UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2563

CRAIG CHIACCHERI
v.
ZURICH AMERICAN INSURANCE COMPANY

On Appeal from the
United States District Court, District of New Jersey
No. 2:23-cv-07056 (Semper, J.)

Before: Montgomery-Reeves, Roth, and Ambro, *Circuit Judges*

PETITION FOR CERTIFICATION OF QUESTIONS OF LAW

To the Honorable Justices of the Supreme Court of New Jersey:

This case presents an issue of first impression regarding the scope of N.J.S.A. § 17:28-1.1(f), which bars step-down provisions in certain corporate automobile insurance policies.

Appellant Craig Chiaccheri was injured in an automobile accident when he was on the job, driving his employer's vehicle. That vehicle was insured by Appellee Zurich American Insurance Company. The Zurich policy included $2,000,000 in general bodily-injury liability coverage. Endorsements limited uninsured (UM) and underinsured (UIM) motorist coverage to $15,000 per person.

After settling with the at-fault driver, Chiaccheri tried to recover under his employer's policy's UIM coverage. Zurich told him that he was not eligible, as the at-fault driver's liability coverage of $100,000 was greater than the policy's UIM limit of $15,000, so the at-fault driver was not considered underinsured.[1]

[1] *See generally* N.J.S.A. § 17:28-1.1(e) (defining an at-fault driver as underinsured if the amount of his third-party liability coverage is less than the injured driver's policy's UIM coverage limit);

Chiaccheri sued, alleging the policy's UIM limitations violated N.J.S.A. § 17:28-1.1(f) and were void as against public policy. He asked that the policy be reformed to provide $2,000,000 in UIM coverage, an amount equal to the policy's bodily-injury liability limits. Sitting in diversity, the District Court for the District of New Jersey granted summary judgment for Zurich, upholding the policy's UIM limitation while rejecting Chiaccheri's statutory and public-policy arguments. Chiaccheri now appeals.

Chiaccheri's theory of the case rests on a broad, but colorable, reading of § 17:28-1.1(f) that would entitle him to UIM coverage up to $2,000,000—what he reads, in the language of the statute, to be the "maximum uninsured or underinsured motorist coverage available under the policy."[2] Chiaccheri cannot recover under the policy if the District Court's narrow interpretation of the statute prevails: that § 17:28-1.1(f) only forbids step-down provisions. Chiaccheri counters that the statute not only rejects step-down provisions, but it also "assur[es] the expansive coverage of an employer's automobile liability policy [is] fully extended to its injured employees."[3]

We believe that these are important and unresolved questions of state law and appropriate for certification. We are confident that the resolution of these issues would be "determinative . . . in [this] litigation."[4] Though we have identified relevant case law from the Superior Court's Trial and Appellate Divisions, those decisions are not controlling on the issue before us.[5] And to our knowledge, the Supreme Court of New Jersey has not ruled on these issues, but we cannot predict confidently how your Court would resolve the matter before us.

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see also, e.g., *Tyler v. N.J. Auto. Full Ins. Underwriting Ass'n*, 228 N.J. Super. 463, 466 (App. Div. 1988) (same).

[2] § 17:28-1.1(f); *see also* Appellant's Br. 26–29.

[3] Appellant's Br. 14.

[4] N.J. Rule of Court 2:12A-1.

[5] *Id.*

Even more, the questions carry general public importance.[6] No matter the holding, the decision rendered will affect New Jersey's insurance market and the premiums paid by New Jersey businesses and consumers. As amici contend, those effects will be much greater if § 17:28-1.1(f) is interpreted to require all in-state, corporate insurance policies to provide UIM coverage to employees at the same level as bodily-injury liability coverage.[7] Indeed, this case has attracted the attention of three industry groups, which filed two amicus briefs: one joint brief from the Insurance Council of New Jersey and the American Property Casualty Insurance Association, and another from the New Jersey Defense Association.[8] Insurance law and regulation is generally the province of the states,[9] and, on this issue, no ruling from this Court would provide lasting, precedential clarity for New Jersey insureds and insurers.

