
Supreme Court of New Jersey

Docket No. _____

NICKY TRAVIESO and EVETTE TRAVIESO,	:	CIVIL ACTION
	:	
	:	ON MOTION FOR LEAVE TO
<i>Plaintiffs,</i>	:	APPEAL FROM AN
	:	INTERLOCUTORY ORDER
vs.	:	OF THE SUPERIOR COURT
	:	OF NEW JERSEY,
CIARA CRESPO, NILDA RIVERA, ZURICH AMERICAN INSURANCE COMPANY, JOHN DOE(S), JANE DOE(S), ABC CORPORATION(S), and FOULKE MANAGEMENT,	:	APPELLATE DIVISION
	:	
	:	DOCKET NO.: AM-000596-24T3
	:	
	:	Sat Below:
<i>Defendants.</i>	:	HON. JOSEPH L. MARCZYK, J.A.D.
	:	

BRIEF OF DEFENDANT ZURICH AMERICAN INSURANCE COMPANY IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

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TABLE OF CONTENTS

	Page
TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED	iii
TABLE OF AUTHORITIES	iv
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	3
STATEMENT OF THE FACTS	8
LEGAL ARGUMENT	9
I. THE COURT SHOULD GRANT LEAVE TO APPEAL AND CORRECT THE TRIAL COURT’S ERROR OF LAW BEFORE TRIAL BECAUSE THE ORDER IMPLICATES A NOVEL ISSUE OF LAW WHICH, IF IT STANDS, WILL CAUSE AN IMMEDIATE AND WIDE-RANGING CHANGE TO NEW JERSEY’S AUTO INSURANCE LAWS AND GIVE RISE TO PERVASIVE REFORMATION LITIGATION (Da1-Da2, Da902, 1T, 2T)	9
II. THE TRIAL COURT ERRED BY EXPANDING <i>N.J.S.A. 17:28-1.1(F)</i> BEYOND ITS PLAIN TEXT AND STATED PURPOSE TO MANDATE THAT COMMERCIAL AUTO POLICIES MUST AFFORD MATCHING THIRD PARTY LIABILITY AND FIRST PARTY UM LIMITS (Da1-Da2, Da902, 1T, 2T)	11
A. <i>N.J.S.A. 17:28-1.1(f)</i> Prohibits The Use And Enforcement Of Step Down Provisions in Commercial Auto Policies That Seek To Provide Employees With Less UM Coverage Than Their Employers (Da1-Da2, Da902, 1T, 2T).....	12
B. <i>N.J.S.A. 17:28-1.1(f)</i> Does Not Mandate Matching Third Party Liability and First Party UM Limits (Da1-Da2, Da902, 1T, 2T) .	15

C. Public Policy Considerations Do Not Permit A Court To Rewrite The Zurich Policy And Reformulate New Jersey's Auto Insurance Laws (Da1-Da2, Da902, 1T, 2T).....	20
III. IN THE ALTERNATIVE, THE TRIAL COURT COMMITTED A CLEAR ERROR TO THE EXTENT THAT IT FOUND THAT THE ZURICH POLICY PROVIDES EMPLOYEES WITH LESS UM COVERAGE THAN THE EMPLOYER (Da1-Da3, Da902, 1T, 2T)	23
IV. PLAINTIFFS' PURPORTED STATUTORY CLAIMS FAIL AS A MATTER OF LAW (Da1-Da2, Da902, 1T, 2T)	24
CONCLUSION	25

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED

Order of Hon. Donald J. Stein, J.S.C. granting in part Plaintiffs,
Nicky Travieso and Evette Travieso’s Motion for Summary Judgment
and reforming the Zurich American Insurance Company (“Zurich”)
policy issued to Foulke Management Corp. and denying Zurich’s
Cross-Motion for Partial Summary Judgment, dated May 23, 2025
and entered on the docket and served on May 28, 2025 Da1¹

Certified Transcript of May 22, 2025 Hearing on Motions for
Summary Judgment 1T²

Order of Hon. Donald J. Stein, J.S.C. denying Zurich’s Motion for
Reconsideration of May 23, 2025 Order, dated July 3, 2025 and
entered on the docket and served on July 7, 2025 with transmittal
email Da3

Certified Transcript of July 2, 2025 Hearing on Motion for
Reconsideration 2T³

Order of Appellate Division denying Zurich’s Motion for Leave to
File Interlocutory Appeal Da902

¹ “Da” refers to Zurich’s Appendix.

² 1T refers to Certified Transcript of May 22, 2025 Hearing on Motions for Summary Judgment.

³ 2T refers to Certified Transcript of July 2, 2025 Hearing on Motion for Reconsideration.

