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**SUPREME COURT OF NEW JERSEY**

**DOCKET NO. 091127**

NICKY TRAVIESO and EVETTE  
TRAVIESO,

Plaintiffs-Respondents,

v.

ZURICH AMERICAN INSURANCE  
COMPANY,

Defendants-Appellants.

On Motion for Leave to Appeal  
Superior Court Of New Jersey  
Appellate Division  
Docket No.: AM-000596-24T3

Sat Below:

Hon. Joseph L. Marczyk, J.A.D.

Civil Action

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**PLAINTIFFS/RESPONDENTS BRIEF IN OPPOSITION TO  
DEFENDANT/APPELLANT'S MOTION FOR LEAVE TO APPEAL**

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On the brief and of counsel:

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## PRELIMINARY STATEMENT

This case boils down to the plain meaning of “maximum uninsured or underinsured motorist coverage available under the policy” considering the plain language of N.J.S.A. 17:28-1.1(f), the case law applying it and legislative intent in enacting it ensuring injured workers are fully protected by their employers.

The arguments here are identical to those faced by the Third Circuit Appeals Court in Chiaccheri v. Zurich Am. Ins. Co., Da885-Da896. Faced with these issues, the Third Circuit found reformation of a similar policy colorable warranting a request for certification to the Supreme Court.

N.J.S.A. 17:28-1.1(f) recognizes that there are two types of corporate automobile policies and directs how each type of policy is to be applied. The first is a policy where the named insureds include the company and certain employees. Those policies are addressed by the first operative sentence, ensuring that all employees, whether named insureds or not, are entitled to the same amount of UM/UIM coverage – the limit listed on the policy. The second instance is a policy where the sole named insured is a company, incapable of physical injury and thus will never use UM/UIM coverage. In those instances, N.J.S.A. 17:28-1.1(f) ensures that all the company’s employees are adequately protected by providing the “maximum uninsured or underinsured motorist coverage available under the policy” pursuant to N.J.S.A. 17:28-1.1(b) – equal to the business’s liability limits.

The lack of a published opinion on this issue to date is due, in part, to the underlying facts. Here, the employer's commercial auto policy sought to limit an employee's UM coverage to the bare minimum, \$15,000, significantly less than the \$1,000,000 liability coverage afforded to the corporation. Although novel, the issue is a straight-forward matter of statutory interpretation. The statute at issue, requiring certain levels of UM/UIM coverage be maintained for employees driving their employers' cars, cannot be trumped by the personal or corporate desires of the commercial insured. In other words, if the statute is interpreted as plaintiff maintains, the corporation's intent to underinsure their employees is of no moment.

Since 1983, commercial auto insurers have been on notice that their insureds could choose UM/UIM limits equal to their bodily injury liability limits. The insurance industry has known for over 40 years that it would have to be able to provide that coverage. Nothing plaintiff asserts at bar or Judge Stein decided is radical or expansive regarding an insurer's duty to provide UM/UIM coverage up to the maximum liability limits afforded by N.J.S.A. 17:28-1.1(b).

### **PROCEDURAL HISTORY**

Plaintiff accepts Defendant's recitation of the procedural history of this matter. Plaintiff, however, takes issue with Defendant's arguments and allegations as to the correctness or appropriateness of the trial court's rulings, which will be appropriately addressed in Plaintiff's legal arguments.

## STATEMENT OF FACTS

Plaintiff accepts Defendant's statement of facts. Plaintiff, however, takes issue with Defendant's arguments in the fact sections that any UM/UIM coverage "separately" and completely independent of the company's liability limits.

Defendant Zurich issued a corporate automobile policy to Foulke Management Corp., which was in effect on the date of Plaintiff's June 11, 2022 crash. Da32. The named insured on that policy is "Foulke Management Corp." (hereafter "Foulke") which is a corporation that owns and runs automobile dealerships. Id. The policy also lists additional named insureds, all of which are business entities, presumably subsidiaries of Foulke. Da36. The policy does not list any human being as a named insured. Da32; Da36. The only named insureds on the subject Zurich policy are corporate or business entities. Id.