For these reasons, we believe this issue is best decided by your Court. Accordingly, a panel of this Court (Montgomery-Reeves, Roth, and Ambro, JJ.) voted unanimously to transmit this Petition for Certification to the Supreme Court of New Jersey under Local Appellate Rule 110.1 of the United States Court of Appeals for the Third Circuit, and in accordance with the procedures set forth in New Jersey Rule of Court 2:12A. We respectfully request that you grant certification.

I. BACKGROUND

In 2022, Craig Chiaccheri was injured in an automobile accident. At the time of the accident, Chiaccheri was on the job, driving a vehicle owned by his employer, the TJX Companies,

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[6] *See, e.g.*, Amicus Brief of N.J. Defense Ass'n 1 [NJDA Amicus]; *see also* N.J. Rule of Court 2:12-4.

[7] *See* NJDA Amicus 1; *see also* Amicus Brief of N.J. and American Casualty Insurance Ass'n 4 [NJACIA Amicus].

[8] *See generally* NJDA Amicus; NJACIA Amicus.

[9] *E.g.*, *In re Twin City Fire Ins.*, 129 N.J. 389, 412 (1992) ("By enactment of the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.*, Congress has expressly left to the states the regulation of the insurance business.").

Inc. That vehicle was insured by Zurich American Insurance Company. Chiaccheri was not a named insured on TJX's Zurich policy, but no party disputes that, as an employee on duty, he was covered by the policy at the time of the accident. The policy insured the TJX vehicle for $2,000,000, and it included endorsements—written by Zurich and accepted by TJX's representatives—limiting UM and UIM to $15,000 per person and $30,000 per accident.

The at-fault driver in the collision, Harvey Gonzalez, maintained $100,000 in third-party liability insurance coverage. Gonzalez's insurer offered the policy limit of $100,000 to settle Chiaccheri's claims. Chiaccheri accepted that sum, but he also sought UIM coverage through the Zurich policy. Zurich told Chiaccheri he could not recover under the policy, as Gonzalez's coverage of $100,000 was greater than the policy's UIM limit of $15,000, so Gonzalez was not considered underinsured.[10]

Chiaccheri sued Zurich in the Superior Court of New Jersey. As relevant here, he alleged (1) the policy's UIM limitations violated the requirement of N.J.S.A. § 17:28-1.1(f) that unnamed insured employees be afforded "the maximum . . . underinsured motorist coverage available under the policy," so, relatedly, (2) the Zurich policy was also void as against public policy. For a remedy, Chiaccheri sought reformation of the policy to provide $2,000,000 in UIM coverage—the same amount as the policy's bodily-injury coverage limit.

The case was removed to the United States District Court for the District of New Jersey. That Court granted summary judgment for Zurich. On the statutory question, it rejected

[10] *See generally* N.J.S.A. § 17:28-1.1(e) (defining an at-fault driver as underinsured if the amount of his third-party liability coverage is less than the injured driver's policy's UIM coverage limit); *Tyler*, 228 N.J. Super. at 466 (same).

Chiaccheri's interpretation and held that the policy's UIM limit did not violate N.J.S.A. § 17:28-1.1(f) and was not void as against public policy.[11] Chiaccheri appealed.

II. DISCUSSION

The issues raised by this appeal sit at the intersection of statutory interpretation and public policy. Because our decision would be bound by the substantive law of New Jersey,[12] we must "apply existing [New Jersey] law as interpreted by the state's highest court in an effort to predict how that court would decide the precise legal issues before us."[13]

New Jersey law is clear that when interpreting a statute, the chief aim is to determine the Legislature's intent,[14] the "best indicator of" which "is the plain language [it] chose[]."[15] We "may neither rewrite a plainly-written enactment . . . nor presume that the Legislature intended something other than that expressed by way of the plain language."[16] But if the text is ambiguous, we may examine the legislative history in light of the "fundamental purpose for which the legislation was enacted."[17] We consider evidence of intent as "stated in . . . the pertinent legislative history"[18] and exercise "the commonsense of the situation."[19]

The parties have identified genuine ambiguity in the statutory language and underlying legislative history.

