

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

LINDA GARCIA,

Plaintiff-Appellee and Respondent,

v.

**Supreme Court No. S-1-SC-40157  
Court of Appeals No. A-1-CA-38005**

ALLSTATE FIRE AND CASUALTY  
INSURANCE COMPANY,

Defendant-Appellant and Petitioner.

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**BRIEF OF AMICUS CURIAE AMERICAN PROPERTY CASUALTY  
INSURANCE ASSOCIATION**

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On Petition for Writ of Certiorari to the New Mexico Court of Appeals  
Appeal from the Ninth Judicial District Court, County of Curry  
The Honorable Fred T. Van Soelen  
Dist. Ct. No. D-905-CV-2017-00480

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## STATEMENT REGARDING SUBMISSION OF AMICUS BRIEF

Pursuant to Rule 12-320(A), NMRA (2016), Amicus, American Property Casualty Insurance Association (“**APCIA**” or “**Amicus**”), hereby submits its brief pursuant to its contemporaneously filed Motion for Leave to File Amicus Brief. This brief supports the Brief in Chief filed by Defendant-Appellant, Allstate Fire and Casualty Insurance Company (“**Allstate**”).

Pursuant to Rule 12-320(D)(1), NMRA (2016), counsel for all parties of record received notice of Amicus’s intent to file this brief on April 14, 2024.

*/s/ Meena H. Allen*

Meena H. Allen

## STATEMENT OF COMPLIANCE

Pursuant to the New Mexico Rules of Appellate Procedure, Amicus hereby certifies that the following brief complies with the limitations set forth in Rules 12-305, NMRA (2016) and 12-318, NMRA (2018). The brief was prepared using a proportionately spaced type-style or typeface (Times New Roman, 14 font) and contains 2779 words. The word count was obtained through Microsoft Word 2016.

*/s/ Meena H. Allen*  
Meena H. Allen

## I. INTEREST OF AMICUS CURIAE

APCIA is the primary national trade association for home, auto, and business insurers and promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent nearly 60% of the United States property-casualty insurance market, including more than 50% of New Mexico's automobile insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits amicus curiae briefs in significant cases before federal and state courts.

Amicus' brief will assist the Court by providing a broader perspective addressing the implications of a ruling in Plaintiff/Appellee/Respondent's favor or a ruling modifying *Montano v. Allstate Indemnity Co.*, 2004-NMSC-020, 135 N.M. 681, 92 P.3d 1255. Any changes or clarification to the law regarding uninsured/underinsured ("UM/UIM") coverage in New Mexico will significantly impact how automobile policies providing UM/UIM coverage are written and sold in New Mexico. This will, no doubt, detrimentally impact the insurance market in the state of New Mexico. Amicus' brief further elaborates on how the Court of Appeals' decision would have the unwanted and undesirable result of deterring,

rather than encouraging, insureds from purchasing UM/UIM coverage and impairing the health of New Mexico's market for automobile insurance.

The issues presented in this appeal are germane to Amicus' interests and those of the members and communities they serve. The issues also implicate their interests in preserving a competitive private insurance market in New Mexico, which is essential to preserving the availability and affordability of insurance for its citizens.

## **II. SUMMARY OF PROCEEDINGS**

Amicus adopts the Summary of Facts and Proceedings set forth in Allstate's Brief in Chief at pp. 9-14.

## **III. ARGUMENT**

This brief is submitted in support of Appellant Allstate's position and the District Court's holding that the UM/UIM forms presented by Allstate to Appellee and signed by Appellee which showed premium costs for both stacked and non-stacked options were meaningful, and that Appellee selected the non-stacked option, which was then fully incorporated into the policy that was delivered to Appellee. Amicus fully supports and incorporates herein the arguments and discussions contained in Allstate's Brief in Chief.

**A. INSURERS ARE ENTITLED TO ALLOCATE PREMIUMS BASED UPON RISKS UNDER *MONTANO*.**

In New Mexico, “no motor vehicle or automobile liability policy insuring against loss resulting from liability . . . shall be delivered or issued for delivery in New Mexico . . . unless coverage is provided therein . . . for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, and for injury to or destruction of property resulting therefrom ....” NMSA 1978 § 66-5-301(A). Subsection B of the same statute then states, “[t]he uninsured motorist coverage described in Subsection A of this section shall include underinsured motorist coverage for persons protected by an insured's policy.” *Id.* § 66-5-301(B). New Mexico law requires that insurers must offer their insureds protection from both uninsured and underinsured motorists. The statute is silent on how such coverage should internally be calculated and rated, or what premiums insureds should pay for UM/UIM coverage.

