitation." Id. at 349.

4. Motil v. Wausau Underwriters Ins. Co., 478 N.J. Super. 328 (App. Div. 2024).

The Motil case involved circumstances strikingly similar to the case *sub judice*, except that plaintiff here resides with the named insured under the policy and defendant here claims that the declarations pages provided a sufficient warning to deprive plaintiff of full UIM coverage. In Motil, the court decided the then "novel" issue of "whether plaintiff was entitled to UIM coverage as a 'covered driver' injured in an automobile accident while driving a 'covered auto' with an identified alternate garaging address under her parents' automobile policy." Id. at 332. The defendant disclaimed coverage under the policy's UM/UIM endorsement step-down provision because the plaintiff was neither a named insured nor a

defined family member. This Court concluded that "there was ambiguity between the declaration and the policy's step-down provision of $15,000 in UIM coverage because the declaration plainly provided: $100,000 UM/UIM coverage for each person; the plaintiff was a covered driver; the UM/UIM premium charged was the same for each vehicle; and the plaintiff's vehicle was a covered vehicle with an alternate garaging address. Thus, the policyholder's reasonable expectation of $100,000 UIM coverage should be afforded." Ibid. The same is true at bar except that plaintiff's vehicle was garaged in the same location as the named insured.

The Motil court recognized that not only named insureds are entitled to coverage under automobile insurance policies. "[T]he term "named insured" is self-defining. The term refers only to the names so appearing in the declaration. On the other hand, an insured is [anyone] who is entitled to coverage. This coverage may result by virtue of a person's status as an operator or occupier of a covered auto." Id. at 338 (citing Botti v. CNA Ins. Co., 361 N.J. Super. 217, 226 (App. Div. 2003)). Relying on Lehrhoff and the language of our Supreme Court in Zacarias v. Allstate Ins. Co., 168 N.J. 590 (2001), stating that insurance policies shall be construed "against the insurer, consistent with the reasonable expectations of insureds, when those policies are **overly complicated**, **unclear**, or **written as a trap for the unguarded consumer**," Zacarias, 168 N.J. at 604 (emphasis supplied), this Court held that the lack of clarity between the declarations and the

policy created an ambiguity entitling plaintiff to full UIM coverage. 478 N.J. Super. at 341.

The Motil court stated: "Here, the declaration listed plaintiff as a *covered* driver. Further, the declaration illustrated the Motils paid the same $103 premium per vehicle for the four identified vehicles and $100,000 in UIM coverage for '[e]ach [p]erson.' An objective review of the declaration indicates that because the UIM coverage premiums were the same for each vehicle, the provided UIM coverage would be the same for a named insured, family member, or covered driver, particularly since the declaration included an alternate garaging address for the Jeep." Id. at 339-340. Further, this Court held: "Pursuant to the language of the declaration, the policyholder had the reasonable expectation that plaintiff, as a covered driver, was entitled to the same UIM policy coverage. Because the ambiguity and contradiction between the declaration and the policy obfuscates the application of the step-down, the 'reasonable expectations doctrine' controls. As we established in Lehrhoff, '[t]he interpretation of insurance contracts to accord with the reasonable expectations of the insured, regardless of the existence of any ambiguity in the policy, constitutes judicial recognition of the unique nature of contracts of insurance.' 271 N.J. Super. at 348 (quoting Sparks, 100 N.J. at 338)." Motil, 478 N.J. Super. at 341.

C. The Allstate Policy.

Applying the foregoing principles to the policy at bar, the alleged notice of reduced coverage contained in the declarations pages missed the mark of what is required by caselaw and public policy and what is consistent with the reasonable expectations of the insureds. Preliminarily, whereas there was one declaration page in Lehrhoff and four declaration pages in Motil, there are **nine** declaration pages in the subject policy. The first page contains the covered vehicles and the named insured, Katie Opfer, and her address. The two vehicles covered by the policy are a 2021 Toyota Highlander and a 2016 Jeep Patriot. Pa127.

On the next page, plaintiff and Ms. Opfer are identified as "listed drivers on your policy." There is also a warning that if there are other licensed drivers in the household and they are not identified, "a loss may not be covered by this policy because the automobile was being operated by someone residing at your house who is not listed in the policy." Pa128. As a "listed driver," plaintiff is a "named driver" or a "covered driver" within the meaning of Lehrhoff and Motil, respectively. Steven Lehrhoff was a "named driver" entitled to full UM coverage because he was listed as a driver under the heading "Driver Information." Under the same circumstances, the Motil court referenced the plaintiff as a "covered driver." Those exact terms are not used in the policies in those cases but were used by the courts in their decisions. In the same way, as a "listed driver," plaintiff is a

"covered driver" under Motil or a "named driver" under Lehrhoff. Any distinction defendant seeks to draw is a distinction without a difference. According to Lehrhoff, "each of the listed drivers was entitled to all of the coverages and all the protections afforded by the policy." Lehrhoff, 271 N.J. Super. at 348.

