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SUPREME COURT
OF NEW JERSEY

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Supreme Court of New Jersey

DOCKET NO. 090943

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CRAIG CHIACCHERI, : CIVIL ACTION

Plaintiff-Appellant, : ON PETITION FOR

v. : CERTIFICATION OF

ZURICH AMERICAN INSURANCE : QUESTIONS OF LAW

COMPANY, : U.S. COURT OF

Defendants-Respondent. : APPEALS FOR THE

: THIRD CIRCUIT

: DOCKET NO.: 24-2563

: Sat below:

: Hon. Tamika R.

: Montgomery-Reeves

: Hon. Jane R. Roth

: Hon. Thomas L. Ambro

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BRIEF OF AMICI CURIAE
INSURANCE COUNCIL OF NEW JERSEY AND AMERICAN
PROPERTY CASUALTY INSURANCE ASSOCIATION

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AMICI CURIAE AND THEIR INTERESTS IN THE CASE

Established in 1977, Insurance Council of New Jersey (ICNJ) is a nonprofit New Jersey insurance trade association comprised of nineteen insurer members licensed to write property and casualty insurance in the State of New Jersey, representing 65% of the total market and 59% of the commercial market. ICNJ's purposes include advocating sound public policies on behalf of its members in legislative, judicial and regulatory forums at the state and federal levels. ICNJ files amicus briefs in cases having substantial impact on the insurance industry in this Court, the New Jersey Superior Court, Appellate Division, and the U.S. Court of Appeals for the Third Circuit. *See, e.g., AC Ocean Walk, LLC v. Am. Guar. & Liab. Ins. Co.*, 256 N.J. 294 (2024); *Crystal Point Condo. Ass'n, Inc. v. Kinsale Ins. Co.*, 251 N.J. 437 (2022).

American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition to benefit consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent approximately 65 percent of the U.S. property-casualty insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members in legislative

and regulatory forums at the federal and state levels and submits amicus curiae briefs in significant cases before federal and state courts, including this Court.

The issues presented in this case will impact the members of ICNJ and APCIA (collectively, “Amici”), their policyholders, and New Jersey’s commercial automobile insurance marketplace. Amici believe their local and national perspectives will aid the Court in its analysis of the important issues before it. Amici were granted leave to participate as amici curiae in the U.S. Court of Appeals for the Third Circuit in this case, and arguments made by Amici were referenced in the Third Circuit’s Petition for Certification of Questions of Law (at pp. 3, 7, 10–11).

SUMMARY OF ARGUMENT

Amici seek to fulfill the classic role of amici curiae by delving beyond what the parties have briefed, “[h]ighlighting factual, historical, or legal nuance glossed over by the parties,” “[e]xplaining the broader regulatory or commercial context in which a question comes to the court,” and “[p]roviding practical perspectives on the consequences of potential outcomes.” *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020) (Scudder, J., in chambers).

First, Amici explain in further detail the background behind the enactment of N.J.S.A. § 17:28-1.1(f), explaining how Plaintiff’s interpretation is

inconsistent with a plain reading of the entire statute as a whole, and inconsistent with its legislative history. The intent, as expressly stated by the New Jersey Legislature, was to achieve equitable treatment of employees with respect to businesses' purchase of uninsured motorist (UM) and underinsured motorist (UIM) coverages. By addressing certain "step-down" endorsements, the Legislature sought to prevent businessowners from buying a high limit of coverage for themselves under their business policies while providing minimal coverage for their employees. The Legislature did not seek to alter the wide range of choices that New Jersey businesses (and consumers) have enjoyed for decades in selecting the *amount* of UM/UIM coverage they desire, which has always been chosen separately from the liability limits. There was no intent to take away those choices and require every business, large or small, to purchase the maximum statutorily permissible limits for UM/UIM coverage, matching the liability coverage limits chosen.

