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SUPREME COURT OF NEW JERSEY

DOCKET NO. 090943

CRAIG CHIACCHERI, Plaintiff-Appellant, v. ZURICH AMERICAN INSURANCE COMPANY, Defendant-Respondent.	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 Civil Action

PLAINTIFF/APPELLANT'S BRIEF ADDRESSING CERTIFIED QUESTIONS

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PRELIMINARY STATEMENT

This case presents two questions of exceptional importance concerning the scope of protection afforded to New Jersey workers under N.J.S.A. 17:28-1.1(f). 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), what is the "maximum . . . underinsured motorist coverage available under the policy" that must be provided to "an individual employed by the corporate or business entity"?

Second:

> Are endorsements limiting underinsured motorist coverage to an amount less than the general third-party liability coverage limit under the same policy in violation of N.J.S.A. § 17:28-1.1(f) or otherwise contrary to public policy?

The answer to the first question is clear from the plain language of the statute, case law and legislative intent ensuring injured workers are fairly protected by their employers. The law requires that motor vehicle policies with corporate named insureds provide employees with the maximum available UM/UIM limits – those that match the liability limits – by operation of law. Endorsements that dilute that protection are void. Anything less undermines the legislative purpose behind the "Scutari Amendment" – a measure intended to guarantee that employees, the human beings who actually face the risk of injury, are fully protected by their employer's insurance.

The answer to the second question is similarly clear. The public policy considerations in this case could not be starker. On one side stands the interest in protecting the profit margins of multi-billion-dollar corporations and their insurers. On the other stands the Legislature's clear mandate to protect the safety and well-being of the employees who make those corporations possible. At its core, this case asks whether the law should prioritize corporate greed or public safety. The defense and insurance industry urge the former; the Plaintiff – and the Legislature – stand firmly for the latter. The Legislature made its choice clear. This Court should do the same.

LEGAL ARGUMENT

POINT I

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" must be provided to "an individual employed by the corporate or business entity."

A. The Statutory Framework of N.J.S.A. 17:28-1.1(f) Compels Plaintiff's Interpretation.

New Jersey Courts recognize the important 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 Pinto v. N.J. Mfrs. Ins. Co., 183 N.J. 405 (2005), the New Jersey Supreme Court reinforced the importance of UM/UIM coverage in a corporate auto policy. 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." Ibid. 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. Id. at 421-22.

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).]

B. The Plain Meaning Compels Plaintiff's Interpretation.

When interpreting a statute, the Court must "begin 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 Court's sole function is to enforce the statute according to its terms." Ibid. (quotation omitted). N.J.S.A. 17:28-1.1(f) is clear and unambiguous and mandates reformation of the UIM coverage.

The question before this Court 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 and their insurer. Plaintiff urges the former, Defendant, the latter.

Although the issue in James v. N.J. Mfrs. Ins. Co., 216 N.J. 552 (2014), was retroactivity, this 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).

When coverage is provided "by operation of law" it is automatic and involuntary. Shotmeyer v. New Jersey Realty Title Ins. Co., 195 N.J. 72, 87 (2008) (citing Egner v. Egner, 183 N.J. Super. 326, 331 (Ch. Div.), aff'd, 185 N.J. Super. 1 (App. Div. 1982)). Thus, all employees are automatically entitled to the maximum UIM coverage under N.J.S.A. 17:28-1.1(f). That is so regardless of whether the employer voluntarily elects the statutory maximum. It is automatic and involuntary.

Under N.J.S.A. 17:28-1.1(b), 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. New Jersey common law also interprets the statute that way. See Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 256, 258 (2008) (finding the insured "had a history of asking for high levels of coverage, often seeking the maximum available policy limits" and equating "maximum UM/UIM benefits" to be equal to the liability limits contained in the insured's auto policy); see also 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).

By contrast, there is no support for Defendant's interpretation limiting the maximum available coverage to the statutory minimum limit chosen by the corporate employer. Again, "by operation of law" is automatic and involuntary. The employer's choice is irrelevant.

Defendant claims 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 N.J.S.A. 17:28-1.1(f) addressed the Pinto decision, 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.

In Pinto, the maximum UM/UIM benefit under the policy in question was $1,000,000. The bodily injury limits in Pinto were most likely also $1,000,000

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), Pa001-Pa009. In Banach, an ex-insurance executive confirmed

> In today[']s insurance environment in New Jersey, ***it is very rare to find a . . . [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), Pa004. Taken together with N.J.S.A. 17:28-1.1(b), because the $1,000,000 UIM limit in Pinto is above $250,000/$500,000, it stands to reason that the UIM coverage in Pinto was equal to the liability coverage. UM/UIM limits above $250,000/$500,000 indicate a policy with greater bodily injury limits than $250,000/$500,000 and UM/UIM limits that match those increased bodily injury limits.

