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SUPREME COURT
OF NEW JERSEY

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CRAIG CHIACCHERI

Plaintiff-Appellant,

v.

ZURICH AMERICAN INSURANCE
COMPANY,

Defendant-Respondent.

SUPREME COURT OF NEW JERSEY

Docket No. 090943

On Petition for Certification of
Questions of Law
United States Court of Appeals
for the Third Circuit
Docket No.: 24-2563

Sat Below:

Hon. Tamika R. Montgomery-Reeves

Hon. Jane R. Roth

Hon. Thomas L. Ambro

BRIEF OF AMICUS CURIAE NEW JERSEY DEFENSE ASSOCIATION

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IDENTITY OF AMICUS CURIAE AND INTEREST IN CASE

Established in 1966, proposed Amicus Curiae New Jersey Defense Association (“NJDA”) is a non-profit organization whose members devote a substantial portion of their practices to representing private companies in the defense of civil lawsuits in a wide variety of contexts, including automobile injury and uninsured/underinsured motorist litigation. The overarching purposes of the NJDA are to encourage the prompt, fair, and just disposition of lawsuits; promote improvements in the administration of justice and the service of the legal profession to the public; support the improvement of the adversarial system of jurisprudence and operation of the courts; and work for the elimination of court congestion and delays in civil litigation.

The questions presented in this appeal is of significant public interest and implicates the NJDA’s policy to protect its constituents against the imposition of new statutory obligations via judicial decision instead of the democratic process and the risk of unintended litigation. In these appeals, Plaintiffs ask this Court to rewrite a specific provision of New Jersey auto insurance law, N.J.S.A. 17:28-1.1(f), to reform commercial auto policies in a manner far afield from the New Jersey Legislature’s intent in enacting that specific subsection of the statute.

As an organization devoted to improvements in the administration of justice and that frequently appears as amicus curiae in matters concerning auto insurance

litigation, the NJDA is uniquely suited to assist the Court to resolve the question presented. See, e.g., Goyco v. Progressive Ins. Co., 257 N.J. 313 (2024); Haines v. Taft, 237 N.J. 271 (2019). The United States Court of Appeals for the Third Circuit granted NJDA leave to submit an amicus brief in support of Defendant-Respondent in Chiaccheri v. Zurich American Insurance Company. The NJDA has now moved for leave to appear as amicus curiae in these two appeals.

PRELIMINARY STATEMENT

These two appeals concern a straightforward question of statutory interpretation that should be resolved in Defendant Zurich American Insurance Company's favor. N.J.S.A. 17:28-1.1(f) serves a narrow purpose as reflected by the amendatory language at issue and the history leading to its enactment. Adopted in direct response to this Court's decision in Pinto v. New Jersey Manufacturers Insurance Co., 183 N.J. 405 (2005), subsection (f) of N.J.S.A. 17:28-1.1 requires commercial motor vehicle policies to be deemed to provide that same amount of uninsured and underinsured motorist ("UM/UIM") coverage available to the named insureds to corporate employees irrespective of any "step-down" provision. Further, if the policyholder only identifies a corporate or business entity as the named insured, the policy is reformed by operation of law to provide the employee the maximum **stated** amount of UM/UIM coverage elected by the policyholder and stated within the policy. This reading of the statute ensures that individuals identified

as named insureds, employees operating commercial motor vehicles under a policy with another individual identified as a named insured, and employees operating commercial motor vehicles under a policy with a corporate entity identified as the named insured, all receive the same amount of UM/UIM coverage if injured by an uninsured or underinsured motorist.

Plaintiffs in the underlying lawsuits seek to expand N.J.S.A. 17:28-1.1(f) beyond its explicit text and stated purpose. Plaintiffs ask this Court to interpret the N.J.S.A. 17:28-1.1(f) to require courts, insurers, and policyholders alike to ignore the policyholder's elected amount of UM/UIM coverage available to named insureds and employees, and reform policies to award certain employees the maximum amount of UM/UIM coverage that the policyholder was permitted to purchase, but chose not to purchase. Plaintiffs thus seek to undo the parity between the named insureds and employees established by the Pinto amendment. The proper audience for Plaintiffs' advocacy is the Legislature—not the courtroom.