TABLE OF AUTHORITIES

Cases	Page
<i>American Wrecking Corp. v. Burlington Ins. Co.</i> , 400 N.J. Super. 276 (App. Div. 2008)	22
<i>Chiaccheri v. Zurich Am. Ins. Co.</i> , 2024 U.S. Dist. LEXIS 130488 (D.N.J. Jul. 24, 2024), app. pen., U.S.C.A. 3d Cir. No.24-2563.....	11
<i>Christafano v. New Jersey Mfg. Ins. Co.</i> , 361 N.J. Super. 228 (App. Div. 2003)	22
<i>Hand v. Philadelphia Ins. Co.</i> , 408 N.J. Super. 124 (App. Div.), <i>certif. denied</i> , 200 N.J. 506 (2009)	18
<i>James v. New Jersey Mfrs. Ins. Co.</i> , 216 N.J. 552 (2014)	10, 14, 17, 19
<i>Myska v. New Jersey Mfrs. Ins. Co.</i> , 440 N.J. Super. 458 (App. Div. 1997)...	25
<i>Olkusz v. Brown</i> , 401 N.J. Super. 496 (App. Div. 2008), <i>certif. denied</i> , 201 N.J. 497 (2010)	14
<i>Pickett v. Lloyd’s (A Syndicate of Underwriting Members)</i> , 131 N.J. 457 (1993)	25
<i>Pinto v. N.J. Mfrs. Ins. Co.</i> , 183 N.J. 405 (2005)	13, 17-18, 19
<i>Seabridge v. Discount Auto, Inc.</i> , 393 N.J. Super. 327 (App. Div. 2007)	12
<i>Sikking v. Nelson</i> , 242 N.J. Super. 185 (App. Div. 1990).....	17
<i>Universal Underwriters Ins. Co., Recreational Products Ins. Div. v. New Jersey Mfrs. Ins. Co.</i> , 299 N.J. Super. 307 (App. Div.), <i>certif. denied</i> , 151 N.J. 73 (1997).....	16
Statutes	
<i>N.J.S.A. 17:28-1.1</i>	20

N.J.S.A. 17:28-1.1(a).....15, 20, 21
N.J.S.A. 17:28-1.1(b) 10, 15, 16, 17, 21
N.J.S.A. 17:28-1.1(f) passim
N.J.S.A. 17:29BB-1 et seq..... 4, 5, 24-25
N.J.S.A. 17:29B-4 4, 5, 24-25
N.J.S.A. 56:8-1 et seq..... 4, 5, 24-25

Rules

R. 2:2-2(a)..... 9
R. 4:46-2(c)..... 24

PRELIMINARY STATEMENT

This case presents a question of public importance which is similar to the ones recently certified to this Court by the United States Court of Appeals for the Third Circuit: whether *N.J.S.A.* 17:28-1.1(f) – which prohibits the use and enforcement of step down provisions against employees so that the uninsured motorist (“UM”) and underinsured motorist (“UIM”) coverage provided to an employee is *no less than* the UM/UIM coverage provided to the employer – mandates that commercial auto policies be reformed to afford matching third party liability and first party UM limits for all employees of a corporate policyholder.

On July 17, 2025, the Third Circuit filed a Petition for Certification of Law in *Chiaccheri v. Zurich American Insurance Company*, U.S.C.A. 3d Cir. No.24-2563 which requested certification of the following questions of law:

1. With respect to a “motor vehicle liability policy ... that names a corporate or business entity as a named insured” under N.J.S.A. § 17:28-1.1(f), what is the “maximum ... [UIM] coverage available under the policy” that must be provided to “an individual employed by the corporate or business entity”?
2. Are endorsements limiting [UIM] coverage to an amount less than the general third-party liability coverage limit under the same policy in violation of N.J.S.A. § 17:28-1.1(f) or otherwise contrary to public policy.

Da885-Da896. This case involves those same issues in the context of *UM* coverage.

The plaintiff, Nicky Travieso's ("Travieso") employer purchased a commercial auto policy from Zurich and selected UM bodily injury coverage with limits of \$15,000 for all insureds, including owners and employees. Travieso claims he was injured in an auto accident with an uninsured vehicle while operating his employer's vehicle, which was insured under the Zurich policy for UM benefits. Zurich offered to pay Travieso the full \$15,000 UM limit, but Travieso rejected that offer and he and his wife ("Plaintiffs") filed this action seeking, *inter alia*, reformation of the Zurich policy's UM limit from \$15,000 to \$1,000,000.

Plaintiffs moved for summary judgment arguing that *N.J.S.A. 17:28-1.1(f)* mandates that all commercial auto policies covering autos in New Jersey must be reformed to afford matching third party liability and first party UM limits for employees. Zurich opposed Plaintiffs' motion and cross-moved for partial summary judgment asserting that *N.J.S.A. 17:28-1.1(f)* bars enforcement of step down provisions which seek to lower the UM coverage available to an employee of a business entity by declaring that the policy will "be deemed" to provide "the maximum uninsured or underinsured motorist coverage *available under the policy*", *i.e.*, the stated UM limit irrespective of any step-down provision.

The trial court adopted Plaintiffs' novel interpretation of Subsection (f) even though it expands the provision beyond its plain text and stated purpose and is at odds with New Jersey's legislative framework.

The Appellate Division denied Zurich's motion for leave to appeal the trial court's interlocutory orders.

N.J.S.A. 17:28-1.1(f) prohibits the use and enforcement of step-down provisions in commercial auto policies to ensure that the UM coverage available to an employee is no less than the UM coverage available to the employer. The plain interpretation of *N.J.S.A. 17:28-1.1(f)* leads to only one conclusion: an employee is entitled to the policy's stated UM limit (*i.e.*, the same UM limit provided to the employer) irrespective of any step-down provision that limits the amount of UM coverage available to an employee based on his or her or a family member's own personal auto policy.