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[11] The District Court also ruled for Zurich on Chiaccheri's claim of bad faith, which is not relevant to this petition. App. 17–18.
[12] *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).
[13] *Koppers Co. v. Aetna Cas. & Sur. Co.*, 98 F.3d 1440, 1445 (3d Cir. 1996).
[14] *Frugis v. Bracigliano*, 177 N.J. 250, 280 (2003).
[15] *Johnson v. Roselle EZ Quick LLC*, 226 N.J. 370, 386 (2016) (quoting *Cashin v. Bello*, 223 N.J. 328, 335 (2015)).
[16] *See O'Connell v. State*, 171 N.J. 484, 488 (2002).
[17] *N.J. Builders, Owners & Managers Ass'n v. Blair*, 60 N.J. 330, 338 (1972).
[18] *Gibbons v. Gibbons*, 86 N.J. 515, 522 (1981).
[19] *Perrelli v. Pastorelle*, 206 N.J. 193, 200 (2011) (quotation omitted).

A. The text of § 17:28-1.1(f) is subject to two different, but plausible, interpretations.

Here, the "plain language chosen by the Legislature"[20] is susceptible of two meanings—in a word, ambiguous. Chiaccheri's theory rests on his interpretation of two sentences of N.J.S.A. § 17:28-1.1(f).[21]

> [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*.
>
> 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 . . . a named insured or is covered under any other policy . . . .[22]

No party disputes that § 17:28-1.1(f) bars step-down provisions, which "cap[] the employer's UIM exposure at the limit provided by the employee's own automobile insurance policy."[23] But Chiaccheri argues the statute does more. The essence of his argument, and the parties' dispute, regards the function of the phrase "available under the policy."

According to him, the first sentence bars step-down provisions by preventing policies from supplying "less UIM coverage" to employees than to named insureds.[24] In other words, by giving the employee at least the same UIM coverage as the employer, the policy may not "step down" the UIM coverage to that in the employee's own policy. But invoking the presumption against

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[20] *Johnson*, 226 N.J. at 386 (quotation omitted).
[21] Appellant's Br. 17–22.
[22] § 17:28-1.1(f) (emphases added) (formatting altered).
[23] *Pinto v. N.J. Mfrs. Ins. Co.*, 183 N.J. 405, 407 (2005).
[24] Appellant's Br. 18.

surplusage,[25] Chiaccheri contends that because the first sentence bars step-down provisions, the second sentence, requiring that an employee be provided "the maximum [UIM] coverage available under the policy," must have further independent meaning.[26]

Relying on *James v. New Jersey Manufacturers Insurance Company*, 216 N.J. 552 (2014), Chiaccheri offers a colorable reading.[27] There, interpreting § 17:28-1.1(f), the Supreme Court of New Jersey explained that an employee must "receive under the [employer's] policy the maximum available amount of [UIM] coverage *by operation of law*."[28] Chiaccheri understands this to mean that employees must receive the maximum amount of UIM coverage that the law—"by operation of law"—permits insurers to offer.[29] In policies like the one here, § 17:28-1.1(b) directs that the maximum permissible amount of UIM coverage is equal to the "insured's . . . policy limits for bodily injury and property damage."[30] Putting all this together, Chiaccheri argues the "maximum" UIM coverage "available" to him, by operation of law, is $2,000,000—the Zurich policy's bodily injury and property damage liability limit.[31]

Zurich and amici respond to Chiaccheri by arguing that, under § 17:28-1.1(f), it is the policy's actual UIM limit that controls, not the policy's legal UIM limit.[32] Zurich agrees with Chiaccheri that the first sentence of 17:28-1.1(f) bars step step-down provisions, but it reads the

