

Richard J. Albuquerque, Esquire - Attorney ID No.: 025091996
D'ARCY JOHNSON DAY
3120 Fire Road, Suite 100
Egg Harbor Township, NJ 08234
(609) 641-6200
Attorneys for Amicus Curiae
New Jersey Association for Justice

Nicky Travieso and Evette
Travieso,

Plaintiff-Respondents,

vs.

Ciara Crespo, Nilda Rivera, John
Doe(s), Jane Doe(s), ABC
Corporation(s), and Foulke
Management,

Defendants,

and

Zurich American Insurance
Company,

Defendant-Appellant.

SUPREME COURT OF NEW JERSEY

DOCKET NO. 091127

Civil Action

On Appeal of Interlocutory Orders of
the Superior Court, Law Division dated
May 23, 2025 and July 7, 2025

Docket No.: CAM-L-1502-24

SAT BELOW:

Hon. Donald J. Stein, J.S.C.

**BRIEF ON BEHALF OF NEW JERSEY ASSOCIATION FOR
JUSTICE (NJAJ) FOR LEAVE TO APPEAR AS AMICUS CURIAE**

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

Dominic R. DePamphilis, Esquire - Attorney ID No.: 023292008

Table of Contents

Table of Citations.....ii

Procedural History & Statement of Facts..... 1

Legal Argument..... 2

Point I

Allowing employers to elect low UM/UIM limits – while at the same time electing higher liability limits – is an attempt by employers to circumvent the legislature’s desired goal of protecting New Jersey employees..... 3

Point II

New Jersey employees are limited to, and consequently rely upon, the insurance coverage provided by employers..... 6

Conclusion..... 9

Table of Citations

Cases

Am. Cas. Co. v. Lattanzio, 78 N.J. Super. 404, 410 (Ch. Div. 1963).....7

Empire Fire & Marine Ins. Co. v. Gsa Ins. Co., 354 N.J. Super. 415, 417
(App. Div. 2002).....6

Fiscor v. Atl. Cty. Bd. of Chosen Freeholders, 293 N.J. Super. 19 (App.
Div. 1996).....7

James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 568 (2014).....3

Venters v. Selected Risks Ins. Co., 120 N.J. Super. 549 (App. Div. 1972)....7

Statutes

N.J.S.A. 17:28-1.1(f)..... 2-5

N.J.S.A. 39:6A-4.....6

Other Authorities

Legislative statement accompanying S-1666.....4

PROCEDURAL HISTORY & STATEMENT OF FACTS

Amicus Curiae relies upon and adopts the Procedural History and Statement of Facts of Plaintiff-Respondents Nicky Travieso and Evette Travieso.

LEGAL ARGUMENT

Amicus Curiae makes two arguments. First, allowing employers to elect low UM/UIM limits – while at the same time electing higher liability limits – employers can avoid the anti-step-down provision of N.J.S.A. 17:28-1.1(f) and simultaneously circumvent the legislature’s desired goal of protecting New Jersey employees. Permitting this practice is manifestly unfair to New Jersey employees who must bear the risk of inadequate UM/UIM coverage.

Second, because there is no guarantee New Jersey employees are protected under their own personal policies when hurt on the job in an employer’s commercial vehicle, New Jersey employees are limited to, and consequently rely upon, the coverage elected by their employers. Fairness thus demands that New Jersey employees be provided the maximum available amount of UM/UIM coverage by operation of law.

Point I

Allowing employers to elect low UM/UIM limits – while at the same time electing higher liability limits – is an attempt by employers to circumvent the legislature’s desired goal of protecting New Jersey employees.

Allowing employers to elect low UM/UIM limits – while at the same time electing higher liability limits – is an effective “end-run around” the intended ultimate goal of N.J.S.A. 17:28-1.1(f), which is to protect employees.

The legislative statement accompanying the S-1666 amendment explained:

Further, the bill expressly 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 any individual employed by the corporate or business entity[.]**

[Id (emphasis added).]

This Court reinforced the legislative goal to protect employees when it explained that under N.J.S.A. 17:28-1.1(f) “[i]f the corporation or the business entity is the only named insured, then **employees of that entity must receive under the commercial policy the maximum available amount of UM/UIM coverage by operation of law[.]**” James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 568 (2014) (emphasis added).

If an unscrupulous employer wanted to circumvent this legislative goal and violate New Jersey’s public policy protecting individual employees by

providing the least amount of UM/UIM coverage to its employees, all that employer would need to do would be to elect statutory minimum UM/UIM coverage and ensure that no UM/UIM step-down provision was contained in the UM/UIM endorsement. Doing so allows the employer to purchase the least amount of UM/UIM coverage for its employees while at the same time avoiding the anti-step-down provision of N.J.S.A. 17:28-1.1(f).