This Court should grant leave to appeal and resolve any uncertainty (and soon to be widespread reformation litigation) over whether commercial auto policies covering autos in this State must be reformed to afford UM benefits equal to the third party liability limits.

PROCEDURAL HISTORY

On May 15, 2024, Plaintiffs filed this action asserting claims against Zurich for UM benefits, reformation of the Zurich policy's UM limit from

\$15,000 to \$1,000,000, and violations of the Insurance Fair Conduct Act, *N.J.S.A.* 17:29BB-1 et seq. (“IFCA”), Unfair Claims Settlement Practices Act, *N.J.S.A.* 17:29B-4 (“UCSPA”), and Consumer Fraud Act, *N.J.S.A.* 56:8-1 et seq. (“CFA”). Da649-Da681; Da257; Da685.

On April 17, 2025, Plaintiffs moved for partial summary judgment¹ seeking an order reforming Zurich Policy No. ADM 0732728-00 (the “Zurich Policy”) to provide \$1 million in UM coverage. Da12-Da15; Da842-Da844. In support, Plaintiffs argued that *N.J.S.A.* 17:28-1.1(f) requires the Zurich Policy “to provide the maximum [UM/UIM] coverage available under the policy” which Plaintiffs contend is equal to the policy’s separate third party liability limit. Da835-Da844; 1T22:22-23:6.

On May 12, 2025, Zurich opposed Plaintiffs’ motion and cross-moved for partial summary judgment seeking a dismissal of all claims, other than UM benefits up to the Zurich Policy’s declared \$15,000 UM limit. Da238-Da242. Zurich argued that Subsection (f) only operates to bar enforcement of step down provisions which seek to lower the UM/UIM coverage available to an employee of a corporation or business (which was not at issue under the Zurich

¹ Although styled as a motion for summary judgment, Plaintiffs sought *partial* summary judgment with respect to one specific claim – reformation of the Zurich policy. Plaintiffs’ motion did not address the remainder of their claims against Zurich or alleged damages, all of which are in dispute.

Policy because it does not contain such a step down provision), and does not (and never has since its adoption) mandate reformation of commercial auto policies to afford UM limits equal to the third party liability limits. Da850-Da862; 1T7:16-10:21.

Following full briefing and oral argument, the trial court ruled in favor of Plaintiffs, confusing the policy's UM/UIM limits with its liability limits, and erroneously concluding that the Zurich Policy affords \$1 Million in *UM limits* rather than *liability limits* for the business owner:

I find the [Chiaccheri] case to be distinguishable in that it applies to UIM not uninsured motorist provision. The key in interpreting this whole case is, under the statute what a maximum uninsured or under insured motorist coverage available under the policy, what that means. That's what this is solely about one way or another, and there really wasn't any specific case on point that addresses it. The cases on point in the statute usually are all talking about a step down.

In looking at the intent of the statute, it is to protect individuals. I don't think it talks anywhere about keeping costs down of an uninsured motorist claim that this corporation, although the policy I didn't see provided, **there's no dispute that the business has a policy of a million dollars for uninsured, under insured motorist. The employees have 15,000 policy.** And I think that this is clearly done in an attempt to circumvent the statute that **there is a million dollars for this business entity for uninsured motorists and the maximum coverage available should be a million dollars,** and I will reform the policy to state that fact. (emphasis added).

1T23:17-24:14. The trial court did not address Zurich's argument that the IFCA, UCSPA, and CFA claims, which are exclusively premised upon a delay

or failure to pay a prospective “reformed” UM limit, fail as a matter of law.

1T15:12-16:6; 1T23:17-24:20; Da867-Da869.

On May 28, 2025, the trial court issued an interlocutory order granting in part Plaintiffs’ motion for summary judgment, reforming the Zurich Policy to provide \$1,000,000 in “UIM”² coverage to Travieso and denying Zurich’s cross-motion for partial summary judgment. Da1-Da2.

On June 10, 2025, Zurich moved for reconsideration on the principal basis that the trial court’s order was based on a material factual error; namely, that the Zurich Policy provided different levels of UM coverage to the business entity and its employees (which it plainly does not). Da778-Da782; Da871-Da881; 2T4:7-5:1; 2T8:3-9:1. Specifically, Zurich asserted that the reformation order was based on the trial court’s mistaken belief that the Zurich Policy provided \$1,000,000 in UM coverage to the business entity and \$15,000 in UM coverage to its employees when in fact the Zurich Policy provided a single \$15,000 UM limit that applies to all “insureds”; *i.e.*, both the business owners and its employees. Da871-Da881; 2T4:7-5:1; 2T8:3-9:1.

²The claims, motions for summary judgment, and the trial court’s May 23, 2025 order pertain to UM coverage; however, the order incorrectly refers to UIM coverage. Da659-Da660; 1T4:9-4:20.

Following full briefing and oral argument, the trial court denied Zurich's motion for reconsideration stating in pertinent part:

The motion for reconsideration is denied. I think it was very clear. And in reviewing what I held earlier, despite counsel's representation, I first found the [Chiaccheri] case to be distinguishable. It applies to UIM, not UM coverage.

The key to interpreting this case is under the statute what a maximum insured or under-insured motorist coverage available under the policy and what it means. That is what's solely about one way or another, and there really wasn't any specific case on point that addresses it. The cases on point in the statute usually are talking about a step-down.