That policy provides the named insureds business entities with \$1,000,000 in liability coverage. Da119. However, the policy provides the employees of those companies with only \$15,000/\$30,000 of split limit UM/UIM coverage. Da148. At the time of the June 11, 2022 crash, Plaintiff Nicky Travieso was a Foulke employee operating a Foulke owned automobile in the course and scope of his employment with Foulke. Da179; Da184.

## LEGAL ARGUMENT

1. **Defendant's Motion Must be Denied Because There is No Risk of Irreparable Injury.**

Leave to file a petition for certification to the New Jersey Supreme Court of an interlocutory order of the Appellate Division will only be granted “when necessary to prevent irreparable injury.” R. 2:2-2(a). Generally, when leave is granted, it is because there is the possibility of “some grave damage or injustice” resulting from the trial court's order. Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008). As explained more fully below, Defendant has failed to meet the stringent standard to overcome the expressed policy against interlocutory/piecemeal review of a trial court’s interlocutory order. As explained more fully below, Defendant has failed to meet this stringent standard.

Judge Stein’s decision is subject to his review and reconsideration until the end of the case. Until suit ends, a trial court “has complete power over its interlocutory orders and may revise them when it would be consonant with the interests of justice to do so.” Lawson v. Dewar, 468 N.J. Super. 128, 134 (App. Div. 2021). A trial court’s reconsideration of its interlocutory order is guided by the “sound discretion” and in the “interest of justice” standard set forth in R. 4:42-2 and Lawson.

Here, the issue Defendant seeks to appeal is currently before the Third Circuit Court of Appeals. On July 14, 2025, the Third Circuit unanimously requested certification of this issue to the New Jersey Supreme Court in Chiaccheri v. Zurich Am. Ins. Co., Da885-Da896. If the Supreme Court accepts certification, this issue

will be decided. If the Supreme Court denies certification, then the Third Circuit will render a decision. At that time, if it favors the Defense, the Defendant can then reapply to the trial judge for reconsideration. This much was acknowledged by Judge Stein. 2T14:25-15:3.

**2. Judge Stein’s Decision was Correct Considering the Plain Language and Two-Fold Legislative Intent of N.J.S.A. 17:28-1.1(f).**

Defendant’s argument that Judge Stein’s interpretation of N.J.S.A. 17:28-1.1(f) was radical or would upend the commercial auto insurance in New Jersey is without merit. Judge Stein’s interpretation of the meaning “maximum uninsured or underinsured motorist coverage available under the policy” is correct given the plain language and legislative intent to protect injured workers in the enactment of N.J.S.A. 17:28-1.1(f).

New Jersey Courts have long recognized the importance of protection afforded by UM/UIM coverage in a business automobile policy. See Cook-Sauvageau v. PMA Group, 295 N.J. Super. 620, 627 (App Div. 1996). Although the employer is the named insured, the “essential risk” for which these policies are intended to provide coverage are crashes “involving an employee’s operation of one of the employer’s vehicles.” Id. In fact, “[t]he employees of an insured corporation are in actuality the objects of the corporation's automobile liability coverage” and UM/UIM coverage is an “integral part of this coverage.” Id.

[When] a business automobile policy is issued to a corporate employer, the actual purchaser of the policy cannot itself suffer bodily injury and thus could not maintain a claim for UIM benefits . . . . On the other hand, if the UIM endorsement is construed to extend coverage to the business' employees, it provides a financial benefit not only to the employees but also to the employer.

Id. at 627-28.

In 2005, the New Jersey Supreme Court reinforced the importance of UM/UIM coverage in a corporate auto policy in Pinto v. N.J. Mfrs. Ins. Co., 183 N.J. 405 (2005). In Pinto, an employee injured using his employer's vehicle was subject to a step-down clause in the employer's corporate vehicle policy that limited UM/UIM recovery to the employee's personal automobile limits rather than the higher limits in the employer's corporate policy. 183 N.J. at 412. Under the employer's corporate vehicle policy, the employee was not a named insured and therefore the employer's reasonable intention, including a desire to make the policy less expensive by limiting the extended coverage to named insureds, controlled. 183 N.J. at 417. The Court, following the general rules of insurance contract interpretation, enforced the contract as written, limiting the employee's recovery. 183 N.J. at 407.