LEGAL ARGUMENT

I. PRINCIPLES OF STATUTORY INTERPRETATION AND THIS COURT'S PRIOR RULINGS RESOLVE THE FIRST CERTIFIED QUESTION OF LAW FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

This case can be resolved within the confines of N.J.S.A. 17:28-1.1(f)'s plain language when read sensibly against the legislative scheme as a whole. In interpreting a statute, courts first “look to the Legislature’s intent as expressed in the

statute’s plain terms.” Wiggins v. Hackensack Meridian Health, 259 N.J. 562, 574 (2025). “There is no more persuasive evidence of legislative intent than the words by which the Legislature undertook to express its purpose” Fuster v. Township of Chatham, 259 N.J. 533, 547 (2025) (alteration in original) (quoting Perez v. Zagami, LLC, 218 N.J. 202, 209-10 (2014)). “[The Court] ascribe[s] 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 v. Penn, 183 N.J. 477, 492 (2005) (citations omitted); see also N.J.S.A. 1:1-1.

“If the Legislature’s intent is clear on the face of the statute, then the “interpretative process is over.” State v. Hupka, 203 N.J. 222, 232 (2010). “[I]f there is ambiguity in the statutory language that leads to more than one plausible interpretation, we may turn to extrinsic evidence, ‘including legislative history, committee reports, and contemporaneous construction.’” DiProspero, 183 N.J. at 492-93 (quoting Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)).

Interpretation of N.J.S.A. 17:28-1.1(f) warrants a short primer on UM/UIM insurance and subsection (f)’s enactment.

UM/UIM coverage provides first-party insurance against injury or property damage caused by negligent operation of a motor vehicle by a person with either no, or insufficient, liability coverage for the losses sustained. See Badiali v. New Jersey Mfrs. Ins. Grp., 220 N.J. 544, 561-62 (2015). “[T]he essential purpose of the

legislation [providing for UM coverage] is to make the victim whole, but not provide a windfall or to allow a double recovery” Riccio v. Prudential Prop. & Cas. Ins. Co., 108 N.J. 493, 499 (1987). Those purposes animated the Legislature’s subsequent adoption of UIM coverage to provide an opportunity for a full recovery for victims of automobile accidents with underinsured drivers. See Rutgers Cas. Ins. Co. v. Vassas, 139 N.J. 163, 167, 174 (1995).

The amount of UM/UIM coverage purchased by an insured remains the insureds’ decision as part of its contractual relationship with its insurer. See Ferrante, 232 N.J. at 469; N.J.S.A. 17:28-1.1(b). Importantly, N.J.S.A. 17:28-1.1(b) prescribes that the “limits for [UM/UIM] coverage shall not exceed the insured’s motor vehicle liability policy limits for bodily injury and property damage, respectively.” N.J.S.A. 17:28-1.1(b) see also Universal Underwriters Ins. Co., Recreational Products Ins. Div. v. New Jersey Mfrs. Ins. Co., 299 N.J. Super. 307, 318 (App. Div. 1997). Pursuant to recent amendments, the Legislature confirmed that commercial motor vehicle policyholders enjoy the right to purchase optional first-party UM/UIM coverage, but are statutorily required to maintain third-party liability coverage. N.J.S.A. 17:28-1.1(b); N.J.S.A. 39:6B-1(a).

In Pinto v. New Jersey Manufacturers Insurance Co., 183 N.J. 405 (2005), this Court enforced a commercial motor vehicle liability policy’s “step-down” provision, which had the effect of capping UIM coverage provided through an employer’s

commercial policy to employees at the limits available through the employee's personal automobile policy. The subject auto policy identified corporate entities as "named insureds" and included an endorsement providing UIM coverage with a limit of \$1,000,000 per accident.

The plaintiff argued that he was entitled to the "maximum" UIM coverage under the policy notwithstanding the step-down provision that limited UIM coverage to the amount available under his personal auto policy. Id. at 408. The "maximum" UIM coverage discussed throughout the decision was the stated UIM limit of \$1,000,000. See id. at 415. In holding that the step-down provision was valid, this Court reinforced the holdings of "early opinions [that] expressed [the Court's] clear willingness to enforce unambiguous step-down provisions as a matter of contract between insurers and insureds." Id. at 407.

The Legislature promptly moved to introduce legislation to abrogate Pinto. It succeeded in doing so by adding subsection (f) to N.J.S.A. 17:28-1.1. See L. 2007, c. 163, § 2. Subsection (f) prescribes that:

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).]

This Court previously “examined the change in law that [N.J.S.A. 17:28-1.1(f)] direct[ed]” in the context of determining whether the amendment should be applied retroactively. See James v. N.J. Mfrs. Ins. Co., 216 N.J. 565 (2014). As noted by this Court, the “straightforward language [of subsection (f)’s first sentence] prohibits providing an employee with less coverage than the named insured on a corporate or business entity’s commercial automobile liability policy.” James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 565 (2014) (emphasis in original). In other words, the first sentence signals the prohibition of disparate coverage between named insureds (whether individuals or corporate entities) and employees—nothing more.