Second, Amici explain how Plaintiff's novel interpretation of N.J.S.A. § 17:28-1.1(f), if adopted, would have serious adverse consequences for the New Jersey commercial automobile insurance marketplace. If Plaintiff's position prevails, insurers will be required to provide maximum UM/UIM coverage limits where lower or minimum limits for that coverage were specifically selected and purchased. Billions of dollars of additional coverage potentially

would become available for which premiums were not paid. The impact on the marketplace of judicially requiring such a massive amount of unpaid-for coverage would be staggering, creating potential risks of insolvency.

Amici respectfully request that this Court answer the two certified questions as follows: First, 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), the “maximum ... underinsured motorist coverage available under the policy” that must be provided to “an individual employed by the corporate or business entity” is the policy limit for underinsured motorist coverage stated in the policy that is applicable to the named insured. Second, endorsements limiting underinsured motorist coverage to an amount less than the general third-party liability coverage limit under the same policy are not in violation of N.J.S.A. § 17:28-1.1(f) or otherwise contrary to public policy.

ARGUMENT

- I. **The New Jersey Legislature decided to require businessowners to purchase the same UM/UIM limits for their employees that they purchase for themselves under a business policy, not to require businesses to purchase the statutory maximum level of UM/UIM policy limits based on the liability limits selected.**

Plaintiff argues that N.J.S.A. § 17:28-1.1(f) requires that all automobile insurance policies issued to business entities are statutorily required to have UM/UIM limits that are identical to the policy’s bodily injury liability coverage

limits. (*See, e.g.*, Plaintiff-Appellant’s Br. at 1.) Plaintiff argues that instead of the \$15,000 UM/UIM limit stated in his employer’s policy, Zurich was statutorily required to provide a \$2 million limit for UM/UIM coverage because that was the limit the employer selected for bodily injury coverage. (*See id.* at 19, 21.) As explained below, Plaintiff’s novel position—never asserted until recently, under an 18-year-old statutory amendment—is contrary to the text of the statute, read as a whole, as well as the legislative history and purpose of the amendment. Plaintiff’s proposed interpretation is plainly incorrect when the amendment is considered in the context of the statute as a whole together with its legislative history and other related statutes.

A. The Legislature’s focus was on equitable treatment of employees.

The applicable statute requires 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 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) (emphasis added). A corporate or business policy “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[s] under the policy.” *Id.* In other words, whatever UM/UIM limit is provided for in a business policy to the company or a businessowner must apply in the same manner to all employees and owners/executives covered by the policy. As this Court has explained, the statute “prohibits providing *an employee* with less coverage than the *named insured* on a corporate or business entity’s commercial automobile liability policy.” *James v. New Jersey Manufacturers Ins. Co.*, 216 N.J. 552, 566 (2014) (emphasis in original). In other words, the statute governs, in “precise and direct terms ... how commercial motor vehicle liability policies must treat employees under any step-down provision impacting UM/UIM coverage.” *Id.* at 571. “[T]he two operative sentences of [§ 17:28-1.1(f)] direct how *employees* must be treated in the presence of such [step-down] provisions.” *Id.* at 567 (emphasis in original). That is consistent with how the bill was described in the committee statement: “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.” N.J. Assembly Financial Institutions and Insurance Committee Statement, Senate No. 1666–L. 2007, c. 163 (May 10, 2007).

The legislative intent was ensuring *equitable treatment of employees vis-a-vis management*, i.e., to address circumstances in which a business might purchase say \$1 million of UM/UIM coverage in a business auto policy for the CEO but provide a much lower or minimum limit for rank-and-file employees. Indeed, that hypothetical is similar to the facts of *Pinto v. New Jersey Manufacturers Ins. Co.*, 183 N.J. 405 (2005), the decision of this Court that precipitated the statutory amendment. In that case, the policy provided \$1 million of UM/UIM coverage for the two owners of the business who were named insureds but included a “step-down” endorsement under which employees who were not named insureds were not entitled to limits higher than were available under their personal or family automobile policies. *Id.* at 408–10.

The Legislature decided that it was unfair to employees to provide them with lower limits than businessowners. A statement appended to the bill explained that the bill was “in response to” the *Pinto* decision, and that the legislative concern was that “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.” N.J.

