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**SUPREME COURT OF NEW JERSEY
DOCKET NO. 091127**

NICKY TRAVIESO and EVETTE
TRAVIESO,

Plaintiffs-Respondents,

v.

CIARA CRESPO, NILDA RIVERA, and
ZURICH AMERICAN INSURANCE
COMPANY,

Defendant-Appellants.

On Motion for Leave to Appeal
Superior Court of New Jersey
Appellate Division

Docket No.: AM-000596-24T3

Docket No.: CAM-L-1502-24

Sat Below:

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

Civil Action

**BRIEF OF PLAINTIFF-APPELLANTS NICKY TRAVIESO AND
EVETTE TRAVIESO IN OPPOSITION TO NEW JERSEY DEFENSE
ASSOCIATION'S AMICUS CURIAE BRIEF**

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PRELIMINARY STATEMENT

The New Jersey Defense Association (“NJDA”), appearing as amicus curiae, urges this Court to construe N.J.S.A. 17:28-1.1(f) as nothing more than a limited prohibition on step-down clauses in corporate automobile policies. That reading ignores the statute’s text, structure, and purpose.

Subsection (f) provides that policies issued to business entities “shall be deemed to provide the maximum uninsured or underinsured motorist coverage available under the policy” to employees, “notwithstanding the provisions of this section or any law to the contrary.” N.J.S.A. 17:28-1.1(f). The Legislature’s command is clear. Employees of corporate insureds are entitled to the maximum UM/UIM coverage available under the policy — that is, coverage up to the policy’s liability limits.

Zurich issued a commercial auto policy with \$2,000,000 in bodily injury liability limits but only \$15,000 in UM/UIM limits. The NJDA characterizes enforcement of subsection (f) according to its plain language as a “radical expansion” of New Jersey insurance law. It is not. It is faithful statutory interpretation.

The issue before this Court is straightforward – whether “maximum coverage available under the policy” means the maximum coverage option permitted by the

policy's liability limits, or merely the amount the employer elected to purchase. The statute uses the word "available," not "chosen." The Legislature knew the difference.

For decades, this Court has recognized that UM/UIM coverage is tied to liability limits and that "maximum available" coverage means coverage up to those limits. The NJDA's proposed construction would reduce subsection (f) to a drafting technicality — allowing insurers to nominally comply while defeating its remedial purpose.

The Court should reject that interpretation and give subsection (f) its full, operative effect.

LEGAL ARGUMENT

I. PRINCIPLES OF STATUTORY INTERPRETATION AND THE PLAIN LANGUAGE OF THE STATUTE SUPPORT PLAINTIFF'S INTERPRETATION OF N.J.S.A. 17:28-1.1(f).

Points I, II and III of NJDA's amicus brief do not warrant particularly extensive response. These brief points are nothing more than a repetition of the arguments made by Defendant Zurich and amicus in both this case and Chiaccheri v. Zurich American Insurance Company, Docket No. 24-2563. They argue, again, that despite the plain language of the statute, the legislative history and case law interpreting the statute, that the sole purpose of N.J.S.A. 17:28-1.1(f) is to eliminate the enforcement of step-down clauses against employees in corporate auto policies. Amici have certainly established their interest. They represent the insurance industry

and insurance companies who are united in trying to limit their exposures and obligations to provide coverage under existing New Jersey law. They each seek to frame the issue of literal statutory interpretation as a radical expansion and rewriting of New Jersey automobile insurance law. See Ab at 9-10. While those repetitive, extreme characterizations identify the unity of interest of defendant and the amici, they are contrary to N.J.S.A. 17:28-1.1(f) and public policy.

There is nothing revolutionary or expansive about plaintiff's position. For over 40 years, pursuant to N.J.S.A. 17:28-1.1(b), insurers have known that they would be issuing corporate auto policies where the UM/UIM coverage was the same as the bodily injury liability coverage. In fact, most corporate auto policies contain equivalent provisions. Here, however, Defendant Zurich issued a policy where the UM/UIM limits are \$15,000 and the bodily injury liability limits are \$2,000,000. This atypical policy is the reason we are before this Court. The facts may be novel, but the legal issue to be decided by this Court is not. The subject Amicus brief should be viewed against that backdrop.