However, The Honorable Justice James R. Zazzali, writing in dissent on behalf of himself and Justice Albin, remarked that imposition of a step-down provision against an injured employee "disserves principles of fairness." Pinto, 183 N.J. at 419. He reasoned that in the Court's "debate over esoteric nuances of

insurance law, we should not forget that there is a victim here . . . who sustained severe and permanent personal injuries and has not received adequate compensation.” In evaluating the policy at issue in that case, Justice Zazzali valued the importance of ensuring the coverage purchased for those insureds is real and not illusory. Specifically, Justice Zazzali recognized:

Because New Jersey requires drivers to maintain a minimal amount of car insurance, the likelihood that one of the purchaser's employees would be uninsured is so small as to render the coverage purchased by the employer virtually illusory. Thus, almost no one will benefit from the insurance contract--except the insurer. Such a result counters both business and common sense.

Instead, a corporation would reasonably expect that the policy that it purchased would provide an extra layer of insurance for its employees, especially in situations like the present one where the nature of the job increases the likelihood of injury.

Pinto, 183 N.J. at 421-22 (emphasis supplied).

The Legislature reacted swiftly to the Pinto decision by adding subsection (f) to N.J.S.A. 17:28-1.1, known as the “Scutari Amendment” to ensure injured employees are fully protected by their employer’s UM/UIM coverage. The amendment provides:

“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).

**a. The Two-Fold Purpose of N.J.S.A. 17:28-1.1(f)**

Defendant claims that the sole purpose of N.J.S.A. 17:28-1.1(f) is to prohibit step-down clauses in commercial automobile insurance policies. Defendant’s interpretation flies in the face of the plain language of the statute, statutory interpretation rejecting surplusage, the statement accompanying Senate Bill 1666 (Da564) and case law analyzing N.J.S.A. 17:28-1.1(f).

N.J.S.A. 17:28-1.1(f) contains two separate operative sentences each with its own purpose – this is undeniable. The Supreme Court has already made this clear in James v. N.J. Mfrs. Ins. Co., 216 N.J. 552 (2014). While James dealt with the retroactivity of N.J.S.A. 17:28-1.1(f), the Supreme Court recognized in doing so, they:

first must examine the change in law that the new statute directs. The plain language of N.J.S.A. 17:28–1.1(f), enacted in response to the Pinto holding, is our starting point in discerning and implementing the legislative intent underlying this new statute[.]

Id. at 565.

The James Court identifies two separate and distinct operative sentences in N.J.S.A. 17:28-1.1(f). Id. at 565-66 The first operative sentence of the statute, as identified by the Supreme Court, reads in relevant part:

Notwithstanding the provisions of this section or any other law to the contrary, *a motor vehicle liability policy . . . issued in this State to a corporate or business entity . . . , 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.*

Ibid. (emphasis in original). The Court held that sentence clearly “prohibits providing *an employee* with less coverage than the *named insured* on a corporate or business entity's commercial automobile liability policy.” They continue:

The plain language of the *second sentence of the amendment further directs what should happen if the corporate or business entity's commercial automobile liability policy has not identified any named insured—other than the business entity itself*—which was the same situation as existed in Pinto. That second sentence of N.J.S.A. 17:28–1.1(f) states as follows:

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 coverage under any other policy providing uninsured or underinsured motorist coverage.

Id. at 566 (emphasis supplied).

The Court then analyzes the effect of the two distinct operative sentences, finding:

The straightforward text of N.J.S.A. 17:28–1.1(f) *is not ambiguous as to how it alters commercial policies of automobile insurance*. We thus give those words their normally ascribed meaning: ***The level of UM/UIM coverage for a “named insured” in a policy shall be the same level that is provided to employees of the corporation or business entity by operation of law, as directed through the first sentence of the new legislation. If 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, as directed through the second sentence of the new legislation.***

Id. at 568. That language addresses both the issue of step-down clauses and, separately, the amount of coverage required to be provided to fully protect employees of named insured corporations.