Pub. L. 2007, ch. 163. In other words, as this Court described it, “[b]ased on public policy considerations, the amendment now 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. Neither *Pinto* nor the text of the amendment to N.J.S.A. § 17:28-1.1(f), nor the statement appended to the bill, discusses any requirement to *increase* the business entity’s UM/UIM limits *above* those stated in the policy. Plaintiffs’ novel position invented over 15 years later was not contemplated.

Plaintiff argues vociferously that when the statute states that a policy naming 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 employee, *id.* (emphasis added), the word “available” was intended to refer to the maximum limits a policyholder is permitted to purchase, which are the liability limits. (Plaintiff’s Amended Reply Br. at 3–7.) This is contrary to both a plain reading of § 17:28-1.1 as a whole and the legislative committee statement.

This Court reads “statutes in their entirety and construe[s] each part or section in connection with every other part or section to provide a harmonious whole.” *Keyworth v. CareOne at Madison Ave.*, 258 N.J. 359, 380 (2024) (cleaned up). Here, the word “available” is used in two other subsections of §

17:28-1.1 in a manner that conflicts with Plaintiff's proposed interpretation of subsection (f). Subsection (c), which prohibits stacking of multiple limits for UM/UIM coverage, provides that "If the insured had uninsured motorist coverage *available under more than one policy*, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits." N.J.S.A. § 17:28-1.1(c) (emphasis added). The "available" limits referred to in this subsection plainly are the limits stated in the policy not the maximum limits that could have been purchased "as an option" under subsection (b). Similarly, subsection (e) uses the term "available" twice in describing policy limits, in explaining when a motor vehicle is underinsured:

A motor vehicle is underinsured when the sum of the limits of liability under all bodily injury and property damage liability bonds and insurance policies *available to a person against whom recovery is sought* for bodily injury or property damage is, at the time of the accident, less than the applicable limits for underinsured motorist coverage afforded under the motor vehicle insurance policy held by the person seeking that recovery. A motor vehicle shall not be considered an underinsured motor vehicle under this section unless the limits of all bodily injury liability insurance or bonds applicable at the time of the accident have been exhausted by payment of settlements or judgments. The limits of underinsured motorist coverage *available to an injured person* shall be reduced by the amount he has recovered under all bodily injury liability insurance or bonds;

N.J.S.A. § 17:28-1.1(e) (emphasis added). Again, in both instances, the legislature used the word "available" to describe the limits stated in a policy not

the maximum amount of insurance that could have been purchased. It would make no sense to determine whether underinsurance exists based on theoretical possible limits rather than the actual limits stated in insurance policies. Plaintiff asks this Court to give the word “available” a different meaning in subsection (f) than it is given throughout the remainder of the statute. This Court has long held that “the general rule is that where a word or phrase occurs more than once in a statute, it should have the same meaning throughout, unless there is a clear indication to the contrary.” *L.A. v. New Jersey Div. of Youth & Fam. Servs.*, 217 N.J. 311, 333 (2014) (quoting *Oldfield v. N.J. Realty Co.*, 1 N.J. 63, 69 (1948)).

Plaintiff focuses on subsection (b) of § 17:28-1.1, asserting that this subsection makes clear that the “maximum uninsured or underinsured motorist coverage available under the policy” referenced in subsection (f) refers to policy’s liability limits. (Plaintiff’s Amended Reply Br. at 3.) Subsection (b), however, simply requires that insurers offer “as an option” UM/UIM limits higher than the minimum limits provided for in subsection (a), which “shall not exceed” the liability limits. Nothing in subsection (b) requires the purchase of any specific limit, or uses the word “available,” as other subsections do.

Plaintiff also argues that the interpretation adopted by the federal district court would render the second sentence of subsection (f) superfluous. (Plaintiff-Appellant’s Br. at 13–14.) This Court, however, has recognized that the two

sentences reinforce each other, with the second sentence explaining what happens if a policy fails to comply with the first sentence, by providing “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.” N.J.S.A. § 17:28-1.1(f). In that circumstance, the policy “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 their status as a named insured, additional named insured, or whether they have other coverage under a different policy. *Id.* (emphasis added). As this Court made clear in *James*, “the two operative sentences” of § 17:28-1.1(f), read together, “direct how *employees* must be treated in the presence of such [step-down] provisions.” *James*, 216 N.J. at 567 (emphasis in original). They do not require selection of particular policy limits.

