Supreme Court of New Jersey

Docket No. 090943

CRAIG CHIACCHERI, *Plaintiff-Appellant,* vs. ZURICH AMERICAN INSURANCE COMPANY, *Defendant-Respondent.*	:	CIVIL ACTION 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 FOR DEFENDANT-RESPONDENT ZURICH AMERICAN INSURANCE COMPANY ADDRESSING CERTIFIED QUESTIONS

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PRELIMINARY STATEMENT

N.J.S.A. 17:28-1.1(f) was enacted to prohibit the use and enforcement of step-down provisions in commercial auto policies so that the uninsured motorist ("UM") and underinsured motorist ("UIM") coverage available to an employee is *no less than* the UM/UIM coverage available to an employer and its principals. This is what the statute states. This is what the legislative statement explains. And this is what has guided Courts, insurers, and litigants since the law's enactment in 2007.

N.J.S.A. 17:28-1.1(f) does not mandate that commercial auto policies issued in this State afford "matching" third party liability and first party UM/UIM limits to employees of a corporation or business entity. There is nothing in the plain text, or the legislative history, to support that reading of the statute. If the Legislature sought to mandate such a sweeping and consequential requirement, it would have said so. And it would have said so plainly. But it did not.

Consequently, the answer to the first certified question is clear. Under N.J.S.A. 17:28-1.1(f), "the maximum ... underinsured motorist coverage available under the policy" for an employee of a corporate or business entity is the policy's declared UIM limit (i.e., the same UIM limit available to the entity and its principals) irrespective of any step-down provisions that purport

to "step down" the declared UIM coverage limit. The answer to the second certified question follows from the first. An endorsement providing a UIM limit selected by the policyholder which complies with the statutorily required UIM limit and which is not subject to any step down of limits provision for employees does not violate public policy or N.J.S.A. 17:28-1.1(f) where the policy provides a greater third party liability limit.

The Legislature has enacted a variety of laws to protect employees in the unfortunate event they are injured in an auto accident while on the job: the Workers Compensation Act, personal injury protection (PIP), statutory minimum liability limits that must be carried by the offending driver, statutory minimum UM/UIM limits that must be carried by an employer which, under N.J.S.A. 17:28-1.1(f), cannot be stepped down, and the choice to purchase UM/UIM coverage under a personal auto policy at the levels the employee desires. If the Legislature wants to add a requirement that commercial auto policies afford matching liability and UM/UIM limits to that list, it can do so. Until then, the plain text and stated purpose of the law that it did enact should continue to control.

LEGAL ARGUMENTS

I. UNDER N.J.S.A. 17:28-1.1(f), THE MAXIMUM UM/UIM COVERAGE AVAILABLE UNDER THE POLICY FOR AN EMPLOYEE IS THE POLICY'S DECLARED UM/UIM[1] LIMITS IRRESPECTIVE OF ANY STEP-DOWN PROVISIONS THAT PURPORT TO LIMIT THE UM/UIM COVERAGE.

A plain and sensible interpretation of N.J.S.A. 17:28-1.1(f)'s proviso 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" leads to only one conclusion: an employee is entitled to the policy's stated UM/UIM limits (i.e., the same UM/UIM limits available to the employer and its principals) irrespective of any step-down provisions that purport to limit the UM/UIM coverage available to the employee.

The maximum UM/UIM coverage available under the policy is not, as Plaintiff argues, the policy's *separate* third party liability limit. Plaintiff's effort to conflate the maximum UM/UIM coverage *available under the policy* and the maximum UM/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) and should be rejected by this Court.

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[1] Zurich also addresses UM coverage in its arguments since Plaintiff's arguments apply to UM as well and the same issues are before this Court in the context of UM coverage in Travieso, et al. v. Ciara Crespo, et al., No. 091127.

A. N.J.S.A. 17:28-1.1(f) prohibits the use and enforcement of step-down provisions in commercial auto policies that seek to provide employees with less UM/UIM coverage than their employers.

"A step-down clause in an insurance policy provides different levels of coverage to different insureds based on their status or the existence of other insurance." Seabridge v. Discount Auto, Inc., 393 N.J. Super. 327, 330 (App. Div. 2007) (citing Pinto v. N.J. Mfrs. Ins. Co., 183 N.J. 405, 412 (2005)). N.J.S.A. 17:28-1.1(f) prohibits the use and enforcement of step-down provisions against employees in commercial auto policies so that the UM/UIM coverage available to the employee is no less than the UM/UIM coverage available to the employer and its principals:

> 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).

The legislative statement accompanying the law explains that the amendment was enacted in response to this Court's decision in Pinto which found those step-down provisions enforceable:

> 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.
>
> This bill is in response to the New Jersey Supreme Court's decision in [Pinto]. In Pinto, the court held that as to a motor vehicle liability policy that names a corporate or business entity as a named insured, step-down provisions which limit uninsured or underinsured motorist coverage for employees of that entity that are not individually named on the policy are valid and enforceable. Thus, 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, if the employer's policy so 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, 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. (emphasis added).

Statement accompanying P.L. 2007, c. 163, approved September 10, 2007, Senate, No. 1666. (emphasis added). Da6.

To be sure, the New Jersey Legislature describes the Bill as one that "[p]rohibits use of 'step-down' provisions to limit uninsured and underinsured motorist coverage in certain circumstances" on its website. Da1. The same pronouncement follows the legislative statement. Da6.