Again, the insurance industry fails to align their position that allowing a company and an insurer to purchase the minimum amount of UM/UIM coverage satisfies the Legislature's desire to ensure "maximum available coverage" is afforded to that company's employees. That is because they cannot.

Here, the Legislature enacted N.J.S.A. 17:28-1.1(f) “notwithstanding the provisions of this section or any law to the contrary.” A “notwithstanding” clause is a clear signal that the provision it introduces overrides conflicting statutory provisions. Kennedy v. Weichert Co., 257 N.J. 290, 310 (2024), quoting Cisneros v. Alpine Ridge Grp., 508 U.S. 10, 18 (1993) (“notwithstanding” clauses are used “to supersede all other laws, stating that ‘[a] clearer statement is difficult to imagine.’”); Shomber v. United States, 348 U.S. 540, 547-48 (1955). As Justice Scalia explained, such a clause is a “fail-safe way of ensuring that the clause it introduces will absolutely, positively prevail.” A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 127 (2012).

The Legislature could not have been clearer in enacting section (f) “notwithstanding the provisions of this section” (i.e. N.J.S.A. 17:28-1.1) that section (f)’s requirements of maximum UIM coverage for employees prevail over the company’s desire to cut costs and the insurer’s desire to limit exposure by choosing lesser limits under section (b), including the statutory minimum amounts set forth in section (a).

The statutory text reinforces this conclusion. While (a) and (b) do not mention businesses or corporations at all, subsection (f) expressly governs those policies. The Legislature deliberately singled out employees of business entities for enhanced

protection and ensured that protection would prevail over cost-containment provisions adopted for other contexts.

Had the Legislature intended to preserve an employer's ability to provide employees only the limits it elected to purchase, it would have used language to that effect, which would have carved out an exception to the earlier "notwithstanding" language. They did not. Instead, they chose to require the maximum available coverage, which is equal to the liability limits. In New Jersey's statutory framework, UM/UIM "maximum available" coverage is tied directly to the policy's liability limits.

When interpreting a statute, courts give words their ordinary meaning and read them in context. DiProspero v. Penn, 183 N.J. 477, 492 (2005). In the UM/UIM context, "maximum available" coverage has a settled meaning: coverage that may be purchased up to the policy's liability limits. Under N.J.S.A. 17:28-1.1(b), UM/UIM limits are tied to liability limits. Consistent with that framework, this Court has long recognized that the "maximum available" UM/UIM coverage equals the liability limits of the policy. The insurance industry asks this Court to substitute N.J.S.A. 17:28-1.1(f)'s use of the word "available" with the word "chosen." If the Legislature meant the chosen amount, then the Legislature would have written "chosen under the policy" or "elected under the policy." They did not. The Legislature specifically chose the word "available" under the policy.

The New Jersey Department of Banking and Insurance confirm this understanding. New Jersey law requires insurers to provide a buyer's guide explaining "all available policy coverages and benefit limits." N.J.S.A. 39:6A-23. The mandatory Auto Insurance Buyer's Guide explains that UM/UIM "[c]overage is *available up to amounts selected for liability coverage.*" Zurich's own New Jersey Buyer's Guide says the same.

When explaining "all available coverages" to its commercial insureds, Zurich advises those insureds that UIM "[c]overage is *available up to amounts selected for liability coverage.*" Zurich also instructs their commercial insureds that UM and UIM coverage "are sold together and are available up to the limits you choose for liability coverage."

Throughout the buyer's guide and coverage selection form there are references to "available" coverage. "Available" coverage is very different from the coverage chosen by the insured. For instance, the coverage selection form confirms that the "coverage options *available* to [the insured]" have been explained and separately, that their "*choices*" of the available coverage are shown.