Plaintiff also argues that the “notwithstanding” clause in subsection (f), providing that it applies “[n]otwithstanding the provisions of this section or any other law to the contrary,” means that that subsection “overrides conflicting statutory provisions.” (Plaintiff’s Amended Reply Brief, at 1.) But there are no conflicting statutory provisions, as explained above, and in construing statutes this Court “make[s] every effort to reconcile those laws that appear to be in

conflict and attempt to interpret them harmoniously.” *Oches v. Twp. of Middletown Police Dep’t*, 155 N.J. 1, 5 (1998).

To the extent the Court looks to legislative history, the committee statement further confirms how the legislature used the word “available” when it states in describing the bill: “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.” N.J. Assembly Financial Institutions and Insurance Committee Statement, Senate No. 1666–L. 2007, c. 163 (May 10, 2007) (emphasis added). Again, the legislature here used the word “available” limits to refer to the limits stated in the employees’ personal insurance policies, the minimum requirements for which were increased in 2022 (as explained below), not the limits the employees potentially could have chosen under their personal policies. Plaintiff’s proposed interpretation of “available” should be rejected as contrary to both the statute and its legislative history.

B. The Legislature did not intend to eliminate businessowners’ ability to choose their desired level of UM/UIM coverage.

There is no indication that, as Plaintiff argues, the New Jersey Legislature intended to require all businesses to purchase UM/UIM limits at the same level as their bodily injury liability limits. Any such argument is contrary to the long

history in New Jersey of allowing both personal and business policyholders the freedom to choose between various levels of UM/UIM coverage.

N.J.S.A. § 17:28-1.1 was enacted in 1983 as part of the “New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984,” which was enacted “for the purpose of making automobile insurance more affordable” by giving policyholders more options. *Caviglia v. Royal Tours of Am.*, 842 A.2d 125, 129 (N.J. 2004); *see also* N.J. Pub. L. 1983, ch. 362, § 1. Consistent with this longstanding objective, over the last four decades, the Legislature has chosen to give policyholders a wide range of choices in selecting UM/UIM limits. The statute in effect when the Zurich policy was issued required only the purchase of minimum limits for UM (but not UIM) coverage of \$15,000 per person and \$30,000 per accident for bodily injury, and \$5,000 per accident for property damage. N.J.S.A. § 17:28-1.1(a) (version applicable prior to August 5, 2022). Insurers were only required to offer “as an option” UM/UIM coverage at limits of up to at least \$250,000 per person and \$500,000 per accident for bodily injury, and \$100,000 per accident for property damage, or a \$500,000 single limit. *Id.* § 17:28-1.1(b). These limits “*shall not exceed* the insured’s motor vehicle liability policy limits for bodily injury and property damage, respectively.” *Id.* (emphasis added). These are the only statutory or regulatory

provisions governing the amount of UM/UIM limits in a New Jersey commercial auto policy.

When the UM/UIM statute was amended effective August 5, 2022, the mandatory minimum UM/UIM limit was increased to \$25,000 per person and \$50,000 per accident for bodily injury and \$25,000 per accident for property damage, for policies issued or renewed after January 1, 2023, and to \$35,000 per person and \$70,000 per accident for bodily injury and \$25,000 per accident for property damage for policies issued or renewed after January 1, 2026. N.J.S.A. § 17:28-1.1(a) (2024). No change was made to the requirement that insurers offer, only “as an option,” higher limits up to \$250,000 per person and \$500,000 per accident for bodily injury. *Id.* The Legislature did not require that businesses purchase limits higher than those stated above, or even that insurers *offer* higher limits—such as the \$2 million limit that Plaintiff seeks in this case. Plaintiff asks this Court to construe subsection (f) as requiring Zurich (and similarly situated insurers) to provide a multi-million dollar limit that they are not even statutorily required to offer as an option.