I'm looking at the intent of the statute. It's to protect individuals. At initial argument, you had made an argument that it was also to keep insurance costs down, which I did not find to be the case.

In this case, as I indicated, there is a policy that, despite you denying it, that says covered auto, \$1 million each accident. General liability/bodily injury, \$1 million. ...³

So this matter was distinguished that the so-called [Scutari] amendment had a purpose. The purpose is to protect individuals.

...

I don't believe I made any factual errors that this policy exists.

³ Although not specifically stated in the decision, the trial court was again referring to the Zurich Policy's covered "autos" third party *liability* coverage in the amount of \$1,000,000 each accident, as the Zurich Policy affords the same \$15,000/\$30,000 UM/UIM limit for all "insureds"—business owners and employees alike. Da479; Da450. The trial court's decision on reconsideration also references the policy's separate "General Liability Bodily Injury" coverage which protects a qualifying "insured" from liability for "bodily injury" caused by an accident resulting from garage operations "other than the ownership, maintenance or use of 'autos'." Da450; Da394.

In essence, the princip[als] have the benefit of having a large policy with these coverages. Well, the employees get the minimum protection under the law. And a 15,000 UM/UIM policy in most cases is just about worthless if the person has insurance, because they have that type of coverage.

2T13:25-15:13. On July 7, 2025, the trial court issued its order denying Zurich's motion for reconsideration. Da3-Da5.

In sum, the trial court's decisions adopt the view that *N.J.S.A. 17:28-1.1(f)* mandates reformation of a commercial auto policy to provide UM/UIM limits for employees equal to the policy's third party liability limit.

On July 21, 2025, Zurich filed a motion for leave to appeal the trial court's interlocutory orders. Da897-Da901. On August 11, 2025, the Appellate Division issued an interlocutory Order dated August 8, 2025 denying Zurich's motion. Da902-Da903.

STATEMENT OF THE FACTS

Zurich issued Policy No. ADM 0732728-00 to Foulke Management Corp. with effective dates of March 1, 2021 to September 1, 2022 (as noted, the "Zurich Policy"). Da262-Da554; Da254; Da682. The Zurich Policy affords, among other coverages, covered "autos" UM/UIM coverage for Symbol 22 "Autos" (Owned "Autos" Only) licensed or principally garaged in New Jersey, with a \$15,000 each person/\$30,000 each accident limit for all "insureds". Da479; Da473-Da474; Da450; Da255; D682-D683. The Zurich

Policy *separately* provides \$1 Million third party auto liability coverage for all “insureds”. Da450; Da385-Da386; Da255; Da683.

Travieso claims that on June 11, 2022, he was involved in an auto accident with an uninsured vehicle while operating his employer’s vehicle. 1T4:9-14. Following its investigation, Zurich offered to pay Travieso the full \$15,000 UM limit available under the Zurich Policy. 1T4:15-16. Travieso rejected that offer contending that the UM limit is equal to the Zurich Policy’s *separate* third party liability limit of \$1,000,000. 1T4:15-20.

LEGAL ARGUMENT

I. THE COURT SHOULD GRANT LEAVE TO APPEAL AND CORRECT THE TRIAL COURT’S ERROR OF LAW BEFORE TRIAL BECAUSE THE ORDER IMPLICATES A NOVEL ISSUE OF LAW WHICH, IF IT STANDS, WILL CAUSE AN IMMEDIATE AND WIDE-RANGING CHANGE TO NEW JERSEY’S AUTO INSURANCE LAWS AND GIVE RISE TO PERVASIVE REFORMATION LITIGATION (Da1-Da2, Da902, 1T, 2T).

This Court has discretion to grant leave to appeal from interlocutory orders of the Appellate Division “when necessary to prevent irreparable injury.” R. 2:2-2(a). The circumstances instant satisfy this standard.

The trial court’s error implicates an important and novel legal issue that has never been *directly* addressed by the Appellate Division or Supreme Court and would upend the statutory commercial auto insurance law in this State. As the Third Circuit recognized in its petition for certification, this question of

law carries “general public importance” and “will affect New Jersey’s insurance market and the premiums paid by New Jersey businesses and consumers.” Da887. This is because the sweeping change would effectively mandate that every commercial auto policy covering vehicles garaged in New Jersey provide UM/UIM limits to employees equal to the third party liability limits. Hence, whenever an employer-policyholder purchases UM/UIM coverage with limits less than the liability limits, as expressly permitted by *N.J.S.A. 17:28-1.1(b)*, the policy would be subject to reformation. This will drive up premiums (in violation of New Jersey’s public policy of cost-containment), potentially impact the available proceeds for the victims of auto accidents by shifting responsibility for tort-based recoveries to the victim’s first party carrier, and otherwise give rise to widespread reformation litigation.

These consequences, which are at odds with New Jersey’s legislative framework, can be avoided if this Court corrects the trial court’s legal error now and reaffirms the interpretation of Subsection (f) that has guided insurers, courts and litigants in this State since the law’s enactment—“[*N.J.S.A. 17:28-1.1(f)*] simply thwarts implementation of [step-down] provisions for a certain class of insureds who otherwise might be subject to them, namely employees of a corporate or business entity whose policy contains such a provision.”