Thus, the statute's text and legislative history are clear. N.J.S.A. 17:28-1.1(f) was enacted to prohibit the use and enforcement of step-down provisions in commercial auto policies that seek to lower UM/UIM coverage for employees in response to Pinto.

This is not a novel interpretation of the law. Over a decade ago, this Court confirmed that N.J.S.A. 17:28-1.1(f) "simply thwarts implementation of [step-down] provisions for a certain class of insureds who otherwise might be subject to them, namely employees of a corporate or business entity whose policy contains such a provision." James v. New Jersey Mfrs. Ins. Co., 216 N.J. 552, 570-571 (2014). And numerous other decisions have said the same. See e.g., Olkusz v. Brown, 401 N.J. Super. 496, 503 (App. Div. 2008), certif. denied, 201 N.J. 497 (2010) ("S-1666 merely disallows the use and enforceability of a contractual clause, which the Supreme Court in Pinto, supra, found to be an issue of 'insurance contract interpretation.'").[2]

[2] The cases supporting this plain reading of the statute's purpose and effect are legion. See e.g., Rivera v. McCray, 445 N.J. Super. 315, 319 (App. Div. 2016) ("N.J.S.A. 17:28-1.1(f) ... prohibit[s] step-down provisions in certain business

B. N.J.S.A. 17:28-1.1(f) does not mandate matching third party liability and first party UM/UIM limits.

Plaintiff seeks to expand N.J.S.A. 17:28-1.1(f) beyond its plain text and stated purpose by arguing that the provision entitles him to the maximum UM/UIM coverage that his employer had the *option to purchase*, which in turn is equal to the policy's *separate* third party liability limit. In other words, under Plaintiff's reading, commercial auto policies must afford matching third party liability and first party UM/UIM limits. No court decision or statutory provision remotely supports this proposed sweeping change to New Jersey auto insurance law.

To begin, this is not what the statute says. The plain text of N.J.S.A. 17:28-1.1(f) – which is the starting point for the interpretation of a New Jersey statute – provides:

> 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**

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auto insurance policies"); Boritz v. New Jersey Mfrs. Ins. Co., 406 N.J. Super. 640, 646 (App. Div. 2009) ("N.J.S.A. 17:28-1-1(f) ... prohibit[s] step-down provisions in policies naming corporate or business entities as insureds"); Sexton v. Boyz Farms, Inc., 780 F. Supp. 2d 361, 363 (D.N.J. 2011) ("In response to Pinto, the New Jersey Legislature passed S-1666 ... which expressly prohibits the use of UM/UIM step-down clauses in the State."); see also Zurich's Brief filed in the Third Circuit at pages 17-18, FN 2 (identifying additional Appellate Division cases stating the same).

> **under any other policy providing uninsured or underinsured motorist coverage**. (emphasis added).

The "uninsured or underinsured motorist coverage available under the policy" means the policy's stated UM/UIM limits, i.e., the amount of UM/UIM coverage that the policyholder elected and purchased. Prudential Property & Cas. Ins. Co. v. Johnson, 238 N.J. Super. 1, 3-4 (1989) illustrates the common usage of this plain language:

> The Atkins' policy provided coverage in the amount of $15,000 for one person and $30,000 for more than one person. In addition to the $8,500 paid to Johnson, Atkins' insurance carrier paid out the full amount of coverage **available under the policy** by paying $15,000 to the representative of the victim who had been killed in the accident and $6,500 to the other person in the accident. (emphasis added).

The provision of the "maximum" coverage available under the policy "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" is intended to prohibit the implementation of step-down provisions that seek to lower the amount of coverage the employer elected and purchased. This is clear from the language itself.

Thus, a plain, sensible interpretation of this provision leads to only one conclusion: the maximum UM/UIM coverage *available under the policy* is the policy's stated UM/UIM limits without application of any step-down

provision. This is how every Court has interpreted N.J.S.A. 17:28-1.1(f), and it is how the insurance industry, through approved UM/UIM coverage forms for this State promulgated by the trade scrivener, Insurance Services Office, Inc. ("ISO"),[3] addressed that statutory provision after its enactment. Zurich's ISO-based New Jersey UM/UIM coverage endorsement, which excepts employees from the scope of the step-down provisions, demonstrates:

> D. Limit Of Insurance
> ...
> a. However, subject to our maximum Limit of Insurance for this coverage, if:
>
> (1) An "insured" is not the individual Named Insured under this Policy;
> (2) That "insured" is an individual Named Insured under one or more other policies providing similar coverage; and
> (3) All such other policies have a Limit of Insurance for similar coverage which is less than the Limit of Insurance for this coverage; resulting from any one "accident" with an "uninsured motor vehicle" or an "underinsured motor vehicle" shall not exceed the highest applicable Limit of Insurance under any Coverage Form or policy providing coverage to that "insured" as an individual Named Insured.
>
> b. However, subject to our maximum Limit of Insurance for this coverage, if:
>
> (1) An "insured" is not the individual Named Insured under this Policy or any other policy;

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[3] "Insurance Services Office, Inc. 'is an influential [nonprofit] organization within the insurance industry that promulgates standard form insurance policies ... that insurers across the country use to conduct their business.'" Mac Property Group LLC & The Cake Boutique LLC v. Selective Fire and Cas. Ins. Co., 473 N.J. Super. 1, 32, fn 7 (App. Div. 2022) (citations omitted).