The Court then addressed the import of the second sentence: “The plain language of the second sentence of the amendment . . . 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” James, 216 N.J. at 565. Any policy that provides less UIM coverage to an employee than a

named insured “shall be deemed to provide the maximum [UM/UIM] coverage available under the policy.” N.J.S.A. 17:28-1.1(f) (emphasis added).

Based on its plain language and the context in which it arose, subsection (f) served, and continues to serve, a narrow purpose. “The text of the . . . statute does not ‘prohibit’ use of step-down provisions”; the statutory language simply directs that named insureds and employees receive equal treatment with respect to UIM/UIM coverage available under the policy. See id. at 566-68 (holding that “[t]he straight-forward text of N.J.S.A. 17:28-1.1(f) is not ambiguous as to how it alters commercial policies of automobile insurance”).

Consequently, had N.J.S.A. 17:28-1.1(f) been in effect at the time of plaintiff’s accident in Pinto involving a commercial policy with a corporation as the named insured, the plaintiff would have been entitled to the “maximum” \$1,000,000 limit in the UIM endorsement notwithstanding the existence of the step-down provision. See Pinto, 183 N.J. at 409-10 (noting that plaintiff “submitted a claim for the one million dollar maximum of UIM coverage under the NJM policy”). That is the specific scenario that subsection (f) was enacted to address. Contrary to Plaintiffs’ interpretation, it did not effect a broader change in the law. Plaintiffs’ requested rewrite of subsection (f) conflicts with the statute’s plain language and this Court’s analysis in James.

II. THE PLAIN LANGUAGE OF N.J.S.A. 17:28-1.1(F) CONFIRMS THE LEGISLATURE INTENDED TO PROVIDE EQUAL TREATMENT FOR EMPLOYEES AND NAMED INSURED UNDER COMMERCIAL MOTOR VEHICLE POLICIES IN RESPONSE TO PINTO.

Plaintiffs' interpretation of N.J.S.A. 17:28-1.1(f)'s phrase "maximum uninsured or underinsured motorist coverage available under the policy" to require first-party UM/UIM coverage available to employees to be equal the insured's third-party bodily injury liability conflicts with the plain language of the statute. The amount "available under the policy" refers to the specific policy limits.

If the Legislature intended for the "maximum uninsured or underinsured motorist coverage" to be equal to the liability limits via N.J.S.A. 17:28-1.1(b)'s cap on UM/UIM coverage, it would have said so. Indeed, such a change could have been easily effectuated by rephrasing phrase "maximum uninsured or underinsured motorist coverage available under the policy" to state: "maximum uninsured or underinsured motorist coverage available ~~under the policy~~ **[to the insured in accordance with the limits imposed by N.J.S.A. 17:28-1.1(b)]**." Alternatively, the Legislature could have rephrased N.J.S.A. 17:28-1.1(f)'s second sentence to state: "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 **[uninsured or underinsured motorist coverage equal to the insured's**

motor vehicle liability policy limits for bodily injury and property damage].”

The plain language ties maximum UM/UIM coverage available to the stated policy limits for UM/UIM; there is no explicit or implicit cross-reference to N.J.S.A. 17:28-1.1(b)’s language capping UM/UIM coverage at the third-party liability limit.

III. PLAINTIFFS’ CONTRARY INTERPRETATION REQUIRING REFORMATION OF UM/UIM COVERAGE LIMITS TO THE STATED THIRD-PARTY LIABILITY LIMITS DOES NOT COMPORT WITH THIS COURT’S ANALYSIS IN JAMES.

Plaintiffs’ interpretation also conflicts with this Court’s analysis in James. Plaintiffs are not the victims of disparate treatment from any named insured with respect to the amount of UM/UIM coverage available under the policy—the ill the Legislature sought to remedy. In contrast to the Pinto amendment’s creation of parity between named insureds (whether corporate or individual) and employees, Plaintiffs’ interpretation creates a significant disparity between named insureds and employees. Furthermore, Plaintiffs’ interpretation creates a risk of a windfall to certain employees.