Before *Montano v. Allstate Indem. Co.*, 2004-NMSC-020, ¶17, 135 N.M. 681, 92 P.3d 1255, was decided, New Mexico courts wrestled with this issue. For example, in *Lopez v. Foundation Reserve Ins. Co., Inc.* 1982-NMSC-034, ¶ 8, 98 N.M. 166, 646 P.2d 1230 the court explained:

The problem of intra-policy stacking arises when two or more vehicles are insured under one policy, with separate premiums paid for each. The insured may argue that he has paid more than once for



each of the types of bodily injury coverage since the coverage is not related to a specific insured vehicle, and should therefore receive multiple coverage. For example, if the insured, while walking down the street, is struck by an uninsured motorist and suffers injury in excess of the minimum coverage provided by one payment of uninsured motorist premium, should he not get the benefit of the multiple premiums he paid?

*Id.*

In response to this quandary, the New Mexico Supreme Court held that “[w]here an insurance company charges a separate *full* uninsured motorist premium for *each* vehicle under a single or several policies, it is only fair that the insured be permitted to stack the coverages for which he has paid.” *Montano*, 2004-NMSC-020, ¶ 18 (emphasis added). However, the Court recognized there may be circumstances where an additional premium charge would be warranted for each additional vehicle if there is also additional risk. *Id.* ¶ 20.

Despite numerous decisions attempting to clarify when stacking was appropriate under this standard, courts were flooded with disputes. Consequently, in 2004, the New Mexico Supreme Court decided to “chart a new course” on the issue of intra-policy stacking. *Id.*, ¶17. It abrogated its prior case law and instead held that, moving forward, the sole requirement to prevent judicial stacking was for an insurer to obtain a written rejection of stacking from the insured. *Id.* ¶ 17.

In *Montano*, the Court held:

In all future cases, an insurance policy that complies with this requirement [of a written rejection of stacking] will avoid the conclusion we now draw from the history of stacking litigation in this State, namely, that anti-stacking clauses are almost inherently ambiguous and are no longer effective at precluding stacking. With written waivers, insureds will know exactly what coverage they are receiving and for what cost; ***if an insurer is charging a higher premium based on the risk created by multiple vehicles, we will leave that to the market to resolve.***

*Id.* ¶ 21 (emphasis added).

By its explicit terms, *Montano* overruled prior precedent that held that if a policy charged multiple full premiums, an insured could be entitled to intra-policy stacking. Instead, post-*Montano*, the only question is whether an insurer obtained a written rejection of stacking. *See id.* Pre-*Montano* case law held that an insurer could not charge multiple **full** premiums on **each** vehicle, reasoning that because UM/UIM coverage follows the insured, if multiple **full** premiums were charged, an insured would be charged multiple times for the same coverage. *Lopez v. Foundation Reserve Ins. Co., Inc.* 1982-NMSC-034 at ¶ 18. At the same time, the Court held that insurers could charge for incremental risk that additional vehicles added. *Id.* ¶ 20. An insurer's premium structure is not relevant under *Montano*, and the premiums stated on the declarations page need not be considered by a court in considering whether stacked UM/UIM coverage was properly rejected.

Similarly, post-*Montano* cases have acknowledged that the premium ambiguity analysis does not apply in cases related to accidents that occurred after *Montano*. See *Hoover v. Metro. Prop. & Cas. Ins. Co.*, 2009 WL 6763997, at \*2 (N.M. Ct. App. Jan. 7, 2009) (unpublished) (applying *Rodriguez* instead of *Montano* only because alleged damage arose three years before *Montano* was announced). Plaintiffs contradict themselves and concede this point by admitting that, “[b]ecause the new written rejection requirement was prospective only,” the second half of the *Montano* opinion applied *Rodriguez* to the case on appeal.

Furthermore, the Tenth Circuit and the United States District Court for the District of New Mexico have interpreted *Montano* as holding that only a written rejection of stacking is required, and only if there is an anti-stacking provision in the policy. *Jaramillo v. Government Employees Insurance Company*, 573 F. App’x 733 (10<sup>th</sup> Cir. 2014) (concluding *Montano*’s “core holding was that ‘an insurance company should obtain written rejections of stacking in order to limit its liability based on an anti-stacking provision’ in a policy”).