The first sentence of N.J.S.A. 17:28-1.1(f) deals with the former. See James, 216 N.J. at 555-56. The language expressly restricts an insurer from providing less UM/UIM coverage “for an individual employed by the corporate or business entity than the coverage to the ‘Named Insured’ under the policy.”

The second sentence unequivocally states that if the business entity is the named insured then the employees of that entity are “deemed” to be provided the “maximum” UM/UIM coverage “available under the policy.” Ibid.

The separate and distinct operation of the two sentences is made clearer by the legislative statement accompanying the enactment of N.J.S.A. 17:28-1.1(f), which 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[.]*

(emphasis supplied).

The separate and distinct effects of the two operative sentences of N.J.S.A. 17:28-1.1(f) was confirmed by New Jersey Appellate Division. See Singh v. Chestnut, 2020 WL 6141096 (App. Div. Oct. 20, 2020), Pa001-Pa004. The Court confirmed that in addition to eliminating the use of step-down provisions against employees, “if the policy only lists the employer as the ‘named insured,’ its employees are ‘deemed’ eligible for the maximum *available* coverage.” Id. at \*3, Pa003 (citing James, supra, 216 N.J. at 556) (emphasis supplied). The Court was “convinced that N.J.S.A. 17:28-11(f) was intended to address the amount of UM or UIM coverage available to a business entity’s employees who are entitled to coverage under the entity’s commercial liability policy.” Ibid., Pa003. In analyzing the committee statement accompanying its enactment, the Court found that N.J.S.A. 17:2-1-1(f):

was intended to bar the enforcement of the step-down provision in the policy of a corporate or business entity that limits the UM/UIM coverage available to the entity’s employees. *The statute also provides that, under certain circumstances, employees of a corporate or business entity would be entitled to the maximum amount of UM/UIM coverage under the commercial policy.*

Singh, 2020 N.J. Super. Unpub. LEXIS 2000 at \*4 (emphasis supplied), Pa004. Thus, the Court recognized that there are “certain circumstances,” i.e. when the sole named insured is a company, where the employees of that company are entitled to the maximum coverage set forth in N.J.S.A. 17:28-1.1(f). Clearly, overruling Pinto and the use of step-down provisions was not the Legislature’s sole intent. Instead, in crafting their remedy to Pinto, the Legislature made a conscious decision to push farther, not only eviscerating step-down clauses, but also ensuring maximum coverage to be afforded to corporate employees.

**b. Defendant’s Argument is Contrary to the Canons of Statutory Interpretation**

Here, the Defendant argues “contrary to the 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.” Db at 19. This argument is contrary to James, the legislative statement and New Jersey statutory interpretation, where the Court is required to “give meaning to each word of the statute and to avoid any construction that renders language useless.” Sahli v. Woodbine Bd. of Educ., 193 N.J. 309, 325 (2008) (quoting Med. Soc’y of N.J. v. N.J. Dep’t of Law & Pub. Safety, 120 N.J. 18, 26 (1990)). In reviewing legislation, courts must follow the “bedrock assumption that the Legislature did not use ‘any unnecessary or meaningless language.’” Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 587 (2013) (quoting Patel v.

New Jersey Motor Vehicle Com'n, 200 N.J. 413, 418-19 (2009)). Courts “must presume that every word in a statute has meaning and is not mere surplusage,” In re Att’y Gen.’s “Directive on Exit Polling: Media & Non - Partisan Pub. Int. Grps.”, 200 N.J. 283, 297-98 (2009), and “give effect to every word” so as not to “construe the statute to render part of it superfluous.” Med. Soc’y of N.J., 120 N.J. at 26-27.