James v. New Jersey Mfrs. Ins. Co., 216 N.J. 552, 570-571 (2014).

II. THE TRIAL COURT ERRED BY EXPANDING *N.J.S.A. 17:28-1.1(f)* BEYOND ITS PLAIN TEXT AND STATED PURPOSE TO MANDATE THAT COMMERCIAL AUTO POLICIES MUST AFFORD MATCHING THIRD PARTY LIABILITY AND FIRST PARTY UM LIMITS (Da1-Da2, Da902, 1T, 2T).

N.J.S.A. 17:28-1.1(f) prohibits the use and enforcement of step-down provisions in commercial auto policies so that the UM coverage provided to the employee is no less than the UM coverage provided to the employer. This is what the statute says. And this is what the legislative statement explains.

The trial court erred in expanding *N.J.S.A. 17:28-1.1(f)* beyond its plain text and stated purpose by finding that “the maximum [UM/UIM] coverage available under the policy” must be equal to the policy’s *separate* third party liability limit. No New Jersey court has ever reached this conclusion in the 18 years since the statute’s enactment. In fact, the only other court that has addressed this argument flatly rejected it. *Chiaccheri v. Zurich Am. Ins. Co.*, 2024 U.S. Dist. LEXIS 130488, *14 (D.N.J. Jul. 24, 2024), app. pen., U.S.C.A. 3d Cir. No.24-2563 (“[T]here is nothing in the text of N.J. Stat. Ann. § 17:28-1.1(f), the legislative history, or case law that supports Plaintiffs’ assertion that commercial auto policies afford matching third party liability and first party UIM limits.”). Da567-Da576.

A plain interpretation of the statute’s proviso that “[a] policy that names a corporate or business entity as a named insured shall be deemed to provide

the maximum [UM/UIM] coverage available under the policy to an individual employed by the corporate or business entity” leads to only one conclusion: an employee is entitled to the policy’s stated UM limit (*i.e.*, the same UM limit provided to the employer / policyholder) irrespective of any step-down provisions that purport to limit the UM coverage available to the employee. The maximum UM coverage available under the policy is not, as the trial court held, the policy’s *separate* third party liability limit.

This Court should review *de novo* and reverse the trial court’s orders.

A. N.J.S.A. 17:28-1.1(f) Prohibits The Use And Enforcement Of Step Down Provisions in Commercial Auto Policies That Seek To Provide Employees With Less UM Coverage Than Their Employers (Da1-Da2, Da902, 1T, 2T).

“A step-down clause in an insurance policy provides different levels of coverage to different insureds based on their status or the existence of other insurance.” *Seabridge v. Discount Auto, Inc.*, 393 N.J. Super. 327, 330 (App. Div. 2007). N.J.S.A. 17:28-1.1(f) prohibits the use and enforcement of step down provisions against employees in commercial auto policies so that the UM coverage provided to the employee is no less than the UM coverage provided to the employer:

Notwithstanding the provisions of this section or any other law to the contrary, a motor vehicle liability policy or renewal of such policy of insurance, insuring against loss resulting from liability imposed by law for bodily injury or death, sustained by any person arising out of the ownership, maintenance or use of a motor

vehicle, issued in this State to a corporate or business entity with respect to any motor vehicle registered or principally garaged in this State, shall not provide less uninsured or underinsured motorist coverage for an individual employed by the corporate or business entity than the coverage provided to the named insured under the policy. A policy that names a corporate or business entity as a named insured shall be deemed to provide the maximum uninsured or underinsured motorist coverage available under the policy to an individual employed by the corporate or business entity, regardless of whether the individual is an additional named insured under that policy or is a named insured or is covered under any other policy providing uninsured or underinsured motorist coverage.

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

The legislative statement accompanying the law explains that the amendment was enacted in response to this Court's decision in *Pinto v. N.J. Mfrs. Ins. Co.*, 183 N.J. 405 (2005) which found those step-down provisions enforceable:

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.

This bill is in response to the New Jersey Supreme Court's decision in [Pinto]. In Pinto, the court held that as to a motor vehicle liability policy that names a corporate or business entity as a named insured, step-down provisions which limit uninsured or underinsured motorist coverage for employees of that entity that are not individually named on the policy are valid and enforceable. Thus, the court's ruling allows an employee's coverage under an employer's business motor vehicle insurance policy to be limited to the lower limits of uninsured or underinsured motorist coverage contained in the employee's individual motor vehicle liability

policy, even in situations in which the employee is injured in a covered vehicle in a work-related accident, if the employer's policy so provides.

This bill reverses the effect of the Pinto decision by prohibiting step-down provisions in these policies. 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, regardless of whether the individual is an additional named insured under that policy or is a named insured or is covered under any other policy providing uninsured or underinsured motorist coverage.

Statement accompanying P.L. 2007, c. 163, approved September 10, 2007, Senate, No. 1666, Da564.

The New Jersey Supreme Court has since, accordingly, confirmed that *N.J.S.A. 17:28-1.1(f)* “prohibits the application of step-down provisions in business entities’ motor vehicle insurance policies to limit the recovery of UM/UIM benefits by employees.” *James*, 216 N.J. at 573. And numerous other decisions have so decided. *See e.g., Olkusz v. Brown*, 401 N.J. Super. 496, 503 (App. Div. 2008), *certif. denied*, 201 N.J. 497 (N.J. 2010) (“S-1666 merely disallows the use and enforceability of a contractual clause, which the Supreme Court in *Pinto, supra*, found to be an issue of ‘insurance contract interpretation.’”).