(2) That "insured" is insured as a "family member" under one or more other policies providing similar coverage; and
(3) All such other policies have a Limit of Insurance for similar coverage which is less than the Limit of Insurance for this coverage; then the most we will pay for all damages resulting from any one "accident" with an "uninsured motor vehicle" or an "underinsured motor vehicle" shall not exceed the highest applicable Limit of Insurance under any Coverage Form or policy providing coverage to that "insured" as a "family member".

However, Paragraphs D.1.a. and D.1.b. do not apply to "employees" of a business or corporate entity designated in the Schedule or Declarations as a Named Insured. (emphasis added).

Appx185-186.

The maximum UM/UIM coverage available under the policy is not, as Plaintiff claims, equal to the policy's *separate* third party liability limit. Plaintiff leaps to this conclusion by relying on a different provision in the statute, N.J.S.A. 17:28-1.1(b), to argue that the policy's first party UM/UIM limits must "equal" the policy's separate third party liability limits. However, N.J.S.A. 17:28-1.1(b) simply states that insurers must provide the named insured with **the option to purchase** certain UM/UIM coverage, subject to the condition that the limits of such UM/UIM coverage "shall not exceed the insured's motor vehicle liability policy limits." 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), certif. denied, 151 N.J. 73

(1997) ("[N.J.S.A. 17:28-1.1(b)] merely stipulates that an insured cannot purchase more UIM coverage than the liability coverage that has been purchased."). There is nothing in that provision, or N.J.S.A. 17:28-1.1(f) itself, that remotely supports the notion that first party UM/UIM limits must be equal to third party liability limits.[4]

In a failed effort to avoid the obvious, Plaintiff resorts to cherry-picking phrases like "maximum limits available" from two wholly inapposite cases pertaining to the effect of a personal lines insurer's failure to provide its insured with the *option* to purchase certain UM/UIM coverage to argue that "[u]nder 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." Pb5-6. Again, there is nothing in paragraph (b) that remotely supports Plaintiff's made-up purported statement of law. To the contrary, that provision provides:

> Uninsured and underinsured motorist coverage shall be provided, **as an option** by an insurer to the named insured electing a standard automobile insurance policy, up to at least the following

[4] In fact, UIM coverage was not even mandatory during the effective dates of the Zurich policy. See N.J.S.A. 17:28-1.1(a) (2021 version); Berger v. First Trenton Indem. Co., 339 N.J. Super. 402, 410 (App. Div. 2001) ("UIM coverage ... must be offered by an insurance company but need not be accepted by the insured."). On August 5, 2022, *after* the subject motor vehicle accident and expiration of the subject policy, N.J.S.A. 17:28-1.1 was amended to require UIM coverage in the amount of $15,000 per person/$30,000 per accident. See N.J.S.A. 17:28-1.1(a).

> limits: $250,000.00 each person and $500,000.00 each accident for bodily injury; ... except that **the limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury** ...

N.J.S.A. 17:28-1.1(b) (emphasis added).

Moreover, the purported "maximum" limits quotes pulled from Sikking v. Nelson, 242 N.J. Super. 185 (App. Div. 1990) and Pizzullo v. New Jersey Mfrs. Ins. Co., 196 N.J. 251 (2008) are taken completely out of context and in no way equate the maximum UM/UIM limits that an insured is *permitted to purchase* under N.J.S.A. 17:28-1.1(b), which is what was at issue in those cases, with the maximum limits available *under the policy* in N.J.S.A. 17:28-1.1(f), which is at issue here.[5]

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[5] In Sikking, the "maximum limits available" language was pulled out of context from a sentence stating, "the trial judge may simply have interpreted the regulations promulgated by the Commissioner to require notice only of the availability of UIM coverage without a need to advise insureds of the maximum limits available". 242 N.J. Super. at 190. Likewise, the "maximum available policy limits" language pulled from Pizzullo v. New Jersey Mfrs. Ins. Co., 196 N.J. 251 (2008) derives from following inapt recitation of facts:

> It is undisputed that Michael had a history of asking for high levels of coverage, often seeking the maximum available policy limits. It was in keeping with his usual practice, therefore, to make a request for a similarly high level of protection when seeking coverage for his wife's new vehicle.

196 N.J. at 256.

In sum, Plaintiff's effort to conflate the maximum UM/UIM coverage *available under the policy* and the maximum UM/UIM coverage his employer had the *option to purchase*, but chose not to, contravenes the explicit text and legislative history of N.J.S.A. 17:28-1.1(f).

C. The meaning of the "maximum [UM/UIM] coverage available under the policy" is evident from its plain text and the Pinto decision that N.J.S.A. 17:28-1.1(f) was intended to address.

To understand the meaning of the phrase the "maximum [UM/UIM] coverage available under the policy", this Court need look no further than the statute's plain language and the Pinto decision that paragraph (f) was intended to address. In Pinto, 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, subject to a "step-down provision [that] capped the employer's UIM exposure at the limit provided by the employee's own automobile insurance policy or that of a resident family member, except that the step-down would be inapplicable if the employee qualified as a 'named insured' under the employer's policy." Pinto, 183 N.J. at 407-408. Pinto argued that he was entitled to the "**maximum**" $1,000,000 stated UIM limit under the policy (i.e., the amount his employer purchased) notwithstanding the existence of a step-down provision that capped UIM coverage at the amount available under his personal policy. Id. at 409-410.