Courts cannot “rewrite a plainly written statute” or “presume that the Legislature meant something other than what it conveyed in its clearly expressed language.” Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012); see also DiProspero v. Penn, 183 N.J. 477, 492 (2005) (finding courts cannot add language to a statute). Courts must also “ascribe to the statutory words their ordinary meaning and significance . . . and read them in context with related provisions so as to give sense to the legislation as a whole.” DiProspero, 183 N.J. at 492.

The first operative sentence of N.J.S.A. 17:28-1.1(f) eliminates enforcement of “step-down provisions to provide less UM/UIM coverage for employees than that which is provided to the ‘named insureds’ on the policy[.]” See James, 216 N.J. at 558. By eliminating step-down provisions against employees, the first sentence guarantees all employees are entitled to the UM/UIM coverage stated in the policy. If courts were to interpret the second operative sentence to require the same thing, the second operative sentence is rendered duplicative, superfluous and meaningless.

Defendant offers no valid explanation as to what purpose they attribute to the second operative sentence of N.J.S.A. 17:28-1.1(f). In the past, they argued the second sentence is simply an enforcement mechanism for the first sentence. See Da891-92. It appears the Defendant has abandoned that argument in this case, recognizing its absurdity. No other provision of N.J.S.A. 17:28-1.1 has a separate and distinct “enforcement provision” accompanying it. For instance, there is no “enforcement provision” in subsection (a) if an insurer chose to ignore its statutory requirements and write a standard policy with limits below the mandated minimums. There also is no “enforcement provision” contained in subsection (b) if an insurer chose to ignore its statutory obligations and not offer UM/UIM coverage. So why would N.J.S.A. 17:28-1.1(f) be different? There is no reason, and it is not.

There is no need for a separate and distinct “enforcement provision” in N.J.S.A. 17:28-1.1(f) because an insurer cannot contract out of its statutory obligations. Ryder/P.I.E. Nationwide, Inc. v. Harbor Bay Corp., 119 N.J. 402 (1990). A policy provision “that conflicts with statutorily mandated coverage will not be enforced.” Potenzzone v. Annin Flag Co., 191 N.J. 147 (2007). The consequences when an insurer writes a policy provision violative of N.J.S.A. 17:28-1.1 were established long ago. When a provision in an insurance contract operates:

to reduce or take away from the coverage mandated in N.J.S.A. 17:28-1.1, ***the contractual provision will almost certainly be found void and the statutorily required coverage read into the policy as a matter of law. Time and time again, the courts of New Jersey have struck down***

*policy language more restrictive than the statutory mandate and held that coverage in accordance with the remedial aims of the legislation must be afforded regardless of the contractual efforts to limit coverage.*

Berger v. First Trenton Indem. Co., 339 N.J. Super. 402, 411 (App. Div. 2001) (citing Craig & Pomeroy, New Jersey Auto Insurance Law, § 23:2 at 348 (2001)).

Thus, the consequences of an insurer ignoring N.J.S.A. 17:28-1.1(f) and writing an *ultra vires* insurance provision are clear – the provision will be found void and the statutorily required coverage read into the policy as a matter of law. There is no reason for a belt and suspenders. To date, in neither this case nor in Chiaccheri has the defense been able or willing to provide a legitimate explanation as to what the second sentence of the legislation achieves, if not to ensure maximum UM/UIM coverage to injured employees.

**c. Defendant’s Argument is Contrary to the Plain Meaning**

A court may invalidate an insurance provision for violating that state’s public policy, without finding the provision ambiguous. See Scott v. Salerno, 297 N.J. Super. 437, 445-46 (App. Div. 1997); Harleysville Ins. Co. v. Crum & Forster Personal Ins., 246 N.J. Super. 503, 507 (App. Div. 1990). Public policy includes “legislation[] and judicial decisions.” Vitale v. Schering-Plough Corp., 447 N.J. Super. 98, 112 (App. Div. 2016) (quoting Hitesman v. Bridgeway Inc., 430 N.J. Super. 198, 218 (App. Div. 2013)). Where policy provisions conflict with the coverage required by statute, they are inapplicable and deemed amended to conform

to the statutory standards. Fellippello v. Allstate Ins. Co., 172 N.J. Super. 249, 261 (App. Div. 1979) (citing Hoglin v. Nationwide Mut. Ins. Co., 144 N.J. Super. 475, 482 (App. Div. 1976)), certif. denied, 85 N.J. 481 (1980); see Selected Risks Ins. Co. v. Zullo, 48 N.J. 362, 373 (1966).