Defendant-Respondent claims this Court's adoption of Plaintiff-Appellant's interpretation of N.J.S.A. 17:28-1.1(f) amounts to impermissible judicial infringement on the private contractual rights of business owners and improper judicial reformation of New Jersey auto policies.

This unfounded contention ignores the fact that auto insurance in New Jersey is a highly-regulated industry, and the legislature has enacted many statutes aimed at curbing insurance policy abuses by employers, of which N.J.S.A. 17:28-1.1(f) is one. See, e.g., legislative statement accompanying S-1666 ("This bill prohibits the use of 'step-down' provisions in motor vehicle liability policies issued to corporate or business entities to lower uninsured or underinsured motorist coverage for employees to the limits of coverage available to the employees under their personal policies.").

While Defendant-Respondent contends business owners have the "freedom" to choose which levels of UM/UIM coverage to purchase,

Defendant-Respondent ignores that it is the employees (i.e., those not deciding which UM/UIM coverage to purchase) who bear the burden of low and inadequate UM/UIM coverage. Again, this is the ultimate result N.J.S.A. 17:28-1.1(f) was intended to avoid.

Amicus NJAJ asks this Court to prohibit the unfairness forced on New Jersey employees which results from the practice of Defendant and other businesses attempting to circumvent the anti-step-down provision of N.J.S.A. 17:28-1.1(f).

Point II

New Jersey employees are limited to, and consequently rely upon, the insurance coverage provided by employers.

More often than not, employees are limited to the coverage elected by their employers and cannot make claims against their own personal auto policies, which most likely exclude coverage for accidents which occur in an employer's vehicle.

Two such situations frequently arise. On one hand, in the PIP context, the employee's personal auto carrier may consider the employer's vehicle to be a commercial vehicle which does not meet the definition of an "automobile," for which there would be no PIP coverage under the personal auto policy. See, e.g., Empire Fire & Marine Ins. Co. v. Gsa Ins. Co., 354 N.J. Super. 415, 417 (App. Div. 2002) (recognizing commercial vehicles are not within the definition of "automobile" as used in N.J.S.A. 39:6A-4 and, therefore, are not statutorily required to maintain PIP coverage).

On the other hand, many carriers write policies with "regular use" exclusions which bar coverage under the personal auto policy for noncovered autos furnished for the regular use of the insured. One New Jersey Court explained the regular use exclusion "manifests an intention on the part of the insurer to protect itself from a situation whereby an insured could purchase a

policy covering one automobile and be covered without qualification as to all automobiles available for his use. [...] Thus, this type of policy extends coverage to the casual or occasional driving of automobiles other than those specifically covered without payment of an extra premium, while excluding the use of automobiles which are furnished for the regular use of the insured.” Am. Cas. Co. v. Lattanzio, 78 N.J. Super. 404, 410 (Ch. Div. 1963) (citations omitted); See e.g. Venters v. Selected Risks Ins. Co., 120 N.J. Super. 549 (App. Div. 1972) (holding an injured employee operating a bus within the scope of his employment was precluded from recovering under his personal automobile liability policy because the accident occurred in a vehicle that was furnished for his regular use); Fiscor v. Atl. Cty. Bd. of Chosen Freeholders, 293 N.J. Super. 19 (App. Div. 1996) (holding that the plaintiff, the warden of the Atlantic County jail, who was injured in an accident while operating a county-owned vehicle was not entitled to coverage under personal automobile liability policy because the accident occurred while he was operating a vehicle that was furnished for his regular use).

In short, there is no guarantee New Jersey employees are protected under their own personal policies when hurt on the job in an employer’s commercial vehicle. When injured employees cannot make claims under their personal auto policies, the employees are limited to the coverage elected by their employers.

Again, the employees rely upon the availability of the employer's coverage and most likely have no other avenue of recovery.

CONCLUSION

For all of the foregoing reasons, Amicus Curiae respectfully requests that the Court to interpret N.J.S.A. 17:28-1.1(f) so as to afford the greatest protection to New Jersey employees and provide the maximum available amount of UM/UIM coverage by operation of law.

Respectfully submitted,

Dated: January 5, 2026

By: 
RICHARD J. ALBUQUERQUE, ESQUIRE

Dated: January 5, 2026

By: 
DOMINIC R. DePAMPHILS, ESQUIRE