The question, as framed by the Court, was "whether the denomination of a corporate entity as the 'named insured' in the employer's policy is so ambiguous as to allow any employee to be characterized as a 'named insured' and thus avoid the step-down." Id. at 407. The Court answered this question in the negative which led to the enactment of N.J.S.A. 17:28-1.1(f).

Throughout the decision, the Court refers to the "maximum" coverage under the policy as the declared UIM limit. Id. at 409 (Pinto "submitted a claim for the one million dollar **maximum** of UIM coverage under the NJM policy."); Id. at 409-410 ("Pinto then filed this declaratory judgment action seeking to compel NJM to provide the **maximum** one million dollar limit of UIM coverage."); Id. at 410 ("The trial court agreed with Pinto and denied NJM's motion for summary judgment, holding that when a business automobile insurance policy fails to designate a business entity's human agent as the 'named insured' entitled to UIM benefits, any individual employed by the corporation is covered under the **maximum** UIM coverage provided by the policy.").

Consequently, the Legislature, in direct response to Pinto, made clear 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", which simply means the stated UM/UIM limits irrespective of any step-down provision in the policy. See Hand v. Philadelphia Ins. Co., 408 N.J. Super. 124, 140 (App. Div. 2009), certif. denied, 200 N.J. 506 (2009) (holding that "be deemed to provide the maximum ... underinsured motorist coverage available under the policy" refers to reformation **"to provide the same levels of UIM insurance to employees as it did to the business entity."**); James, 216 N.J. at 566 ("The plain language of the second sentence of the amendment further directs what should happen if the corporate or business entity's commercial automobile liability policy has not identified any named insured – other than the business entity itself – which was the same situation as existed in Pinto.") (emphasis added).

Moreover, the fact that the "maximum [UM/UIM] coverage available under the policy" language relied upon by Plaintiff is followed by "regardless of whether the individual ... is a named insured or is covered under any other policy providing uninsured or underinsured motorist coverage" further defeats any suggestion that the provision was not intended to deal with step-down provisions only. It clearly was.

D. The first and second sentences of N.J.S.A. 17:28-1.1(f), when read in pari materia, bar the use and enforcement of step-down provisions against employees in commercial auto policies.

Plaintiff argues that Zurich's interpretation of the second sentence of N.J.S.A. 17:28-1.1(f) to bar the enforcement of step-down provisions is "illogical" and renders the second sentence "duplicative and meaningless." Pb14-15. Not so. As this Court has already explained, the "shall be deemed" language in the second sentence "plainly evidence[s] the Legislature's intent to immediately alter a policy in existence when the statute took effect." James, 216 N.J. at 569. "In other words, on its effective date N.J.S.A. 17:28-1.1(f) reformed the contract by operation of law." Id. at 571. While most, if not all, commercial auto policies now except employees from the application of step-down provisions in response to the law, this was not the case in 2007 when the law was enacted.[6] Thus, this language was critical to carrying out the Legislature's intent to give the law "an immediately reformative effect on commercial motor vehicle liability policies in existence on the date of its enactment." Id. at 574.

The second sentence also reflects the Legislature's intent to clearly and unequivocally bar the principal type of step-down provision that the law was

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[6] See discussion supra, regarding the revised ISO NJ UM/UIM coverage form now in use. Compare the pre-N.J.S.A. 17:28-1.1(f) step-down provision recited in Pinto, 183 N.J. at 409.

intended to address, namely, step-down provisions that cap UM/UIM coverage for employees at the limits in their personal policies. The most pointed way to do this is to pass a law that requires the provision of the maximum UM/UIM available under the policy (i.e., the amount that the employer purchased) "regardless of whether the [employee] ... is a named insured or is covered under any other policy providing uninsured or underinsured motorist coverage". The first sentence, on the other hand, more broadly prohibits businesses and corporations from electing different limits for its "named insureds" and employees. In other words, the first sentence is geared toward prohibiting step-down provisions based on the status of the insured as opposed to the existence of other insurance. See Seabridge, 393 N.J. Super. at 330 (citing Pinto, 183 N.J. at 412) ("A step-down clause in an insurance policy provides different levels of coverage to different insureds based on their *status or the existence of other insurance*.") (emphasis added).

Finally, the second sentence precludes companies from seeking to circumvent the first sentence by scheduling higher limits for the entity's principals and executives *without* listing them as "named insureds", a term that refers to the names listed in the policy's declarations. A policy structured this way would not violate the first sentence of N.J.S.A. 17:28-1.1(f) because the level of UM/UIM coverage for the "named insured" and its employees would

remain the same. The second sentence would, however, apply and reform the policy to provide the employees with the same UM/UIM coverage available to the entity's principals and executives.

By way of example, the commercial auto policy at issue in Nicky Travieso, et al. v. Ciara Crespo, et al., Docket No. 091127, which is also presently before this Court on appeal, includes a "Drive Other Car Coverage – Broadened Coverage For Named Individuals – New Jersey" endorsement[7] which schedules the corporate "named insured's" owner and others as "insureds" under the "Who Is An Insured" clause but does *not* change the designation of the policy's "named insured" which is the corporate entity:

Schedule				
Name of Individual:	CHARLES W. FOULKE JR. CHARLES W. FOULKE III, MICHELLE FOULKE, JANE JOHNSON, ADAM FOULKE, REMI FOULKE, MCCALL FOULKE			
Covered Autos Liability Coverage	Limit:	$1,000,000	Premium:	INCL
Auto Medical Payments	Limit:	$5,000	Premium:	INCL
Comprehensive	Deductible:	$500	Premium:	INCL
Collision	Deductible:	$500	Premium:	INCL
Uninsured Motorists	Limit:	SEE ENDT	Premium:	SEE ENDT
Underinsured Motorists	Limit:	SEE ENDT	Premium:	SEE ENDT

...