B. *N.J.S.A. 17:28-1.1(f)* Does Not Mandate Matching Third Party Liability and First Party UM Limits (Da1-Da2, Da902, 1T, 2T).

The trial court expanded *N.J.S.A. 17:28-1.1(f)* beyond its plain text and stated purpose. Under the trial court’s interpretation, commercial auto policies must afford matching third party liability and first party UM limits. Hence, according to the trial court and Plaintiffs, any different election of UM or UIM benefits by the policyholder as specifically authorized under *N.J.S.A. 17:28-1.1(a)* and (b) is moot, and those provisions are rendered irrelevant and superfluous for all business owners in this State. No statutory provision or court decision supports this sweeping change to New Jersey auto insurance law, or the elimination of election rights specifically granted to policyholders in this State. Accordingly, this Court should reverse.

To begin, the statute does not say that UM limits must equal liability limits. The plain text of *N.J.S.A. 17:28-1.1(f)* – which is the starting point for the interpretation of a New Jersey statute – provides that “[a] policy that names a corporate or business entity as a named insured shall be deemed to provide **the maximum [UM/UIM] coverage available under the policy** to an individual employed by the corporate or business entity ...” (emphasis added). The plain interpretation of this provision leads to only one conclusion: the maximum UM coverage available under the policy to an employee is the policy’s stated UM limit *without* application of any step-down provision.

The maximum UM coverage available under the policy is not, as the trial court held, equal to the policy's *separate* third party liability limit. Plaintiffs' argument relies on a different provision in the statute, *N.J.S.A. 17:28-1.1(b)*.⁴ However, *N.J.S.A. 17:28-1.1(b)* simply states that insurers must provide the named insured with the *option* to purchase certain UM/UIM coverage, subject to the condition that the limits of such UM/UIM coverage "shall not exceed the insured's motor vehicle liability policy limits." *See also Universal Underwriters Ins. Co., Recreational Products Ins. Div. v. New Jersey Mfrs. Ins. Co.*, 299 N.J. Super. 307, 318 (App. Div. 1997), *certif. denied*, 151 N.J. 73 (1997) ("[*N.J.S.A. 17:28-1.1(b)*] merely stipulates that an insured cannot purchase more UIM coverage than the liability coverage that has been purchased."). There is nothing in that provision, or *N.J.S.A. 17:28-1.1(f)* itself, that supports the notion that first party UM limits must equal the policy's third party liability limits. If the Legislature sought to mandate such a sweeping and consequential requirement, it would have said so.

⁴ Although the trial court did not state why "the maximum uninsured or underinsured motorist coverage available under the policy" is equal to the policy's third party liability limit in its decision, Plaintiffs' argument was seemingly grounded in *N.J.S.A. 17:28-1.1(b)* as shown by the following statement in their opening brief: "[t]he maximum available amount of UM/UIM coverage under operation of law is equal to the bodily injury limits contained within the policy. See N.J.S.A. 17:28-1.1(b)". Da837.

Zurich anticipates that Plaintiffs will attempt to cherry-pick phrases like “maximum limits available” from wholly inapposite cases pertaining to the effect of an insurer’s failure to provide the insured with the *option to purchase* certain UM/UIM coverage to draw a false connection between the maximum UM/UIM coverage *permitted by law* under *N.J.S.A. 17:28-1.1(b)* and the “maximum [UM/UIM] coverage *available under the policy*”. However, those cases in no way support the proposition that the maximum UM/UIM limit that an insured is permitted to purchase is the same thing as the “maximum [UM/UIM] coverage available under the policy”.⁵

To understand the meaning of the phrase the “maximum [UM/UIM] coverage available under the policy”, one needs to look no further than the statute’s plain language and the *Pinto* decision that Subsection (f) was intended to address. In *Pinto*, the Court rejected the insured’s argument that he was entitled to the “**maximum**” UIM limit (which was the policy’s stated UIM limit)

⁵ For instance, in their opposition to Zurich’s motion for leave to file an interlocutory appeal with the Appellate Division, Plaintiffs cite to *Sikking v. Nelson*, 242 N.J. Super. 185, 190 (App. Div. 1990) in an attempt to equate the maximum UM/UIM limits “permitted by law” and “maximum limits available” under a policy. However, the “maximum limits available” language was pulled completely out of context from a sentence stating—“the trial judge may simply have interpreted the regulations promulgated by the Commissioner to require notice only of the availability of UIM coverage without a need to advise insureds of the *maximum limits available*”—and no way no supports the proposition that the “maximum [UM/UIM] coverage available under the policy” means the maximum UM/UIM limits *permitted by law*.

notwithstanding the existence of a step down provision that capped UIM coverage at the amount available under his personal auto policy. *Id.* at 409-410. Throughout the decision, the *Pinto* Court refers to the “maximum” coverage under the policy as the policy’s UIM limit. *See e.g., id.* at 409 (Pinto “submitted a claim for the one million dollar **maximum** of UIM coverage under the NJM policy.”). *Id.* at 409-410 (“Pinto [sought] to compel NJM to provide the **maximum** one million dollar limit of UIM coverage.”). Consequently, the Legislature, in direct response to *Pinto*, made clear that commercial auto policies “shall be deemed to provide the **maximum [UM/UIM] coverage available under the policy**”, which means the stated UM/UIM limit irrespective of any step-down provision in the policy. *See Hand v. Philadelphia Ins. Co.*, 408 N.J. Super. 124, 140 (App. Div. 2009), *certif. denied*, 200 N.J. 506 (2009) (holding that “be deemed to provide the maximum ... underinsured motorist coverage available under the policy” refers to reformation “to provide the same levels of UIM insurance to employees as it did to the business entity.”).