Consistent with the objective of freedom of choice, New Jersey law requires prospective purchasers of automobile insurance to be provided with a detailed buyer’s guide and coverage selection form on an annual basis. *See* N.J.S.A. §§ 17:28-1.9, 39:6A-23. The New Jersey Department of Banking and

Insurance has required the use of and published a “New Jersey Auto Insurance Buyer’s Guide” for commercial auto insurance. Pa436–446; *see also* N.J. Admin. Code § 11:3-15.5; N.J. Dep’t of Banking and Insurance Bulletin No. 04-15 (Pa954-955). This guide explains UM/UIM coverage and the various options that businesses have in selecting UIM/UIM coverage limits. Pa442, 445. Insurers require, as provided for by statute, N.J.S.A. § 39:6A-23(e), and regulation, N.J. Admin. Code § 11:3-15 App., that policyholders review and sign a document specifically selecting their desired level of UM/UIM coverage. Pa435. With respect to commercial policies, this is consistent with this Court’s directive in *Pinto* imposing “a duty to inform employers” about how their policies’ UM/UIM coverage operates with respect to their employees, “so that employers may make informed decisions” about that coverage. *Pinto*, 183 N.J. at 417. As Plaintiff would have it, employers have no choice and cannot make any decision other than obtaining the maximum statutorily permitted UM/UIM limits.

Plaintiff argues that the Auto Insurance Buyer’s Guide supports his position because it states that “[c]overage is available up to amounts selected for liability coverage.” (Plaintiff’s Amended Reply Brief, at 4; PaR005.) This supports Zurich’s position—it demonstrates that the Department of Banking and Insurance believes that commercial policyholders have a *choice* of limits. If

Plaintiff's interpretation of § 17:28-1.1(f) were correct, that would mean that the Department should be advising commercial policyholders that they *must* purchase UM/UIM coverage limits at the *same* level they choose for liability limits. Nothing in the Auto Insurance Buyer's Guide suggests that. (PaR001-011.)

To avoid litigation over how coverage limits are selected, New Jersey law also provides a form of immunity to insurers "in circumstances relating to an insured's election of UIM coverage when the insured attempts to later shift the blame for a decision to opt for any level of coverage less than the maximum back onto the insurer, as long as the insurer has complied with its obligations to make known the availability of all possible limits as required by the statute." *Pizzullo v. New Jersey Mfrs. Ins. Co.*, 196 N.J. 251, 268 (2008); *see also* N.J.S.A. § 17:28-1.9; *Baldassano v. High Point Ins. Co.*, 396 N.J. Super. 448, 453–57 (App. Div. 2007). All of this demonstrates that the Legislature intended for commercial policyholders to have and make separate choices about UM/UIM and liability coverage, not to be required to purchase the same level of coverage for liability and UM/UIM.

C. Plaintiff's proposed interpretation would rewrite N.J.S.A. § 17:28-1.1.

Plaintiff's position would rewrite N.J.S.A. § 17:28-1.1, such that *all* businesses, rather than having the *choice* of purchasing various limits of

coverage, would have no choice with respect to UM/UIM limits. Every business of every size—from the smallest “mom and pop” deli to the largest global conglomerate—would be required to purchase the same amount of UM/UIM limits as the liability limits, i.e., the maximum amount of UM/UIM coverage that an insurer is statutorily permitted to offer. *See* N.J.S.A. § 17:28-1.1(b) (providing that UM/UIM limits “shall not exceed the insured’s motor vehicle liability policy limits for bodily injury and property damage, respectively”). In effect, all businesses would be required to provide what amounts to a mandatory additional employee benefit, and one that would not benefit employees whose own personal automobile policies include the same or a higher UM/UIM limit.¹ There is no support in the text of the statute, its legislative history or otherwise for Plaintiff’s argument that the Legislature intended to require all businesses to incur the cost of purchasing the maximum UM/UIM coverage that an insurer is statutorily allowed to offer based on the liability limits.