When interpreting a statute, a court “begin[s] with the statute’s plain language – our polestar in discerning the Legislature’s intent.” L.W. v. Toms River Reg’l Schools Bd. of Educ., 189 N.J. 381, 400 (2007). “If the language is plain and clearly reveals the statute’s meaning, the [c]ourt’s sole function is to enforce the statute according to its terms.” Ibid. (quotation omitted). At bar, the statute is clear and unambiguous and mandates reformation of the UM coverage.

The issue here is whether under N.J.S.A. 17:28-1.1(f), “maximum uninsured or underinsured motorist coverage available under the policy” means the maximum UIM benefits available by operation of law or as chosen by the corporate employer. Plaintiff urges the former, defendant, the latter. Although the issue in James was the retroactivity of the statute, the Supreme Court answered the question in accord with plaintiff’s interpretation. “If 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**, as directed through the second sentence of the new legislation.” 216 N.J. at 568 (emphasis supplied).

There can be no legitimate dispute that, pursuant to statute, the maximum amount of UIM coverage *by operation of law* is equal to the insured's bodily injury liability limits elected on any given automobile policy. See N.J.S.A. 17:28-1.1(b). New Jersey common law has also interpreted the statute that way. See Sikking v. Nelson, 242 N.J. Super. 185, 188, 190 (App. Div. 1990) (equating “maximum [UIM] limits permitted by law” and “maximum limits available” under a policy to the liability limits under the auto policy, in that case, \$300,000); see also Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 258 (2008) (finding “maximum UM/UIM benefits” to be equal to the liability limits contained in the insured’s auto policy).

By contrast, there is no support for defendant’s interpretation limiting the maximum available coverage to the minimum limit chosen by the corporate employer. Defendant claims that the Legislature’s use of the term “maximum coverage available” should be read in a limited fashion to reflect the use of the term in the Pinto case. Although plaintiff agrees that the statute was meant to address the Pinto Court’s upholding of a step-down provision to offer lesser UIM benefits than the policy offered, it does not follow that the Legislature intended to allow an employer to choose the bare **minimum** UM/UIM limits and have that comport with the **maximum** coverage “by operation of law” available under the statute. “By operation of law,” the maximum UM/UIM limits match the bodily injury liability limits. N.J.S.A. 17:28-1.1(b).

In Pinto, the maximum UM/UIM benefit under the policy in question was \$1,000,000. It is highly likely that was also the liability limit under the policy because, in most cases, the UM/UIM limits are the same as the bodily injury limits. See Banach v. Tarakanov, 2017 WL 399622 (App. Div. Sep. 12, 2017), Pa005-Pa013. In Banach, an ex-insurance executive confirmed that “[i]n today[’]s insurance environment in New Jersey, *it is very rare to find a [p]ersonal or [c]ommercial [a]uto policy that does not have UM/UIM limits that match the policy’s liability limits – and when that occurs, it is deemed to be violative of [industry] standards and practices.*” Id. at \*4 (emphasis supplied), Pa008.