2. The following is added to **Who Is An Insured**

Any individual named in the Schedule and his or her spouse, while a resident of the same household, are "insureds" while using any covered "auto" described in Paragraph B.1. of this endorsement.

[7] The endorsement can be found in Zurich's Appendix in Support of Motion for Leave to Appeal in Travieso, et al. v. Ciara Crespo, et al., Docket No. 091127 at Da421-422, and is also included in the within Appendix at Da7.

While the company's owner in Travieso is subject to the *same* UM/UIM endorsement and $15,000 UM/UIM limits as the "named insured" and its employees, the owner could have elected to purchase higher UM/UIM limits for himself which would have been reflected on the endorsement. If that occurred, the second sentence would apply and reform the policy to provide the company's employees with the same UM/UIM coverage available to the company's owner. In other words, the policy would "be deemed" to provide the employees with the maximum UM/UIM coverage available under the policy, i.e., the higher UM/UIM limits elected by the owner. See Hand, 408 N.J. Super. at 140, certif. denied, 200 N.J. 506 (holding that "be deemed to provide the maximum ... underinsured motorist coverage available under the policy" refers to reformation "to provide the same levels of UIM insurance to employees as it did to the business entity.").

Thus, when the first and second sentences of paragraph (f) are read, in pari materia, they bar the use and enforcement of *all* types of step-down provisions that may be used to provide the entity and its principals and employees with different levels of UM/UIM coverage based on both status and the existence of other insurance. As noted in James, the language used by the Legislature is clear that it applies to both policies in effect on the law's effective date and policies issued thereafter.

What the second sentence does not do, however, is mandate matching liability and UM/UIM limits. If the Legislature sought to mandate such a sweeping and consequential requirement, it would have said so plainly in the statute and legislative statement.[8]

This Court already made this clear in James: "the **two operative sentences** of the new law direct how employees must be treated in the presence of [step-down] provisions." James, 216 N.J. at 566-567. See also id. at 567 ("the language of the **two operative sentences** clearly altered how policies containing [step-down] provisions would be permitted to operate in respect of employees.") (emphasis added in both).

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[8] New Hampshire's Legislature has enacted the law that Plaintiff proposes for New Jersey. The mandate is clear and unequivocal:

> Except as provided in paragraph I-a, no policy shall be issued under the provisions of RSA 264:14, with respect to a vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto at least in amounts and limits prescribed for bodily injury or death for a liability policy under this chapter, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or drivers of uninsured motor vehicles, and hit-and-run vehicles because of bodily injury, sickness, or disease, including death resulting therefrom. When an insured elects to purchase liability insurance in an amount greater than the minimum coverage required by RSA 259:61, the insured's uninsured motorist coverage shall automatically be equal in amounts and limits to the liability coverage elected. ... (emphasis added).

RSA 264:15(I).

E. Plaintiff's interpretation of N.J.S.A. 17:28-1.1(f) violates the canons of statutory construction and can lead to anomalous results.

Plaintiff asserts that "[t]he 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'," (Pb11) which he contends, incorrectly, is the policy's third party liability limit. Putting aside that Plaintiff omits the critical language "under the policy" and "regardless of whether the individual ... is a named insured or is covered under any other policy providing uninsured or underinsured motorist coverage", his interpretation violates every conceivable canon of statutory construction.

First, Plaintiff's interpretation directly contravenes the statutory mandates for businesses and corporations insuring vehicles registered or garaged in New Jersey set forth in paragraphs (a) and (b) of N.J.S.A. 17:28-1.1.

At the time of the subject accident, paragraph (a) of N.J.S.A. 17:28-1.1 required all motor vehicle policies issued in this State to include UM coverage in the amount of $15,000 per person / $30,000 per accident:

> Except for a basic automobile insurance policy, no motor vehicle liability policy or renewal of such policy of insurance, including a standard liability policy for an automobile as defined in section 2 of P.L.1972, c.70 (C.39:6A-2), 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, shall be issued in this State with respect to any

> motor vehicle registered or principally garaged in this State unless it includes coverage in limits for bodily injury or death as follows:
>
> (1) an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident, and
> (2) an amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to or death of more than one person, in any one accident, under provisions approved by the Commissioner of Banking and Insurance, for payment of all or part of the sums which the insured or his legal representative shall be legally entitled to recover as damages from the operator or owner of an uninsured motor vehicle, or hit and run motor vehicle, as defined in section 18 of P.L.1952, c.174 (C.39:6-78), because of bodily injury, sickness or disease, including death resulting therefrom, sustained by the insured, caused by accident and arising out of the ownership, maintenance, operation or use of such uninsured or hit and run motor vehicle anywhere within the United States or Canada ...

The statute was amended on August 5, 2022 (after the subject accident) to require the inclusion of UIM coverage and increase the mandatory aggregate UM/UIM limits to $25,000 per person / $50,000 per accident for policies issued after January 1, 2023 and $35,000 / $70,000 for policies issued after January 1, 2026.