When the New Jersey Legislature desires to require businesses to purchase specific limits for personal or commercial automobile coverage, it does so explicitly. In a 2023 amendment, the Legislature required minimum liability limits of \$300,000 for commercial motor vehicles with a gross vehicle weight

¹ New Jersey law prohibits “stacking” of UM/UIM coverage limits under multiple policies available to the insured. *See* N.J.S.A. § 17:28-1.1(c).

rating between 10,001 and 26,000 pounds, and \$1.5 million for commercial motor vehicles with a gross vehicle weight rating of 26,001 pounds and above. N.J.S.A. § 39:B-1(a), (e) (2024); 2023 N.J. Laws, c. 176, § 1. The Legislature chose not to require this increased limit for UM/UIM coverage, instead continuing to give businessowners a wide range of choices depending on their needs and budget. As the recent amendment regarding commercial motor vehicle policy limits demonstrates, if the New Jersey Legislature wants to require higher limits, this “implicate[s] public policy choices that are for the Legislature, rather than this Court, to make.” *Bosland v. Warnock Dodge, Inc.*, 197 N.J. 543, 548 (2009).

II. Plaintiff’s position, if adopted, would adversely affect the New Jersey commercial automobile insurance marketplace by retroactively increasing policy limits far above the amount of coverage purchased.

As the Third Circuit’s petition for certification acknowledged, “the decision rendered will affect New Jersey’s insurance market and the premiums paid by New Jersey businesses and consumers,” and “[a]s amici contend, those effects will be much greater if § 17:28-1.1(f) is interpreted to require all in-state, corporate insurance policies to provide UIM coverage to employees at the same level as bodily-injury liability coverage.” (Third Circuit Petition for Certification, at 3.) Plaintiff’s interpretation of N.J.S.A. § 17:28-1.1(f), if adopted, would require insurers to provide UM/UIM coverage at levels that in

some instances would be many multiples of the limits that were sold to the policyholder. In this case, for example, the policyholder chose to purchase UM/UIM limits of \$15,000 per person, \$30,000 per accident for bodily injury and \$5,000 for property damage per accident. Plaintiff argues that he is entitled to up to \$2,000,000 of UM/UIM coverage where the policy provides for a \$15,000 limit for that coverage. (*See, e.g.*, Plaintiff-Appellant’s Br. at 21.) While the precise amount of premium paid for the \$15,000 of UM/UIM coverage that was purchased does not appear in the record, it is obvious that an insurer would charge much more for \$2 million of coverage than for \$15,000 of coverage. As this Court has long recognized, “[a]n insurer may fairly be assumed to intend to limit the risk to the price exacted.” *Prather v. Am. Motorists Ins. Co.*, 67 A.2d 135, 138 (N.J. 1949). The recent amendment requiring higher liability limits for some commercial motor vehicles, discussed above, has reportedly resulted in premium increases of 40-60% for some vehicles. *See* John Kingston, “New Jersey hikes truck insurance minimum to \$1.5M, higher than most states,” *Freight Waves* (Feb. 2, 2024) (available at <https://www.freightwaves.com/news/new-jersey-hikes-truck-insurance-minimum-to-1-5m-higher-than-most-states>).

If insurers are required to provide coverage limits greater than what was purchased, this will have a substantial adverse impact on the New Jersey

commercial automobile insurance marketplace. On Plaintiff's claim, the UM/UIM policy limit would be increased by *more than 133 times* the amount purchased. Across the entire commercial auto insurance marketplace, such an increase in coverage potentially could cost insurers untold billions of dollars. This would amount to "an unbargained-for expansion of coverage, *gratis*, resulting in the insurance company's exposure to a risk substantially broader than that expressly insured against in the policy." *Zuckerman v. Nat'l Union Fire Ins. Co.*, 495 A.2d 395, 406 (N.J. 1985). In addition to leading to potential insolvency risks, under applicable law, such an expansion of coverage could not be ignored in setting future premiums for all commercial policyholders. Insurers are required, in setting premiums, to "[g]ive consideration to past and prospective loss experience." N.J.S.A. § 17:29A-4(c); *see also id.* § 17:29AA-9 (similar).