Moreover, taken together with N.J.S.A. 17:28-1.1(b), because the \$1,000,000 UIM limit in Pinto is above the \$250,000/\$500,000 mandated by N.J.S.A. 17:28-1.1(b), it stands to reason that the UIM coverage in Pinto was equal to the liability coverage. The same is true in every other post-Pinto case. James, supra, 216 N.J. 552 (\$500,000 corporate UIM limits); Murawski v. CNA Ins. Co., 183 N.J. 423 (2005) (\$1,000,000 corporate UIM limits); Olkusz v. Brown, 401 N.J. Super. 496 (App. Div. 2008) (\$1,000,000 corporate UIM limits); Hand v. Philadelphia Ins. Co., 408 N.J. Super. 124 (App. Div. 2009) (\$1,000,000 corporate UIM limits); Sexton v. Boyz Farms, Inc., 780 F. Supp. 2d 361 (D.N.J. 2011) (\$1,000,000 corporate UIM limits); Singh v. Chestnut, 2020 N.J. Super. Unpub. LEXIS 2000, 2020 WL 6141096 (App. Div. Oct. 20, 2020) (\$1,000,000 corporate UIM limits). Pa001. In contrast, no

post-Pinto case has held \$15,000 to comport with the requirements of N.J.S.A. 17:28-1.1(f).

The point of the statute is to make sure that employees who are driving company cars are sufficiently insured to cover injuries incurred while driving in the scope of their employment. It flies in the face of logic and statutory intent that the Legislature intended for a corporate entity that will never be injured in a car crash to be the arbiter of the coverage to which an employee is entitled. It makes even less sense that an insurance company has that power. Hence, the “notwithstanding the provisions of this section or any other law to the contrary” language in the statute. N.J.S.A. 17:28-1.1(f). The logical conclusion is that an employer’s desire to cut costs cannot be the metric by which we measure adequate and appropriate UM/UIM coverage under the statute.

### **3. Public Policy Warrants Reformation of the Policy.**

The Defense, in line with the mantra of tort reform, suggests, without support that Judge Stein’s decision 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.

Db at 23. This is wrong. The only policies which would require reformation are those that are in violation of N.J.S.A. 17:28-1.1(f). Specifically, commercial auto policies

whose only named insured is a business entity which provides less than the maximum amount of UM/UIM insurance available by operation of law.

The defendant's public policy arguments are premised on the incorrect notion that plaintiff seeks to "expand" the law. That is untrue. The statute has been in place since 2007; the ability of the insured to choose UM/UIM limits equal to the liability limits has been in place for over 40 years. Insurers know their obligations; they just do not want to fulfill those obligations. As indicated by the cases cited above, the policy here providing millions in liability coverage for the corporate entity and virtually no coverage for the employees who are driving the corporate vehicles is uncommon. In other words, the insurance industry is already writing policies matching UM/UIM and liability limits. The sky has not fallen nor has the insurance industry ceased to be.

Further, all defendant's policy arguments are purely speculative and unsupported. There is no proof in the record regarding how much the insured paid for the policy at issue here. That information was redacted. Defendant cannot possibly show how changing the UM/UIM coverage would greatly drive-up Foulke's premiums, as claimed, let alone premiums industry wide.

Throughout the insurance industry, it is common knowledge that while insurers push lower UM/UIM limits on their insureds under the guise of "saving money," the amount of premium saved by lowering UM/UIM limits is nominal. The

only thing lower UIM limits do is protect the insurance industry's bottom line. See Banach, 2017 WL 3996222. In Banach, the insurance industry expert addressed and dismissed that very premium-impact contention, noting that a 5x increase of a UM/UIM coverage from \$100,000 to \$500,000 would result in a "very minimal increase" in premium. Id. at \*4, Pa008. Instead, insurers deterred insureds from purchasing increased UIM for one reason only:

insurance companies believed they could not 'under-write' the exposures presented by UM and UIM coverages, [so] they generally tended to be adverse to selling the coverages, and the statutory change that made it the insured's option to purchase increased limits of UM/UIM when prior to this it had been the insurer's option to sell increase[d] limits was not well received by most insurance companies.

Ibid.