These are the mandatory UM (now UM/UIM) limits for motor vehicle policies issued to businesses and corporations insuring vehicles registered or garaged in this State. There is no requirement that the policy's UM/UIM limits match the policy's liability limits, rendering Plaintiff's interpretation of paragraph (f) unsupportable and in direct contravention of paragraph (a).

Paragraph (b) of N.J.S.A. 17:28-1.1 requires the insurer to offer the insured, **as an option**, additional UM/UIM coverage up to at least $250,000 person / $500,000 per accident, subject to the condition that the UM/UIM coverage elected not exceed the insured's liability limits:

> Uninsured and underinsured motorist coverage shall be provided, as an option by an insurer to the named insured electing a standard automobile insurance policy, up to at least the following limits: $250,000.00 each person and $500,000.00 each accident for bodily injury; ... except that the limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury ... (emphasis added).

This additional UM/UIM coverage is optional; not mandatory. Plaintiff's interpretation of N.J.S.A. 17:28-1.1(f) would likewise render paragraph (b) meaningless for every motor vehicle policy issued to a business or corporation in this State.

It is well settled that statutory provisions should be read "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), and interpreted in a manner "that gives effect to all of the statutory provisions and does not render any language inoperative, superfluous, void or insignificant," G.S. v. Dep't of Human Servs., 157 N.J. 161, 172 (1999) (citations omitted). Plaintiff's inapposite reading of paragraph (f) renders paragraphs (a) and (b) void for any business

or corporate entity, large or small, insuring vehicles in this State and strips them of the choices explicitly afforded to them by the Legislature.

Next, Plaintiff's assertion that the second sentence of N.J.S.A. 17:28-1.1(f) is divorced from a prohibition on the enforcement of step-down provisions and instead was added for the unrelated purpose of mandating matching liability and UM/UIM limits violates the very rule against rendering words superfluous on which he so heavily relies. The second sentence of paragraph (f) provides that an employee is entitled to the maximum UM/UIM coverage available under the policy "regardless of whether the individual ... is a named insured or is covered under any other policy providing uninsured or underinsured motorist coverage." This language is indisputably intended to prohibit step-down provisions by ensuring that the UM/UIM coverage the employer purchased is available to the employee regardless of whether the employee is covered under another policy. Yet, according to Plaintiff, the second sentence is completely unrelated to step-down provisions. This is not only nonsensical, but at odds with the mandated and optional UM/UIM coverage expressly provided by the statute as explained supra.

Plaintiff's interpretation also results in employees receiving higher UM/UIM limits than the businesses and owners that purchased the policies. Travieso, supra provides a real world example. The trial judge in that case

incorrectly reformed the $15,000 UM limit to match the $1,000,000 liability limit which, if left to stand, would result in the company's owner having $15,000 UM/UIM limits while his employees would be entitled to $1,000,000 UM/UIM limits. Statutes should be construed to avoid these types of anomalous results. See e.g., Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 178 (2006) (citing State v. Lewis, 185 N.J. 363, 369 (2005)) ("[A] court should strive to avoid statutory interpretations that lead to absurd or unreasonable results.") (internal quotation marks and citations omitted); Robson v. Rodriquez, 26 N.J. 517, 528 (1958) ("A statute will not be construed so as to reach an absurd or anomalous result.").

Plaintiff's reading also disregards the plain text of the statute in violation of the rule that statutory words should be ascribed "their ordinary meaning and significance", DiProspero, 183 N.J. at 492, adds requirements that the Legislature omitted in violation of the rule that a Court "cannot 'write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment,'" id. (citations omitted), and asks the Court to "'rewrite a plainly-written enactment of the Legislature'", id. (citations omitted).

This Court has made clear that "whatever the rule of [statutory] construction, it is subordinate to the goal of effectuating the legislative plan as

it may be gathered from the enactment read in full light of its history, purpose, and context." Chasin v. Montclair State Univ., 159 N.J. 418, 426-427 (1999) (citing State v. Haliski, 140 N.J. 1, 9 (1995)). It is clear that the legislative intent behind N.J.S.A. 17:28-1.1(f) was to prohibit the use and enforcement of step-down provisions in response to Pinto and nothing more. It is equally clear that the Legislature chose to mandate certain UM (now UM/UIM) coverages in N.J.S.A. 17:28-1.1(a), and allow for optional—not required—UM/UIM coverages in N.J.S.A. 17:28-1.1(b). Plaintiff's proposed sweeping change to the mandated and optional limits expressly dictated by statute is simply irreconcilable with the statute itself.

F. The provision of different liability and UM/UIM limits and statutory minimum limits in commercial auto policies is common and expressly permitted by statute.

Plaintiff suggests that Zurich's policy is an anomaly because, according to him, most commercial policies already include matching liability and UM/UIM coverage. This position is based on pure conjecture and belied by the fact that three separate trade associations joined Zurich's position as amicus curiae in the Third Circuit. Plaintiff ignores reality and instead relies on the conclusory opinions of a purported insurance expert pulled out of context from Banach v. Tarakanov, 2017 N.J. Super. Unpub. LEXIS 2254

(App. Div. Sep. 12, 2017) (Pb7, Pa001), an unpublished Appellate Division case that has never been cited by another court.