Clearly, the coverage "available" means the coverage options – which would include the maximum UIM coverage option equal to the liability limits. To the contrary, the "choices" are wholly different. In other words, both the New Jersey DOBI and Zurich are advising insureds throughout New Jersey that "available"

UM/UIM coverage under any policy extends up to the liability limits – exactly what Plaintiff is saying here. Further, Zurich and DOBI are advising insureds that this is the “common coverage option.” These statutorily required forms by the insurance industry contradict the insurance industry’s arguments to this Court.

The Legislature’s phrasing – “available *under the policy*” – recognizes that the maximum available UM/UIM coverage varies from policy to policy depending on the liability limits selected. If liability limits are \$1 million, the *maximum available UM/UIM coverage under the policy* is \$1 million. If liability limits are \$2 million, the *maximum available UM/UIM coverage under the policy* is \$2 million. If liability limits are \$50,000, the *maximum available UM/UIM coverage under the policy* is \$50,000. That is precisely what the statute contemplates.

This understanding was also confirmed by the Supreme Court almost 35 years ago. In Weinisch v. Sawyer, 123 N.J. 333 (1991), the New Jersey Supreme Court examined “whether reformation is the appropriate remedy when an insurance agent negligently fails to inform an insured about *available coverage*” under N.J.S.A. 17:18-1.1. Id. at 336 (emphasis added). This Court held “when an insured sues the insurer and its agent for the agent’s failure to inform the insured of *available coverage*, the proper remedy is reformation[.]” Ibid. (emphasis added). The Supreme Court in Weinisch consistently referred to the “optional higher limits of UM/UIM coverage” as the “available coverage.” Id. 336-37. See also Pizzullo v. N.J. Mfrs.

Ins. Co., 196 N.J. 251, 256, 258 (2008) (discussing “available” coverage and confirming “maximum available” coverage equals the liability limits under the given policy); Sikking v. Nelson, 242 N.J. Super. 185, 188–90 (App. Div. 1990).

Likewise, in Pinto v. Garretson, 237 N.J. Super. 444 (App. Div. 1989), the Appellate Division found that Plaintiff’s auto insurer and agent were not liable to Plaintiff for professional negligence for allegedly failing to inform the insured that higher levels of UIM coverage were *available*, because the agent provided the necessary paperwork. The Court held:

even assuming that Pinto had purchased the *maximum available [UIM] coverage*, his motor vehicle would not have been an underinsured motor vehicle. The *maximum UIM coverage* that Pinto would have been able to obtain was \$100,000/\$300,000 – *the limit of his bodily injury and property damage liability insurance coverage*. See N.J.S.A. 17:28-1.1(b)

[Id. at 45 (emphasis added)]; see also Walker v. Atlantic Chrysler Plymouth, Inc., 216 N.J. Super. 255 (App. Div. 1987) (finding insurance broker may have had duty to inform insured of additional UIM coverage *available* beyond statutory minimum).

Amicus’ attempt to limit the Legislature’s desire to remedy Pinto v. N.J. Mfrs. Ins. Co., 183 N.J. 405 (2005) is misplaced. In Pinto, the employer had elected \$1 million in UM/UIM limits, which likely matched the liability limits. The Court had no occasion to distinguish between the chosen limits and maximum available limits – because they were the same. Nothing in Pinto suggests that “available” means only what the employer chose. This is also true for every other post-Pinto case.

“[M]aximum [UIM] coverage available under the policy” can only reasonably be interpreted to mean the maximum coverage option available to be chosen under a given policy.

Section (f) addresses Justice Zazzali’s concerns in Pinto that “we should not forget that there is a victim here . . . who sustained severe and permanent personal injuries and has not received adequate compensation” and recognizes the importance in ensuring real and meaningful coverage for those victims. Pinto, supra, 183 N.J. at 419; 421-22.

Amici, like Defendant, attempts to use the Court’s language in James v. New Jersey Mfrs. Ins. Co., 216 N.J. 552, 570-71 (2014) where the Court states N.J.S.A. 17:28-1.1(f) simply limits the enforceability of step-down provision. However, nowhere in James does the Court limit the application of subsection (f) or suggest anything that closely resembles what amici seek to compel. The issue the Court was addressing at that time was whether section (f) proscribed step-down clauses entirely. They confirm it does not. Specifically, they write:

as noted, a plain language construction of the operative terms of the new legislation reveals that it does not proscribe step-down provisions. It simply thwarts implementation of such 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. The legislation does not prevent a step-down provision from operating for other persons subject to its terms.