The same is true in every other post-Pinto case. Every one of those cases involved UM/UIM limits that were greater than the statutorily mandated $250,000/$500,000. See James, 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). Pa010. 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 ensure 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. Giving the insurance company that power makes even less sense. 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 pinch pennies cannot be the metric by which we measure adequate and appropriate UM/UIM coverage under the statute.

C. The Two-Fold Purpose of N.J.S.A. 17:28-1.1(f) Compels Plaintiff's Interpretation.

Defendant and the insurance industry have continually claimed that the sole purpose of N.J.S.A. 17:28-1.1(f) is to prohibit step-down clauses in corporate automobile insurance policies. That also was the basis of the District Judge's grant of Defendant's summary judgment motion. In finding that the Defendant's UIM endorsement does not violate N.J.S.A. 17:28-1.1(f), the District Court held:

> the maximum UIM coverage available under the Zurich Policy is the policy's stated UIM limit without application of any step-down provision. The maximum UIM coverage available under the policy is

> not, as Plaintiff claims, equal to the policy's separate third-party liability limit. ***Here, the language relied upon by Plaintiff simply bars enforcement of step down provisions which seek to lower the UM/UIM coverage available to an employee of a corporation or business by declaring that the policy will "be deemed" to provide "the maximum uninsured or underinsured motorist coverage available under the policy", i.e., the stated UM/UIM limit irrespective of any step-down provision***. Thus, hypothetically, if Zurich sought to provide a lower UIM limit to TJX's employees through the use of a step down provision, the Zurich Policy would "be deemed" to provide the employee with the maximum UIM coverage available under the policy which is $15,000. Plaintiff's conflation of the maximum UIM coverage available under the policy and the maximum UIM coverage his employer was permitted to purchase, but chose not to, contravenes the explicit text and legislative history of [N.J.S.A.] 17:28-1.1(f).
>
> [Appx0014-Appx0015[1] (emphasis supplied).]

The trial court decided that the sole purpose of N.J.S.A. 17:28-1.1(f) was to eliminate step-down provisions in corporate motor vehicle insurance policies. That is incorrect and contrary to the statute's plain language, statutory interpretation rejecting surplusage, the Legislative statements accompany Senate Bill 1666 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 Court has already made that clear in James, 216 N.J. 552. The James Court identified two separate and distinct operative sentences in N.J.S.A. 17:28-1.1(f), each with its own effect. Id. at 565-66. The first operative sentence of the statute, as identified by this Court, reads in relevant part:

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[1] Citations are to the Third Circuit Court of Appeals Appendices.

> 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." Id. at 566. The Court continued:

> The plain language of the ***second sentence of the amendment further***[2] ***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 covered under any other policy providing uninsured or underinsured motorist coverage.
>
> [Id. at 566 (emphasis supplied).]

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

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[2] Further is defined by Merriam-Webster as "in addition: moreover." See *Further*, Merriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/further (October 29, 2025, 8:30 am)

> 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 (emphasis added).]

That 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 only named insured then the employees of that entity are "deemed" to be provided the "maximum" UM/UIM coverage "available[.]" Ibid.

The separate and distinct operation of the two sentences is confirmed 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[.]
>
> [S-1666 (2007) (emphasis supplied).]

The separate and distinct effects of the two operative sentences of N.J.S.A. 17:28-1.1(f) were recently confirmed by New Jersey Appellate Division. See Singh v. Chestnut, 2020 WL 6141096 (App. Div. Oct. 20, 2020), Pa010-Pa013. The court held 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, Pa012 (citing James, 216 N.J. at 556). 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., Pa012. 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 WL 6141096 at *4 (emphasis supplied), Pa013.]

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(b). 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 further, not only eviscerating step-down clauses, but also ensuring maximum coverage to be afforded to corporate employees.

D. Cannons of Statutory Interpretation Compel Plaintiff's Interpretation.

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 Comm'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. v. N.J. Dep't of Law & Pub. Safety, 120 N.J. 18, 26-27 (1990); Sahli v. Woodbine Bd. of Educ., 193 N.J. 309, 325 (2008) (the Court must "give meaning to each word of the statute and avoid any construction that renders language useless").

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 DiProspero v. Penn, 183 N.J. 477, 492 (2005). 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; Singh, 2020 WL 6141096 at *3. 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 and meaningless.