Plaintiff's suggestion that insurance companies do not write commercial auto policies with minimum limits is equally baseless. For that proposition, Plaintiff turns to a handful of cases that addressed policies with UIM limits that exceed the statutory minimum limits. Pb7-8. However, the policyholders in those cases, unlike Plaintiff's employer in this case, selected and paid for the increased UIM limits. Appx518-521; Appx523-524; Appx234. Moreover, the dearth of decisions addressing statutory minimum UM/UIM limits in commercial auto policies is not surprising. Those cases are unlikely to go into litigation given the amount at issue, and even less likely to go up on appeal.

Next, Plaintiff asserts that "no post-Pinto case has held $15,000 to comport with the requirements of N.J.S.A. 17:28-1.1(f)." Pb8. The reason that this issue has never come before the Courts in the 18 years since the statute's enactment is because the text and legislative history are clear that its purpose is to prohibit certain step-down provisions and nothing more. This Court made that clear in James when it stated not once, but twice, that "the **two operative sentences**" of paragraph (f) address the operation of step-down provisions with respect to employees, James, 216 N.J. at 566-567, and that statute "simply thwarts" the implementation of step-down provisions with respect to

employees, id. at 570-571. The Appellate Division has likewise explained that the "be deemed to provide the maximum ... underinsured motorist coverage available under the policy" provision refers to reformation "to provide the same levels of UIM insurance to employees as it did to the business entity." Hand, 408 N.J. Super. at 140.

Plaintiff also suggests that the $15,000 UIM limit is illusory. Pb22. The fact that Plaintiff wants *more* UIM coverage than the policy provides does not make it illusory. The Zurich policy provides $15,000 in UM/UIM coverage which Plaintiff could not recover since the offending driver carried $100,000 in liability limits that were paid to Plaintiff as part of a settlement. Appx482; Appx485-486. The efficacy of a $15,000 UIM limit, which is the amount of UIM coverage that Plaintiff's employer chose to purchase and was permitted by N.J.S.A. 17:28-1.1(a) and (b) at the time of the accident, is an issue for the Legislature—not the Courts.

II. AN ENDORSEMENT PROVIDING UM/UIM LIMITS AS SELECTED BY THE POLICYHOLDER WHICH COMPLY WITH THE STATUTORILY REQUIRED UM/UIM LIMITS AND WHICH IS NOT SUBJECT TO ANY STEP DOWN OF LIMITS PROVISION FOR EMPLOYEES DOES NOT VIOLATE PUBLIC POLICY OR N.J.S.A. 17:28-1.1(f) WHERE THE POLICY PROVIDES A GREATER THIRD PARTY LIABILITY LIMIT.

A commercial auto policy that provides a greater third party liability limit than the UM/UIM limits does not violate N.J.S.A. 17:28-1.1(f) for the

reasons discussed above. Quite the contrary, the statute at large expressly gives the policyholder the right to select (and pay for) the amount of UM/UIM coverage it chooses, provided the selected limits are no less than $15,000 per person (at the time, and now $25,000 per person and soon to be $35,000 per person) and do not to exceed the liability limit, N.J.S.A. 17:28-1.1(a)-(b).

It follows then that the provision of a greater liability limit than the UM/UIM limits under a commercial auto policy does not violate public policy. The public policy that the Legislature has declared for businesses insuring vehicles registered or garaged in New Jersey can be found in N.J.S.A. 17:28-1.1 itself. It has three basic requirements relevant here. A commercial auto policy must include UM/UIM coverage of no less than $15,000 per person / $30,000 per accident (now $25,000 / $50,000 and soon to be $35,000 / $70,000). See N.J.S.A. 17:28-1.1(a). The insurer must provide the business with the *option* to purchase UM/UIM coverage in certain amounts, subject to the condition that the limits of such UM/UIM coverage "shall not exceed the insured's motor vehicle liability policy limits." N.J.S.A. 17:28-1.1(b). And N.J.S.A. 17:28-1.1(f), as discussed, prohibits those selected UM/UIM limits from being "stepped down" for employees.

Zurich's ISO based endorsement complies with each of them. Zurich provided Plaintiff's employer, which is an exceedingly sophisticated

international company that was keenly aware of the insurance it was purchasing, with the option to purchase UM/UIM coverage in accordance with N.J.S.A. 17:28-1.1(b). Appx518-521; Appx523-524. The policyholder selected $15,000 in UM/UIM coverage which was explicitly permitted by N.J.S.A. 17:28-1.1(a). Id.; see also Appx234. And the policy's step-down provisions except employees from their scope consistent with N.J.S.A. 17:28-1.1(f). Appx186. Consequently, the Zurich policy's UM/UIM endorsement comports with the applicable public policy embodied by this legislation.

In any event, "public policy considerations alone are not sufficient to permit a finding of coverage in an insurance contract when its plain language cannot fairly be read to otherwise provide that coverage." State v. Signo Trading Int'l, 130 N.J. 51, 66 (1992). To that end, the Appellate Division has aptly recognized the following when interpreting N.J.S.A. 17:28-1.1's provisions:

> We acknowledge that N.J.S.A. 17:28-1.1c must be construed liberally to foster the protection UM affords automobile accident victims. However, in the absence of a statutory prohibition to the contrary, an insurance company has a right to impose whatever conditions it desires prior to assuming its obligations. It is not our function to make a better contract for the parties than they themselves have seen fit to enter into or to alter it for the benefit of one party and to the detriment of the other.

Christafano v. New Jersey Mfg. Ins. Co., 361 N.J. Super. 228, 237 (App. Div. 2003).