The third and fourth pages of the declarations contain coverage details for the two insured automobiles under the policy. The coverage is identical for both vehicles **with excluded coverages highlighted in bold**. The rating information for the 2021 Toyota Highlander is based on Ms. Opfer and states in pertinent part that "the rating information for this vehicle is: married female age 35." Pa129. The rating information for the 2016 Jeep Patriot is based on plaintiff and states that "the rating information for this vehicle is: married male age 37." Pa130. That is how the policy was underwritten and that is why the coverage for each vehicle is the same. Notably, the premiums for UM/UIM coverage are identical for the vehicles. There is no indication on that page that plaintiff's UM/UIM coverage is limited, reduced or in any way differs from the coverage afforded to Ms. Opfer. Pa130.

Page 5 of the declarations lists additional coverage and **in bold is coverage that is not included**. **Also bolded is pertinent payment information**. Pa131. There is no indication of limitation or reduction of plaintiff's coverage.

Page 6 contains "New Jersey required communications." The first item listed pertains to New Jersey Vehicle Inspection. The second item listed is the alleged warning on which defendant and the trial court relied to reduce the UIM benefits to which plaintiff was entitled. Contrary to defendant's attempt to mislead this Court, **it is not in bold**. Pa132; see Db4. Rather, the only bolded item on that page pertains to the Limited Right to Sue option which states: "**The Limited Right to Sue option applies to your policy**." Pa132.

Contrary to our jurisprudence as detailed above, the language is neither clear and unambiguous nor straightforward and unconditional. The language used is expressly equivocal. It states only that UM/UIM coverage "may" be impacted by other provisions and the insured should read the contract. As a matter of fact and law, that "warning" is insufficient to negate the reasonable expectations of the insureds that they would receive equal protection under the policy. Motil, 478 N.J. Super. at 340. "**The drafters could have unambiguously included language in either the declaration or the policy alerting that a covered driver using a 'covered auto' with an identified alternate garaging address was subject to the step-down in coverage. Specifically, the policy could have clarified that the only qualifying 'household' was the residence of the named insured and an identified alternate address was excluded**." Ibid. (emphasis supplied)

To pass muster, the insurer here needed to state unequivocally that plaintiff, although a fully disclosed, covered driver, would not get the same UM/UIM benefits as the named insured and that those benefits would be subject to a step-down in coverage. Defendant failed to do so. At a minimum, by its own drafting standards, the insurer should have bolded/highlighted the provision to bring it to plaintiff's attention as it did with the provisions cited above and many other provisions. "**To make it easier to see where you may have gaps in your protection, we've highlighted any coverages you do not have in the Coverage Detail section in the enclosed Policy Declarations.**" Pa035 (emphasis in original). UM/UIM coverage is not highlighted.

Moreover, under the heading "**Insuring Agreement,**" the insurer states that "A coverage applies only when a premium for it is shown in the Policy Declarations or when the Policy Declarations lists the coverage as being 'Included.' On your Policy Declarations, coverages may be shown for each auto." Pa072. As mentioned above, identical UM/UIM coverage was included for both insured vehicles and the premiums for UM/UIM coverage on each vehicle were identical. To dilute coverage that the express language of the policy indicated unequivocally was included, the insurer had the duty to disclaim those coverages equally unequivocally. Anything less borders on deceptive and constitutes a windfall for the insurer.

By contrast, the very next page in the declarations reduces PIP coverage as follows: "A named operator on this policy who is not a named insured or resident relative is entitled to PIP benefits **only** when they sustain a bodily injury while occupying, using, entering into or alighting from the insured automobile with the permission of the named insured and have no other available coverage. **You may be able to save money if you have health insurance; contact your agent for more information**." Pa133 (emphasis in original). The insurer obviously knows how to draft a provision in a clear and unequivocal manner and knows how to bring provisions it deems important to an insured's attention. Defendant failed to do either with reference to UM/UIM coverage.

Because the policy was underwritten as a married couple residing at the same address, neither the insureds nor the underwriter contemplated the step-down applying to one of the insureds. Instead, after the fact, the adjuster scoured the contract to find a loophole to deny coverage. There is no shortage of loopholes in insurance policies. Like the plaintiffs in Kievit, Sparks, Gerhardt, Lehrhoff and Motil, based on the nature and extent of the insurance purchased, and that the premiums paid for the same UM/UIM coverage were exactly the same, the covered insureds at bar reasonably expected that they would be entitled to the coverage identified in the declarations pages. As a matter of law and public policy, the

alleged warning that that was not the case was deficient and cannot defeat the reasonable expectations of the insured.

CONCLUSION

For the reasons stated herein, NJAJ urges this court to reverse the decision below and affirm the long line of New Jersey caselaw recognizing and prioritizing the fulfillment of the reasonable expectations of the insured.

Respectfully submitted,

FOLEY & FOLEY
Counsel for Amicus Curiae
NEW JERSEY ASSOCIATION FOR JUSTICE

By: */s Sherry Foley*
Sherry L. Foley

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