Plaintiff's Reply Brief argues that neither Zurich nor Amici have provided data regarding how many commercial automobile insurance policies have UM/UIM limits that are lower than the policy's liability coverage limit. (Plaintiff's Amended Reply Br., at 12–13.) While Amici have not located precise data on this issue, because larger commercial policyholders often purchase coverage with large deductibles (amounting to hundreds of thousands or millions of dollars), "[m]any commercial insureds with loss sensitive

insurance programs reject UM/UIM coverage where they are permitted to do so, or purchase the minimum required coverage limits where rejection is not permitted, in order to avoid the increased exposure to losses from UM/UIM coverage.” Gary Kramer et al., “Uninsured Motorist and Underinsured Motorist Coverage” (Feb. 2012), at 2–3 (available at https://riskandinsurance.com/wp-content/uploads/2015/09/ACE_Uninsured-Motorist-and-Underinsured-Motorist-Coverage.pdf). Under such policies, the brunt of the impact from the result Plaintiff advocates could fall on employers with large deductibles. Here, for example, the Zurich policy at issue has a \$2 million deductible for UM/UIM coverage. Pa96. Employers typically do not want to assume, through a deductible, a large potential exposure for potential injuries caused by an uninsured third party over whom they have no control. *Id.* at 3. While employers can implement safety programs for their own employee drivers, there is nothing they can do about uninsured third parties.

When employers choose lower UM/UIM limits for whatever reason, this does not leave employees without compensation. Workers’ compensation insurance is the primary source of coverage for automobile-related employee injuries. *See, e.g., Lambert v. Travelers Indem. Co. of Am.*, 447 N.J. Super. 61, 71 (App. Div. 2016) (“workers’ compensation benefits are the primary source of recovery for injuries suffered by employees in a work-related automobile

accident”). Employees also are required to have UM/UIM coverage available under their personal automobile insurance policy, which generally would apply when they are driving for a work-related purpose. Plaintiff incorrectly suggests that employees have no opportunity to purchase the level of UM/UIM coverage they desire for a potential work-related accident. (Plaintiff-Appellant’s Br. at 17.) Under New Jersey law, as explained above, individuals purchasing a personal automobile policy are required to be advised of the available options for UM/UIM coverage and must make a choice.

Businesses make decisions about UM/UIM coverage limits for various reasons. As a leading insurance brokerage firm explains, an employer may decide not to purchase UM/UIM coverage above minimum limits if workers’ compensation, medical and disability coverage, together with personal auto coverage, are sufficient. Other employers may purchase UM/UIM coverage above minimum limits: (1) “as an extra benefit for owners” who are exempt from workers’ compensation coverage (which under the New Jersey statute will extend to employees if the owners are the named insureds); or (2) if employees who drive company vehicles do not have any personal auto insurance. *See* USI, “Does Your Business Need Uninsured/Underinsured Motorist Coverage?” (Aug. 5, 2025) (available at <https://www.usi.com/executive-insights/executive-series->

articles/supplemental/emerging-business/q3-2025/is-um-uim-coverage-right-for-your-business/).

In situations where employees need to make UM/UIM claims under a personal auto insurance policy arising from a work-related accident, in most circumstances this should *not* affect their future premiums. While insurance rates are complex and governed by the applicable insurer’s rating plan, under New Jersey law, “[r]ates for uninsured and underinsured motorist coverage for the same limits shall, for each filer, be uniform on a Statewide basis without regard to classification or territory.” N.J.S.A. § 17:28-1.1(b). To the extent that the Third Circuit suggested a potential concern about employees needing to use their personal UM/UIM coverage (Third Circuit Order, at 9), if an employee is not at fault for the accident, making a UM/UIM claim under their personal policy should not cause an increase in future premiums.²

CONCLUSION

Amici respectfully urge the Court to answer the two certified questions as follows: First, 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), the “maximum ... underinsured motorist coverage available under the policy”

² If an employee is at fault, their driving record likely would be considered in determining future premiums regardless of whether they were driving for a work-related purpose or personal reasons.

that must be provided to “an individual employed by the corporate or business entity” is the policy limit for underinsured motorist coverage stated in the policy that is applicable to the named insured. Second, endorsements limiting underinsured motorist coverage to an amount less than the general third-party liability coverage limit under the same policy are not in violation of N.J.S.A. § 17:28-1.1(f) or otherwise contrary to public policy.

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