In its Third Circuit opposition, Defendant argued that the second operative sentence is an enforcement provision that:

> acts to bar enforcement of step down provisions which seek to lower the UIM coverage available to an employee of a corporation or business by declaring that the policy will "be deemed" to provide "the maximum uninsured or underinsured motorist coverage available under the policy", i.e., the stated UIM limit irrespective of any step-down provision.

> It is clear that the first sentence of N.J.S.A. 17:28-1.1(f) prohibits insurers from *using* step down provisions that seek to provide employers with less UIM coverage than their employers. If that proscription is ignored by an insurer, the second sentence applies to bar *enforcement* of the violative step down provision by declaring that the policy is "deemed" to provide the employee with the maximum UIM coverage available under the policy, *i.e.*, the stated UIM limit without application of any step-down provision.
>
> [Db27-28[3] (emphasis in original).]

That argument is illogical. 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." Potenzone 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:

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[3] Citations are to Defendant's Third Circuit Court of Appeals brief.

> 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)).]

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, the defense has been unable or unwilling 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.

POINT II

Endorsements in corporate auto policies limiting underinsured motorist coverage to an amount less than the general third-party liability coverage limit under the same policy violate N.J.S.A. § 17:28-1.1(f) and are contrary to public policy.

Here, the UIM endorsement is void as it violates public policy. The purpose of N.J.S.A. 17:28-1.1 is "to provide maximum remedial protection to innocent victims of financially irresponsible motorists." Livsey v. Mercury Ins. Grp., 197 N.J. 522, 534 (2009) (quoting Lundy v. Aetna Cas. & Sur. Co., 92 N.J. 550, 555 (1983)). To that end, "N.J.S.A. 17:28-1.1 must be construed liberally" to foster that

protection. Rider Ins. Co. v. First Trenton Cos., 354 N.J. Super. 491, 497-98 (App. Div. 2002) (citing State Farm v. Zurich Am. Ins. Co., 62 N.J. 155, 168 (1973)).

That protection is even more important in the context of corporate auto policies, where those at risk – the employees – have no opportunity to bargain for the necessary coverage. See Cook-Sauvageau, 295 N.J. Super. at 627. In those instances, UM/UIM coverage is an "integral part" of the protections afforded to those employees. Ibid. Because the employees cannot choose the limits of that protection, the Legislature has ensured they are fully protected by the maximum available coverage, ensuring that the coverage afforded to the employees is real and not illusory. Pinto, 183 N.J. at 421-22.

An insurer cannot contract out of its statutory obligations. Ryder, 119 N.J. at 407; Potenzone 191 N.J. at 150. 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). That is particularly true of an endorsement that violates the statutorily

mandated coverage of N.J.S.A. 17:28-1.1. See Berger, 339 N.J. Super. at 411 (citing Craig & Pomeroy, New Jersey Auto Insurance Law, § 23:2 at 348 (2001)). For those reasons, Defendant's endorsement violates public policy, as it seeks to limit the UM/UIM coverage in the policy to an amount less than what is statutorily mandated.

Defendant and its amici argue that public policy favors corporate profits. In line with the mantra of tort reform they argue:

> Reversing the District Court would require this Court to rewrite N.J.S.A. 17:28-1.1(f) to mandate that all commercial auto policies afford matching third party liability and first party UIM limits to employees. This sweeping revision of New Jersey insurance law would arguably reform every affected commercial auto policy covering vehicles garaged in the State of New Jersey to provide increased UM/UIM limits that the policyholder did not purchase. This, of course, will drive up premiums for the entire industry (in violation of New Jersey's public policy of cost-containment) and incentivize businesses to purchase less third party liability coverage in order to keep premiums under control.
>
> [Db at 31.]

That is hyperbole. Only policies that violate N.J.S.A. 17:28-1.1(f) need to be reformed. Specifically, only corporate auto policies that name solely the business entity as the named insured and that provide less than the maximum amount of UM/UIM insurance available by operation of law. Historically, those policies are "very rare to find" and are "deemed to be violative of [industry] standards and practices." Banach v. Tarakanov, 2017 WL 399622, at *4 (App. Div. Sep. 12, 2017), Pa001-Pa009. The insurance industry is already writing policies matching UM/UIM

and liability limits. Insurers know their obligations; Defendant just does not want to fulfill those obligations.