The Zurich Policy does not include a step down provision which would lower the UM/UIM limit available to employees. Rather, employees are explicitly excepted from application of the policy’s step down provisions in accordance with *N.J.S.A. 17:28-1.1(f)*. Da475. Consequently, Subsection (f),

if given its plain and intended meaning, is not implicated by the UM claim in this case.

Moreover, contrary to Plaintiffs' contention, the second sentence of *N.J.S.A. 17:28-1.1(f)* does not serve a separate purpose of providing employees with *higher* UM limits than those purchased by and applicable to their employers (as would be the case if the trial court's decision were left to stand). As this Court has already made clear in *James*, "the two operative sentences of the new law direct how employees must be treated in the presence of [step-down] provisions." *James*, 216 N.J. at 566-567. *See also id.* at 567 ("the language of the two operative sentences clearly altered how policies containing [step-down] provisions would be permitted to operate in respect of employees.") (emphasis added in both).

Nor does Zurich's interpretation render the second sentence superfluous as Plaintiffs have alleged. As this Court has already explained, the "shall be deemed" language in the second sentence "plainly evidence[es] the Legislature's intent to immediately alter a policy in existence when the statute took effect." *Id.* at 569. "In other words, on its effective date *N.J.S.A. 17:28-1.1(f)* reformed the contract by operation of law." *Id.* at 571. The first sentence, on the other hand, "has continuing effect on any renewal policy for existing customers, as well as for any subsequently issued policy of insurance

to a new commercial insured, that contains a step-down provision governing UM/UIM benefits”. *Id.* at 572.⁶

C. Public Policy Considerations Do Not Permit A Court To Rewrite The Zurich Policy And Reformulate New Jersey’s Auto Insurance Laws (Da1-Da2, Da902, 1T, 2T).

The trial court’s strained interpretation of Subsection (f) is ostensibly based upon the notion that the provision’s purported purpose is to “protect individuals”; that is, employees of the policyholder. 2T14:12-13. The statute, however, while serving this salutary purpose, does not require the employee’s UM coverage to exceed that which is afforded to the employer policyholder, nor does it mandate that UM benefits available to the employee match the amount of the liability coverage.

N.J.S.A. 17:28-1.1 was enacted as part of the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 for the purpose of making automobile insurance more affordable. Consistent with that

⁶ Plaintiffs have posited that the first sentence applies where the named insureds include the company and certain employees and ensures that all employees are entitled to the same UM/UIM coverage whereas the second sentence applies where the sole named insured is a company. Under this nonsensical interpretation, an employee who happens to work at a company whose policy lists an employee as a named insured can be provided with minimum UM/UIM limits (as long as those limits match the limits provided to the listed employee) while an employee who works for a company whose policy lists the company as the sole name insured is entitled to the maximum limits that his or her employer was permitted to purchase, even if the company selected and paid for lower limits.

purpose, the statute provides policyholders with a wide range of options in selecting UM/UIM limits. Specifically, UM, while mandatory in certain minimum amounts,⁷ may be purchased in an amount up to the third party liability limit. *N.J.S.A.* 17:28-1.1(b). As is evident from Subsection (b), the law does not require a policyholder to purchase that level of UM/UIM coverage, rendering the trial court's conclusion to the contrary, and its reformation of the policy based on that erroneous conclusion, inapposite.

To be clear, there is no statutory prohibition against the business entity selecting and purchasing a \$15,000 UM/UIM limit for itself and its employees. *See N.J.S.A.* 17:28-1.1(a)(1). Quite the contrary, the statute expressly gives the policyholder the right to select (and pay for) the amount of UM/UIM coverage it chooses, not to exceed the liability limit, *N.J.S.A.* 17:28-1.1(b). And *N.J.S.A.* 17:28-1.1(f), as explained, prohibits those selected UM/UIM limits from being "stepped down" for employees.

The Zurich Policy does not run afoul of either statutory requirement. The policyholder selected \$15,000 UM/UIM limits, and the policy's step down provisions do not apply to employees. Da556-Da557; Da559; Da479; Da475.

⁷ \$15,000 was the statutory minimum UM limit allowable under New Jersey law at the time of the accident. *See N.J.S.A.* 17:28-1.1(a)(1).

In reaching its decision, the trial court alternatively posited that “a 15,000 UM/UIM policy in most cases is just about worthless if the person has insurance, because they have that type of coverage.” 2T15:11-13. The efficacy of a \$15,000 UM limit, which is the amount of UM coverage that Travieso’s employer chose to purchase and was permitted by statute at the time of the accident, is an issue for the New Jersey Legislature—not the Courts.