[James, 216 N.J. at 570-71]. Thus, as recognized earlier in the opinion, step-down provisions are still enforceable in certain situations under corporate policies, for instances “a family member of an employee riding in a corporately registered car, or a non-employee permissive user of the vehicle, who was injured by an uninsured or underinsured motorist.” Id. at 567. They are “simply” proscribed for employees.

The Court never suggested that subsection (f) does nothing more than address step-downs. To the contrary, they recognize an independent and affirmative mandate: that policies issued to business entities “shall be deemed to provide the maximum [UM/UIM] coverage available under the policy” to employees. That clear language has operative effect beyond the elimination of step-downs and this Court should give it full force and effect.

II. THE COURT MUST INTERPRET N.J.S.A. 17:28-1.1(f) BROADLY IN LINE WITH THE LEGISLATURE’S INTENT.

In Point IV of NJDA’s brief, the sole point raised anew in the amicus curiae brief of NJDA is one of which this Court needs no reminders. Sandwiched around a reiteration of the history of N.J.S.A. 17:28-1.1(f), NJDA seeks to remind this Court of its limitations when it comes to statutory interpretation of state laws.

The amici do not suggest that the issue before this Court is particularly close or difficult to resolve. They simply choose to ignore the express language of the relevant statute in favor of an interpretation that would allow the atypical policy that defendant and the insured to deny any meaningful auto insurance coverage to the

insured's employees. However, The NJDA's argument that any further reform is solely for the Legislature ignores this Court's role in construing remedial statutes in a manner that effectuates legislative purpose. Where statutory language is susceptible to more than one reasonable interpretation, the Court should adopt the construction that advances the remedial goals of the statute. See Haines v. Taft, 237 N.J. 271, 293-94 (2019). Plaintiffs' interpretation does precisely that, whereas if this Court were to read the statute like the insurance industry, insurers would be allowed to comply with subsection (f) in form while defeating it in substance. Insurers could get away with naming only corporate entities as insureds and select nominal UM/UIM limits that bear no actual purpose to protect the public. That result is inconsistent and inapposite to New Jersey's long-recognized policy *against* illusory UM/UIM coverage. There would simply be no purpose in having subsection (f) if this were the case.

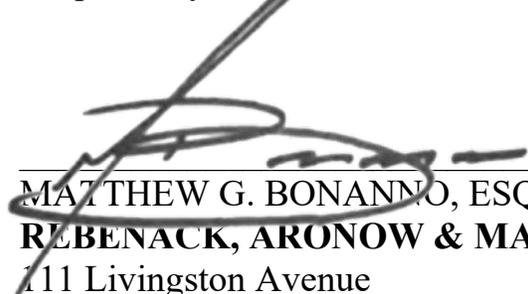
Because subsection (f) exists, the simple fact is that the Legislature has already declared their intentions with this statute. The issue of UM/UIM coverage "in name only" like the Defendants have here is that it deviates from subsection (f) substantially. Plaintiff's position is not to seek a retroactive modification of a contract – it is to comport the insurance policy to be consistent with subsection (f) as that is the law governing its coverage. It does not take a complex analysis of statutory construction to look at the Defendant's insurance policy and understand

that its \$15,000 UM/UIM limits were not at all what the legislature intended with subsection (f).

CONCLUSION

The NJDA’s amicus brief urges an interpretation of N.J.S.A. 17:28-1.1(f) that drains the statute of its remedial force and perpetuates inequities the Legislature enacted subsection (f) to eliminate. Plaintiff respectfully submit that this Court should reject the NJDA’s narrow construction and interpret subsection (f) consistent with New Jersey’s longstanding public policy favoring robust UM/UIM protection for accident victims—particularly employees injured in the course of their employment.

Respectfully submitted,



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