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. However, the coverage selection form submitted by Defendant belies its claim. It provides under UIM coverage that "choosing a lower limit ***may*** reduce your premium." Appx448 (emphasis supplied). Conversely, premiums may not be increased by increasing limits. Further, review of Zurich's declaration page confirms that there is not a separate UIM premium in this case; it is included in an overall premium. Appx61. Moreover, although the UIM limit is $15,000 and the bodily injury limit is $2,000,000, the deductible for liability coverage and UIM coverage is the same – $2,000,000. Appx96. It would seem the insurer is already "charging" the insured for the higher UIM limit without providing the corresponding benefit. Defendant cannot possibly show how changing the UM/UIM coverage would greatly drive-up TJX's premiums, as claimed, let alone premiums industry wide.

Although 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 at *4, Pa004. Insurers deter insureds from purchasing increased UIM because:

> 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 – not excess policies. Corporations commonly use excess policies and often insurance towers to protect their assets and expand their liability limits.

By using excess coverage and insurance towers, a corporation is required 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. That amount 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/UIM coverage to the liability coverage – pursuant to N.J.S.A. 17:28-1.1(f). The corporation can then protect itself and its assets further through use of an excess policy or insurance tower, up to whatever limits it desires. That can all be done easily

without having to pay significantly increased premiums for additional asset protection coverage.

For example, in this case, under N.J.S.A. 17:28-1.1(f), TJX's auto policy must insure its employees for UIM coverage up to its auto liability limits of $2,000,000, but no further. TJX could conceivably lower that UIM exposure by lowering its liability limits. However, TJX would have to maintain high enough liability limits – and by extension UIM limits – to satisfy the excess carrier's underlying limit of liability requirements. Presumably TJX currently uses excess coverages to protect itself in the event of a catastrophic car crash. It would be foolish to believe that TJX – a company nearing $50,000,000,000 in annual sales – has only a $2,000,000 auto policy protecting it against catastrophic bodily injury claims.

Zurich's other argument regarding corporations buying less liability insurance coverage has even less credence. Db23. That a corporation would risk its corporate assets to save a "very minimal" amount per year in insurance premiums is inconceivable. Such a decision would likely subject the company's decision makers to personal liability to their shareholders for placing the company's assets at risk unnecessarily.

CONCLUSION

At its heart, this case is not about arcane clauses or corporate accounting – it is about people. It is about the New Jersey workers who get behind the wheel every

day, often before dawn and long after dusk, to keep the businesses of this State moving. It is about the Legislature's solemn promise that those workers will not be left unprotected when tragedy strikes. And it is about making sure that promise still means something.

The law could not be clearer. N.J.S.A. 17:28-1.1(f) mandates that when a corporation insures its vehicles, it insures its employees – the flesh-and-blood human beings who drive those vehicles – with the maximum protection available under that policy. The Legislature did not write that law for Zurich or TJX or any other corporate giant. It wrote it for the worker who comes home in an ambulance instead of a company car. It wrote it to guarantee insurance coverage is real, not illusory; that protection is full, not hollow; and that the scales of justice are not tilted by profit and power.

Defendant's reading would strip that protection from the very people the statute was designed to safeguard. It would convert a clear legislative mandate into a loophole, leaving injured employees at the mercy of corporate frugality and insurer manipulation.

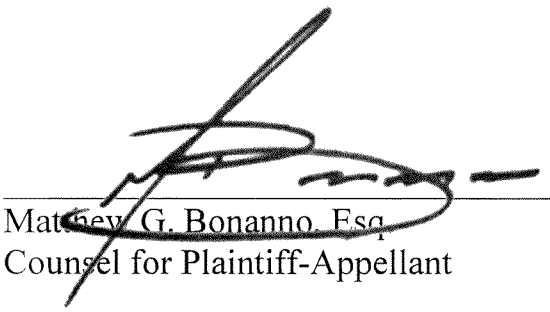
This Court has always stood as the final guardian of legislative purpose and fundamental fairness. The Legislature spoke in unmistakable terms when it mandated that employees of a corporate insured receive the maximum UM/UIM

limits available by operation of law, matching the liability limits of the policy. Endorsements that seek to do less are unlawful, unjust and void.

This case offers the Court an opportunity to reaffirm a simple but powerful principle: that in New Jersey, the lives and livelihoods of working people outweigh the balance sheets of billion-dollar insurers. Anything less would betray both the language and the spirit of N.J.S.A. 17:28-1.1(f).

For all those reasons, Plaintiff respectfully urges this Court to uphold the Legislature's intent, to reform the policy to provide UM/UIM coverage equal to the liability limits and to ensure that the promise of full protection for New Jersey's workers remains not just words on a page, but a living guarantee of justice.

REBENACK, ARONOW & MASCOLO, LLP



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