In any event, ““public policy considerations alone are not sufficient to permit a finding of coverage in an insurance contract when its plain language cannot fairly be read to otherwise provide that coverage.”” *American Wrecking Corp. v. Burlington Ins. Co.*, 400 N.J. Super. 276, 285 (App. Div. 2008) (citing *State v. Signo Trading Int’l*, 130 N.J. 51, 66 (1992)). To that end, the Appellate Division has aptly recognized the following when interpreting *N.J.S.A. 17:28-1.1*’s provisions:

We acknowledge that *N.J.S.A. 17:28-1.1c* must be construed liberally to foster the protection UM affords automobile accident victims. However, in the absence of a statutory prohibition to the contrary, an insurance company has a right to impose whatever conditions it desires prior to assuming its obligations. It is not our function to make a better contract for the parties than they themselves have seen fit to enter into or to alter it for the benefit of one party and to the detriment of the other.

Christafano v. New Jersey Mfg. Ins. Co., 361 N.J. Super. 228, 237 (App. Div. 2003). The trial court erred in relying on a vague public policy consideration to reform a statutorily compliant, clear, and unambiguous policy.

The practical result is that the trial court's reformation decision, if it stands, would impact every commercial auto policy covering vehicles garaged in this State, mandating reformation of such policies to afford equal UM/UIM and liability coverage limits whenever the policyholder selects UM/UIM benefits in an amount less than the policy's third party liability limit. The trial court's mandate is irreconcilable with the Legislature's decision to give policyholders a choice to purchase a UM/UIM limit less than the liability limit. Moreover, such a sweeping change to New Jersey's auto insurance laws would drive up premiums (in violation of New Jersey's public policy of cost-containment), incentivize businesses to purchase less liability coverage to keep costs down, and lead to a dramatic increase in reformation lawsuits.

III. IN THE ALTERNATIVE, THE TRIAL COURT COMMITTED A CLEAR ERROR TO THE EXTENT THAT IT FOUND THAT THE ZURICH POLICY PROVIDES EMPLOYEES WITH LESS UM COVERAGE THAN THE EMPLOYER (Da1-Da3, Da902, 1T, 2T).

In its initial decision, the trial court found that the Zurich Policy provided the business entity with \$1,000,000 in UM coverage and its employees with \$15,000 in UM coverage: “there’s no dispute that the **business has a policy of a million dollars for uninsured, under insured motorist.** The **employees have 15,000 policy.**” 1T24:5-24:14. This is a clear error as the Zurich Policy provides one UM/UIM limit (\$15,000) that applies to all “insureds”. Da479. Indeed, Plaintiffs did not even argue that the Zurich Policy

provided the business entity with a higher UM limit than its employees.

Da810-Da844; 2T18:3-23:14. On reconsideration, the trial court did not correct this error and again found a non-existent disparity between the coverage provided to the business entity and its employees. 2T15:8-10.

To the extent that the trial court's decision was based on a perceived disparity between the coverages provided to the Named Insured and the coverages provided to its employees, it should be reversed. The Zurich Policy provides one UM/UIM limit (\$15,000) that applies to all "insureds" and one covered autos liability limit (\$1,000,000) that applies to all "insureds". Da479; Da473-Da474; Da450; Da385-386. If the corporation's principals filed a claim for UM/UIM benefits under the Zurich Policy, their claim would be governed by the same \$15,000 UM/UIM limit that applies to their employees. Similarly, if Travieso, or any other employee, is sued for tort liability, they would be entitled to the same \$1,000,000 third party liability limit available to the corporation. There is simply no disparity in these coverages.

IV. PLAINTIFFS' PURPORTED STATUTORY CLAIMS FAIL AS A MATTER OF LAW (Da1-Da2, Da902, 1T, 2T).

Zurich's motion for partial summary judgment also sought dismissal of Plaintiffs' perfunctory claims for alleged violations of the IFCA, UCSPA, and CFA; however, the trial court did not find facts or state its conclusions with respect to the same as required by *R.* 4:46-2(c). These statutory claims are all

predicated on a decision to offer the declared UM/UIM limit under the Zurich Policy, rather than a subsequent judicially “reformed” limit of that policy. Putting aside that claims under the UCSPA and CFA do not lie under settled law,⁸ Zurich cannot, as a matter of law, be held liable under the IFCA, UCSPA, or CFA for failing to tender a later reformed limit. Zurich plainly acted reasonably in offering to pay the policy’s full \$15,000 UM limit. It cannot be held liable for failing to unilaterally reform its policyholder’s requested (and statutorily compliant) coverage based on a novel argument which has never been sanctioned by any court, and in fact was specifically rejected by the United States District Court.

CONCLUSION

For the foregoing reasons, Zurich requests that the Court grant it leave to appeal and reverse the trial court’s May 23, 2025 and July 7, 2025 orders, or otherwise stay this matter if the Court accepts Certification in *Chiaccheri*.

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Dated: August 27, 2025

⁸ The USPSA “does not create a private cause of action,” *Pickett v. Lloyd’s (A Syndicate of Underwriting Members)*, 131 N.J. 457, 468 (1993), and it is well-settled that the CFA cannot be used “as a vehicle to recover damages for an insurance company’s refusal to pay benefits,” *Myska v. New Jersey Mfrs. Ins. Co.*, 440 N.J. Super. 458, 485 (App. Div. 1997).