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# Supreme Court of New Jersey

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Docket No. 091127

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.
	:	

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**BRIEF OF DEFENDANT-APPELLANT ZURICH AMERICAN  
INSURANCE COMPANY IN RESPONSE TO BRIEF OF AMICUS  
CURIAE, NEW JERSEY ASSOCIATION FOR JUSTICE**

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Date Submitted: February 19, 2026

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## LEGAL ARGUMENTS

### **A. The Purported Limitations in Personal Auto Policies for Work-Related Accidents Raised by NJAJ are Inapt and, In Any Event, Do Not Support an Expansion of N.J.S.A. 17:28-1.1(f) Beyond Its Plain Text and Stated Purpose.**

Amicus curiae, New Jersey Association for Justice (“NJAJ”) asks this Court to expand N.J.S.A. 17:28-1.1(f) beyond its plain text and stated purpose based on speculation that “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.” (NJAJ Br. at pg. 2). More specifically, NJAJ claims that employees may not be able recover personal injury protection (“PIP”) benefits under their personal auto policies for work-related accidents and therefore “rely upon the availability of the employer’s coverage.” (NJAJ Br. at pg. 6-8). This argument is severely flawed and should be rejected.

Putting aside that most vehicles used in commerce do qualify as “automobiles” for purposes of PIP benefits<sup>1</sup>, workers’ compensation—not PIP—is the primary source of recovery for medical expenses and lost wages for employees injured in work-related accidents:

[T]he Legislature made clear that when an employee injured in a work-related accident is entitled to benefits under the Workers’

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<sup>1</sup> See e.g., Wagner v. Transamerica Ins. Co., 167 N.J. Super. 25, 31 (App. Div.), certif. denied, 81 N.J. 60 (1979) (“[W]e perceive no legislative design to exclude private passenger vehicles commercially owned and used in business pursuits [from No-Fault Law]”).

Compensation Act, that statute — not AICRA — provides his or her primary source of recovery for medical expenses and lost wages. N.J.S.A. 39:6A-6. It envisioned that the employer or its workers' compensation carrier will pay medical and disability benefits to the injured employee, and that the employee will neither seek nor receive PIP benefits under his automobile policy, thus obviating the need for his or her automobile insurer to pay those benefits. Ibid.

N.J. Transit Corp. v. Sanchez, 242 N.J. 78, 93-94 (2020). In fact, “when workers' compensation benefits are available to an injured employee, PIP benefits in that situation are neither collectible nor paid”. Id. at 102 (internal quotation marks and citations omitted). Thus, an employee's purported inability to recover PIP benefits under his or her personal auto policy for work-related accidents is irrelevant and in no way supports NJAJ's proposed expansion of N.J.S.A. 17:28-1.1(f).

NJAJ also posits that “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.” (NJAJ Br. at pg. 6). This is also incorrect. The Standard Personal Automobile Policy form approved by the New Jersey Commissioner of Insurance does not include a “regular use” exclusion in the uninsured motorist (“UM”) and underinsured motorist (“UIM”) coverage part. DaS7-8.<sup>2</sup> That exclusion only applies to liability

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<sup>2</sup> The Standard Personal Automobile Policy referenced herein and included in Zurich's Supplemental Appendix was obtained from Craig & Pomeroy, N.J.

coverage. DaS4-5. To be sure, the cases cited by NJAJ, Fiscor v. Atlantic County Bd. of Chosen Freeholders, 293 N.J. Super. 19 (App. Div. 1996) and Venters v. Selected Risks Ins. Co., 120 N.J. Super. 549 (App. Div. 1972), apply “regular use” limitations in the context of liability and medical payments coverage, respectively, and do not reference UM/UIM coverage.

Thus, the UM/UIM coverage available to an employee under a Standard Personal Automobile Policy is not affected by “regular use” exclusions and, even if it was, this does not justify NJAJ’s proposed rewrite of N.J.S.A. 17:28-1.1(f) to add mandates that the Legislature chose to omit. This is especially true since there are insurance products available to employees who wish to purchase extended non-owned auto coverage. See Fiscor, 293 N.J. Super. at 28 (citing Di Orio v. New Jersey Mfrs. Ins. Co., 79 N.J. 257, 264 (1979)) (noting that “there appears to be insurance available to insureds who wish to obtain ‘extended non-owned automobile coverage’” and that “[b]y paying an additional premium, an insured could obtain such coverage for automobiles not owned by the named insured or members of his or her household.”).

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Auto Insurance Law (2026), Appendix C-1, which describes the form as the “complete text of an auto insurance policy issued after the March 22, 1999 effective date of AICRA”, id. at 26:3. See also id. at 19:3 (describing the UM/UIM section of the form as being “approved by the Commissioner of Insurance pursuant to N.J.S. 17:28-1.1(d)” and “used by most of the insurers licensed to transact business in New Jersey”).

**B. NJAJ Cannot Impose Mandates on Employers and Insurers, Which the Legislature Chose to Omit, Under the Guise of “Protecting” Employees.**

NJAJ also claims that the election of a greater third party liability limit than UM/UIM limits “is an attempt by employers to circumvent the legislature’s desired goal of protecting New Jersey employees” and asks this Court to prohibit the purported “unfairness” that results from this practice. (NJAJ Br. at pg. 3-5). Notably, NJAJ does not assert that the election of different third party liability and first party UM/UIM limits is prohibited by N.J.S.A. 17:28-1.1(f) but rather suggests that the practice is “unfair” and does not comport with the statute’s goal of protecting employees.

For this broader argument concerning the scope of N.J.S.A. 17:28-1.1(f), Zurich incorporates its Brief Addressing Certified Questions filed in Craig Chiaccheri v. Zurich American Insurance Company, Docket No. 090943. Zurich adds only that the stated “goal” of N.J.S.A. 17:28-1.1(f) is clear. It was enacted to prohibit the use and enforcement of step-down provisions in commercial auto policies that seek to lower UM/UIM coverage for employees in response to Pinto v. N.J. Mfrs. Ins. Co., 183 N.J. 405 (2005). This goal was achieved because the Zurich policy instant, like most or all other commercial auto policies covering vehicles garaged or registered in New Jersey, excepts employees from the scope of the step-down provisions.

NJAJ, like the plaintiffs in Chiaccheri and this case, cannot add new requirements to the statute that the Legislature omitted under the guise of “protecting” employees. See e.g., State v. Signo Trading Int’l, 130 N.J. 51, 66 (1992) (“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”); Livsey v. Mercury Ins. Grp., 197 N.J. 522 (2009) (declining to extend the UM statute beyond its terms to provide compensation for an innocent victim).

### **CONCLUSION**

In sum, Zurich respectfully submits that this Court should reject NJAJ’s arguments and reverse the trial court’s orders reforming the Zurich policy’s UM limit from \$15,000 to \$1,000,000.

Respectfully submitted,

/s/ Louis A. Bové

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