Notwithstanding the insurer's outlandish claims, there are simple ways that a corporate employer can satisfy both of its obligations – fully protecting its assets while at the same time providing a threshold level of UIM coverage for their employees. N.J.S.A. 17:28-1.1(f) applies only to auto policies. It does not apply to excess policies. Corporations commonly utilize excess policies and often insurance towers to protect their assets and expand their liability limits. By using excess coverage and insurance towers, a corporation would have to have an underlying policy that provides a certain level of liability coverage on their auto policy to allow them access to an excess policy. Whether that minimum is \$250,000, \$500,000, \$1,000,000 or more, would be dependent on the excess carrier. That auto policy

would then have to provide the maximum UM/UIM coverage available under that policy – i.e., match the UM/UMI coverage to the liability coverage – pursuant to N.J.S.A. 17:28-1.1(f). The corporation can then protect themselves and their assets further through use of an excess policy or insurance tower, up to whatever limits they desire. That can all be done easily without having to pay significantly increased premiums for additional asset protection coverage.

Zurich’s second argument regarding corporations buying less liability insurance coverage has even less credence. Db23. It is wholly inconceivable that a corporation would risk its corporate assets to save a “very minimal” amount per year in insurance premiums. Such a decision would likely subject the company’s decision makers to personal liability to its shareholders for placing the company’s assets at risk unnecessarily.

**4. Judge Stein’s Decision was Not Based Upon a Misunderstanding of the Policy at Issue.**

Defendant’s argument that “[t]o the extent the trial’s court decisions 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” lacks merit. Judge Stein recognized the inequity in coverage afforded to the named insured company and the UM/UIM coverage, or lack thereof, afforded to its employees. As the Cook-Sauvageau Court long ago recognized, a company has no need for UIM benefits since it cannot itself suffer bodily injury. 295 N.J. Super. at 627-28.

Therefore, when the only named insured is a business, they are protected solely by liability coverage. However, their employees are protected by UM/UIM coverage. Therefore, in this case, the coverage afforded to the named insured – Foulke – is \$1,000,000 of liability coverage. The coverage afforded to the employees is only \$15,000 in UM/UIM coverage. That is what Judge Stein recognized in finding that the company is afforded “a large policy with these coverages [while] the employees get the minimum protection under the law.” 2T15:8-13.

##### **5. Plaintiff’s Bad Faith Claims Survive.**

Defendant argues that Plaintiff’s bad faith claims must be dismissed without any support, either legal or factual. The bad faith claims are predicated, in part, on Defendant’s issuance of an *ultra vires* insurance contract in violation of N.J.S.A. 17:28-1.1(f).

On January 18, 2022, The Insurance Fair Conduct Act (“IFCA”) was signed into law. It provides insureds a meaningful remedy when insurance carriers engage in their long-standing practices of unreasonably denying, delaying or underpaying claims in UM/UIM cases. That law provides, in pertinent part:

[A] claimant, who is unreasonably denied a claim for coverage or payment of benefits, or who experiences an unreasonable delay for coverage or payment of benefits, under an uninsured or underinsured motorist policy by an insurer may . . . file a civil action . . . against its automobile insurer for (1) an unreasonable delay or unreasonable denial of a claim for payment of benefits under an insurance policy; or (2) any violation of . . . [N.J.S.A. 17:29B-4].

Entitled “Unfair claim settlement practices,” N.J.S.A. 17:29B-4(9) prohibits, *inter alia*, not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

Further, the issuance of a statutorily violative policy is not the only potential IFCA violation. Defendant’s ongoing conduct throughout the litigation is subject to the IFCA, not just their issuance of an improper insurance policy. The UM coverage is now reformed to \$1,000,000. If the carrier unreasonably delays payment of the \$1,000,000 policy, refuses to effectuate prompt, fair and equitable settlements of the claim or compels additional litigation, including additional appeals, to recover amounts due under the policy by offering substantially less than the amounts ultimately recovered, these would all be violations.

### **CONCLUSION**

For these reasons, Plaintiff respectfully requests that the Court deny Defendant’s Motion for Leave to Appeal the May 23, 2025 or July 7, 2025 Orders.

**REBENACK, ARONOW & MASCOLO, LLP**

A handwritten signature in black ink, appearing to read 'Matthew G. Bonanno', is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Matthew G. Bonanno, Esq.  
Counsel for Plaintiffs-Respondents

Dated: September 4, 2025