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[25] *See* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012) ("If possible, every word . . . is to be given effect. . . . None should be ignored. None should needlessly be given an interpretation that causes it to . . . have no consequence.").
[26] Appellant's Br. 19–22.
[27] Appellant's Br. 16; Reply Br. 2–6.
[28] 216 N.J. at 568 (emphasis added).
[29] Reply Br. 6–8; *cf. Allstate Ins. Co. v. Malec*, 104 N.J. 1, 6 (1986) ("Whenever an insurance policy and a governing statute are in conflict, the statute controls, and the policy is automatically amended *by operation of law* to conform to the statutory standard." (emphasis added)).
[30] § 17:28-1.1(b); *see also, e.g.*, *Pizzullo v. N.J. Mfrs. Ins. Co.*, 196 N.J. 251, 258 (2008) (explaining maximum UM and UIM benefits available to insureds in this way).
[31] Reply Br. 6–7.
[32] Appellee's Br. 31–32; NJDA Amicus 8; NJACIA Amicus 8–12.

second sentence simply to "bar *enforcement* of [any] violative step down provision by declaring that the policy is 'deemed' to provide the employee with the maximum UIM coverage available under the policy."[33]

In their view, which follows the District Court's reasoning,[34] the "shall be deemed" language of the second sentence supplements the first sentence by guiding judicial interpretation of commercial policies, like that in *Pinto*, that "name[] a corporate or business entity as a named insured."[35] In those cases, employees must receive whatever the maximum available UM and UIM coverage is offered by—*i.e.*, is "available under"—the policy. Thus, on the reading adopted by the District Court and urged by Zurich and amici, Chiaccheri would be entitled to $15,000 of UIM coverage, as the maximum UIM coverage available under TJX's policy was $15,000 per individual and $30,000 per accident.[36]

Again, Chiaccheri sees it differently, arguing the District Court rendered the second sentence redundant, as would Zurich and amici. As he argues, "the first . . . sentence, by eliminating step-down provisions against employees, guarantees that all employees are entitled to the stated UIM coverage in the policy," so "interpret[ing] the second operative sentence to require the same thing" would render that sentence "meaningless, duplicative[,] and superfluous."[37] And

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[33] Appellee's Br. 28.

[34] *See* App. 14 (D. Ct. Op.) ("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 . . . ."); Appellee's Brief 11 (same); NJDA Amicus 9–10 (same); NJACIA Amicus 5 (same).

[35] N.J.S.A. § 17:28-1.1(f); *See 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.*").

[36] App. 34–35.

[37] Appellant's Br. 21; *cf. Burgos v. State*, 222 N.J. 175, 203 (2015) ("We do not support interpretations that render statutory language as surplusage or meaningless . . . .).

as outlined below, he offers arguments from legislative history and policy to bolster his interpretation.

B. The policy considerations in the legislative record provide some support for Chiaccheri's interpretation.

In our interpretation of a New Jersey statute, if "the statute is ambiguous" or "the plain language leads to a result inconsistent with any legitimate public policy objective," we may "turn to extrinsic tools to discern legislative intent."[38] Chiaccheri points us to one such tool: the legislative history of § 17:28-1.1(f).

The New Jersey Legislature enacted § 17:28-1.1(f) in response to the Supreme Court of New Jersey's 2005 *Pinto* decision, which upheld the application of step-down provisions in circumstances like those here.[39] Those step-down provisions allowed an employer, and its insurer, to provide less UM and UIM coverage to employees than to "named insureds" on the policy, often putting the employees on the hook for UIM coverage if injured in a work-related accident.[40] The Legislative Committee's statement accompanying the bill made clear that "[t]his bill is in response to the New Jersey Supreme Court's decision in *Pinto* . . . . This bill reverses the effect of the *Pinto* decision by prohibiting step-down provisions in [affected] policies."[41] Then, echoing the language of § 17:28-1.1(f), the statement continued: "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 . . . ."[42]

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[38] *Shelton v. Restaurant.com*, 214 N.J. 419, 429 (2013).
[39] 183 N.J. 405 (2005).
[40] *See James*, 216 N.J. at 555–56 (explaining this operation of step-down clauses).
[41] Statement, L. 2007, Ch. 163. (S. No. 1666) (2007).
[42] *Id.*; *accord* § 17:28-1.1(f).