Take two identical commercial motor vehicle policies with \$15,000 in UM/UIM coverage and \$2,000,000 in third-party bodily injury liability coverage (like Chiaccheri) issued to neighboring delivery companies. Company A elects to name its principals as named insureds, while Company B elects to name its corporate affiliates as named insureds. The principal identified as a named insured under Company A’s policy and employees of both companies are injured by underinsured

motorists in separate accidents during the policy period. The individual identified as a named insured under Company A's policy would be entitled to the stated \$15,000 in UIM coverage. For the employees however, their amount of UIM coverage becomes fortuitous if Plaintiffs' interpretation is adopted. Company A's employee would receive the policy's stated UIM limit of \$15,000 in accordance with Plaintiff's interpretation of the first sentence of 17:28-1.1(f). On the other hand, Company B's employee would receive \$2,000,000 in UIM coverage by way of the reformed UIM limit being equal to third-party liability limit in accordance with Plaintiff's interpretation of the second sentence of N.J.S.A. 17:28-1.1(f).

As a sensible reading of the plain language indicates, the foregoing result creating \$1.985M in different coverage for two similarly situated injured employees is not what the Legislature had in mind when enacted the Pinto amendment. The Legislature sought to protect employees (1) against disparate treatment from named insureds and (2) ensure that they receive the maximum benefits available under their employer's policy, consistent with the policyholder's stated elections.¹ Accordingly,

¹ Were there any doubt or ambiguity regarding the statutory language (there is not), this Court could look to the legislative history. The Senate Commerce Committee's Statement to S1666 states that "a policy that names a corporate or business entity as a named insured shall be deemed to provide the maximum [UM/UIM] coverage available under that particular policy to any individual employed by the corporate or business entity" S. Commerce Comm. Statement to S1666 (Nov. 27, 2006) (emphasis added). The focus is again on the particular UM/UIM coverage available under the policy, not the maximum available by law under N.J.S.A. 17:28-1.1(b). At the hearing that occurred on the same date, the New Jersey State Bar representative explained to the Senate Commerce Committee that the amendment does not mandate reformation of the policy limits for UM/UIM coverage to the third-party liability limits. See S. Commerce Comm. Hearing,

a sensible reading of subsection (f)’s plain language comports with this stated legislative intent.

IV. THE LEGISLATURE IS BETTER SUITED TO DETERMINE WHETHER ENDORSEMENTS LIMITING UM/UIM COVERAGE TO AN AMOUNT LESS THAN THE GENERAL THIRD-PARTY LIABILITY COVERAGE LIMIT IS CONTRARY TO PUBLIC POLICY

This Court has emphasized that “the Legislature is the preeminent expositor of public policy in our democratic society,” New Jersey Div. of Child Prot. & Permanency v. J.R.-R., 248 N.J. 353, 373 (2021), and that the Legislature effectuates declarations of public policy through legislative enactments. As evidenced by recent amendments, the Legislature is acutely aware of the established statutory requirements for the purchase of minimum limits for first-party and third-party insurance. See, e.g., L. 2022, c. 87, eff. Aug. 5, 2022; L. 2023, c. 276, eff. Jan. 16, 2024. Thus, if the Legislature deemed endorsements allowing unequal first-party and third-party limits to be against public policy, it would have explicitly sought to mandate equal UM/UIM and third-party liability limits through these amendments, or past amendments, such as the Pinto amendment at issue.

Nov. 27, 2006, at 32:15 to 33:44, <https://www.njleg.state.nj.us/archived-media/2006/SCM-meeting-list/media-player?committee=SCM&agendaDate=2006-11-27-10:00:00&agendaType=M&av=A> (explaining that “there is nothing in the law that mandates that the coverages be the same”).

In interpreting a statute, the Court “strive[s] to advance the . . . objectives expressed by the Legislature when it enacted [the provision at issue], consistent with the limits imposed by the statutory text.” Finkelman v. Nat’l Football League, 236 N.J. 280, 295 (2019) (emphasis added). For the reasons set forth supra, N.J.S.A. 17:28-1.1(a)’s plain language does not support Plaintiffs’ public policy arguments. Nor can sufficient evidence of Plaintiffs’ pronouncements be gleaned from the statute or overall statutory scheme. In the absence of a clear declaration of public policy from the Legislature, this Court should not (1) interpret N.J.S.A. 17:28-1.1(f) to bar endorsements with unequal UM/UIM and third-party liability limits; or (2) otherwise declare that such endorsements are contrary to public policy. If the Court’s interpretation of N.J.S.A. 17:28-1.1(f) “does not reflect the Legislature’s intended goal . . . , the Legislature may elect to replace the [statute] with a provision that clarifies the State’s public policy with respect to that issue.” Finkelman, 236 N.J. at 295.

CONCLUSION

N.J.S.A. 17:28-1.1(f)’s plain language did not affect the novel interpretation advanced by Plaintiffs nearly two decades after its enactment. NJDA respectfully submits that this Court should decline the expansion of N.J.S.A. 17:28-1.1(f).

Dated: January 5, 2026

Respectfully Submitted,

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