Thus, contrary to Plaintiff's position, public policy considerations cannot be used to reform a statutorily compliant, clear, and unambiguous policy. This is illustrated by the very Supreme Court decision that Plaintiff cites to support his arguments on this point. See Livsey v. Mercury Ins. Grp., 197 N.J. 522 (2009) (declining to extend the UM statute beyond its terms to provide compensation for an innocent victim).

Plaintiff's heavy reliance on Cook-Sauvageau v. PMA Group, 295 N.J. Super. 620 (App. Div. 1996) is also misplaced. In that case, the Appellate Division rejected a commercial auto insurer's contention that an employee of the named insured was only entitled to recover UIM benefits under his own policy. Id. at 622. Thus, Cook-Sauvageau dealt with the existence of UIM coverage—not the amount, which is at issue here. No one disputes that Plaintiff would have been entitled to UIM benefits under the Zurich policy if he had not settled with the offending driver for an amount in excess of the Zurich policy's UIM limit.[9]

Plaintiff's suggestion that his proposed rewrite of New Jersey auto insurance law will not affect insurance premiums is wild conjecture and belies common sense. It is axiomatic that a law mandating matching UM/UIM limits

[9] Plaintiff recovered $100,000 from the other driver's insurer in addition to his workers' compensation benefits. Appx482; Appx485-486.

and liability coverage, where one does not already exist, will have a significant impact on commercial auto premiums throughout the State.

Plaintiff's conjecture regarding the Zurich policy's premium is equally baseless. The Zurich policy is a multi-state commercial fleet policy that covers hundreds of vehicles across the country at varying UM/UIM limits depending on each state's laws and the deductible simply addresses the total potential UM/UIM exposure in those varying jurisdictions. Appx55-456; Appx518-521. Needless to say, Plaintiff's guess that Zurich is already charging for a higher UIM limit is wrong. Plaintiff's employer elected to purchase the statutory minimum UM/UIM coverage for each state which is reflected in the premium. Appx518-521.

III. PLAINTIFF'S PROPOSED EXPANSION OF N.J.S.A. 17:28-1.1(f) VIOLATES PUBLIC POLICY AND FUNDAMENTAL FAIRNESS.

Plaintiff, under the guise of "corporate greed", asks this Court to rewrite the law to do something that the Legislature never intended, namely, strip businesses of the choice to purchase the amount of UM/UIM coverage they desire. The result: higher premiums for everyone, widespread reformation of commercial auto policies to provide an expansion of coverage without a corresponding premium, and an evisceration of the choice afforded policyholders under current law. This all flies in the face of public policy and fundamental fairness.

First, it is indisputable that New Jersey has a strong public policy in reducing the cost of automobile insurance. Indeed, the Legislature passed a law titled the "New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984" and numerous other laws designed to keep insurance premiums down. See e.g., Perrelli v. Pastorelle, 206 N.J. 193, 202 (2011) (noting that the Legislature "enacted the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act, N.J.S.A. 17:28-1.1 ... for 'the purpose of making automobile insurance more affordable and available to members of the public.'"). Plaintiff's proposed new law will drive up premiums and make insurance less affordable in violation of New Jersey's public policy favoring cost containment. Plaintiff's answer to this: force every business from the smallest "mom and pop" shop to large corporations to purchase excess insurance towers. Pb20-21.

Second, Plaintiff's proposed rewrite is fundamentally unfair because it would reform every affected commercial auto policy covering vehicles garaged or registered in the State of New Jersey to provide significantly increased UM/UIM limits that the policyholders did not elect or purchase or pay for. The facts in this case highlight the extreme results. If Plaintiff's position is adopted, the UM/UIM limits in Zurich's policy will be reformed from the $15,000 coverage that was elected and purchased to a new $2 million limit

with no corresponding premium increase. This is more than 133 times the coverage that was purchased, for free.

Finally, Plaintiff's proposed rewrite will strip every business of the choices explicitly afforded to them by N.J.S.A. 17:28-1.1(b). Under that provision, the insurer is obligated to offer businesses the option to purchase UM/UIM limits *up to* their liability limits. The business and corporation (for-profit and not-for-profit alike) must then decide what coverage meets its needs and budget. Plaintiff seeks to foreclose these statutorily granted rights, by asking this Court to impose his will on every business owner and corporation garaging a vehicle in this State.

CONCLUSION

In sum, Zurich respectfully submits that under N.J.S.A. 17:28-1.1(f), "the maximum [UM/UIM] coverage available under the policy" for an employee is the policy's declared UM/UIM limits (i.e., the same UM/UIM limits available to the business and its principals) irrespective of any step-down provisions that purport to limit the UM/UIM coverage. The "maximum uninsured or underinsured motorist coverage available under the policy" is not the amount of UM/UIM coverage that a business or corporation had the option to purchase, but chose not to. As such, a commercial auto policy that provides greater third party lability coverage than first party UM/UIM coverage does

not violate N.J.S.A. 17:28-1.1(f) or the public policy that the Legislature has decreed for businesses insuring vehicles in New Jersey set forth in N.J.S.A. 17:28-1.1.

Stated plainly, the adoption of Plaintiff's proposed wholesale rewrite of New Jersey auto insurance law will violate public policy and fundamental fairness by driving up premiums for New Jerseyans, reforming commercial auto policies to significantly expand coverage, gratis, and stripping businesses and corporations (for-profit and not-for-profit alike) of the choices afforded to them under the current law.

Respectfully submitted,

/s/ Louis A. Bové

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