In a manner like his textual arguments, Chiaccheri argues that the legislative statement has two distinct parts, corresponding to two distinct purposes of the statute.[43] He assigns independent meaning to the statement's characterization of the bill's "[f]urther" purpose—to ensure that an employee is "provide[d] the maximum [UIM] coverage available under [his employer's] policy."[44] By his reading, that added purpose requires "maximum amounts of coverage . . . be afforded to corporate employees"[45] through, again, offering UIM insurance at a level equal to the employer policy's third-party liability limits. According to Chiaccheri, this reading coheres with the New Jersey Legislature's "longstanding history of protecting workers injured in the course of their employment,"[46] of which § 17:28-1.1(f)—enacted to reverse *Pinto*—is a chapter. He argues that "[i]n situations described by" the second sentence, "*where the only named insured is a corporate or business entity*" that cannot suffer bodily injury, "the Legislature has chosen to protect those companies' employees by ensuring they are entitled to the" maximum legally permissible UIM coverage.[47]

Zurich and amici respond that Chiaccheri's reading would cause § 17:28-1.1(f) to do more than just eliminate step-down provisions and overrule *Pinto*. In their view, interpreting § 17:28-1.1(f) and *James* as Chiaccheri urges would require insurers and employers to provide employees the "maximum UIM coverage [the] employer was permitted to purchase, but chose not to."[48] Zurich argues the text and legislative history of § 17:28-1.1(f) do not identify the Legislature's intent to create such a regime.[49] Amici assert that such a result also would impair employers' ability

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[43] Appellant's Br. 15.
[44] Statement, L. 2007, Ch. 163. (S. No. 1666) (2007).
[45] Appellant's Br. 17.
[46] *Id.* at 3.
[47] Reply Br. 5–6.
[48] Appellee's Br. 24 (emphasis omitted); *see also* NJDA Amicus 9–11; NJACIA Amicus 8.
[49] Appellee's Br. 24.

to choose what amount of coverage to buy, a general policy objective that they contend is expressed in related statutory provisions.[50]

With this evidence before us, we conclude the legislative history does not definitively resolve the meaning of § 17:28-1.1(f).

* * *

Our Court cannot predict confidently how your Court would decide these issues. As one of our late former colleagues observed, "[d]espite our best efforts to predict the future thinking of the state supreme courts within our jurisdiction on the basis of all of the available data," those "state courts have found fault with a not insignificant number of past '*Erie* guesses' made by the Third Circuit and our district courts."[51] Even were our record better, we cannot create binding precedent on this important state-law matter. That this case has attracted the attention of industry amici strengthens our conclusion that we should not hazard a non-binding *Erie* guess.

Accordingly, we respectfully transmit this Petition for Certification to the Supreme Court of New Jersey under Local Appellate Rule 110.1 of the United States Court of Appeals for the Third Circuit, and per the procedures set forth in New Jersey Rule of Court 2:12A. Rule 2:12A-1 permits the Supreme Court of New Jersey to answer a certified question if the answer would determine the litigation pending in this Court and there is no controlling New Jersey law. We believe the questions presented here satisfy those criteria.

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[50] NJACIA Amicus 9–10; NJDA Amicus 11–12.

[51] Dolores K. Sloviter, *A Federal Judge Views Diversity Jurisdiction Through the Lens of Federalism*, 78 Va. L. Rev. 1671, 1679 (1992); *see also* John L. Watkins, Erie *Denied: How Federal Courts Decide Insurance Coverage Cases Differently and What to Do About It*, 21 Conn. Ins. L.J. 455, 457–58 (2015) (proposing that federal courts "favor[] the liberal use of certification of unsettled questions of state law to a state's highest court" to reverse the trend of federal courts "often guess[ing] incorrectly in deciding important coverage issues").

NOW, THEREFORE, these questions of law are certified to the Supreme Court of New Jersey according to the rules of your Court.[52]

> 1. 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"?
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> 2. 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?

We shall retain jurisdiction of the appeal pending resolution of this certification.

By the Court,

PER CURIAM

Dated: July 14, 2025

A True Copy:

Patricia S. Dodszuweit, Clerk

[52] We acknowledge, pursuant to New Jersey Rule of Court 2:12A-2, that the Supreme Court of New Jersey may reformulate these questions.