In the instant case, the Court of Appeals held that Allstate’s policy was ambiguous because the selection/rejection form offered stacked coverage for a “single premium charge, but when Allstate sent Plaintiff the declarations page for her policy, that document listed UM/UIM coverage and premium charges on a vehicle-by-vehicle basis.” *Garcia v. Allstate Fire & Casualty Ins. Co.*, 2024-

NMCA-010, 541 P.3d 162. The Court concluded that the “insurance contract at issue is ambiguous as to whether multiple premiums were charged” and held that Ms. Garcia is entitled to stack her coverages, despite her signed written rejection of stacked coverage. *Id.* As noted above, this holding conflicts with *Montano* and should be reversed by this Court.

While it is well recognized in New Mexico that the UM Statute is construed broadly in favor of insureds, there are significant public policy reasons for limiting UM/UIM coverage to coverages selected and paid for by policyholders. While the purpose of the UM Statute is undoubtedly important, that purpose cannot trump the parties’ freedom of contract and other important societal interests, such as encouraging citizens to purchase insurance and preventing insurance from becoming prohibitively expensive by extending coverage which was never contemplated by the insurer or insured when entering into the insurance contract. To reform policies in cases where insurers allocated a single non-stacked premium amongst two or more vehicles would, in effect, require automobile insurance companies to re-assess risk exposures and premium calculations that were never contemplated post-*Montano* or more recently in *Ullman*.

In *Ullman*, this Court addressed whether insurers, in their offers of coverage, must include information about stacked or aggregated benefits. 2023-NMSC-030,

¶27, 539 P.3d 668<sup>1</sup> (“The primary issue before us is whether New Mexico law requires an insurer to disclose in its UM/UIM selection/rejection form that an offer to insure multiple vehicles, for which an insurer will charge multiple premiums, will result in *stacked* or aggregated benefits in the event of a covered loss.”) (emphasis in original). The Court held that “going forward, insurers must provide *basic* information about stacking to prospective insureds so that insurers’ offers are meaningful and any associated rejections or waivers by insureds are effective.” *Id.* (emphasis added).

This Court held that “offers of UM/UIM insurance going forward must include a brief discussion of stacking.” *Id.*, 2023-NMSC-030, 43. However, the Court explained, “insurers need not set out a matrix of all stacking possibilities in their offers of UM/UIM coverage to adequately inform insureds of the potential effects of stacking.” *Id.* For purposes of ensuring that coverages “meet the consumers’ reasonable expectations,” “[a] declaration that clarifies that an insured who purchases insurance on multiple vehicles and *pays* multiple premiums would be entitled to stack benefits in the event of a covered loss and affords the insured an opportunity to obtain additional information about stacking will satisfy this requirement.” *Id.* See also *Lopez v. Found. Res. Ins. Co.*, 1982-NMSC-034, ¶¶ 1,

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<sup>1</sup> Unlike this case, in *Ullman*, each of the plaintiffs rejected UM/UIM coverage altogether but, nevertheless, sought stacked coverage based on the argument that the selection/rejection form was legally deficient and invalid. *Id.*

25, (“an insured who *paid* two *separate* premiums for coverage [...] would be entitled to stack two [...] coverages”); *Jimenez v. Found. Res. Ins. Co.*, 1988-NMSC-052, ¶ 11, 107 N.M. 322, 757 P.2d 792 (“case law in this jurisdiction repeatedly has stated the public policy [that] allows [UM/UIM] coverage to be stacked when *separate* premiums are *paid* for additional coverage”) (emphasis added); *Rodriguez v. Windsor Ins. Co.*, 1994-NMSC-075, ¶11, 118 N.M. 127, 879 P.2d 759 (“We have permitted stacking of uninsured motorist coverages when *separate* premiums have been *paid* [...].”) (emphasis added); and *Wilkeson v. State Farm Mut. Auto. Ins. Co.*, 2014-NMCA-077, ¶ 9, 329 P.3d 749 (referring to stacking when “multiple” premiums are paid).

Finally, as emphasized in *Ullman, Montano* “addressed the requirements an insurer must meet should it seek to preclude the stacking of coverages in a multivehicle policy for which the insured pays multiple premiums.” *See Ullman*, ¶ 2023-NMSC-030, 76 (internal citation omitted). *Montano* made clear that with written waivers, the insured will know exactly what coverage they are receiving and for what cost and, further, if an insurer charged a higher premium based on the risk created by multiple vehicles, that would be left “to the market to resolve.” 2004-NMSC-020, ¶ 21.

*Montano* explicitly overruled prior precedent that held that if a policy charged multiple full premiums, an insured could be entitled to intra-policy

stacking and instead, post-*Montano*, the sole question was whether the insurer obtained a written rejection of stacking. *Id.* Insurers, for approximately twenty years since *Montano*, have allocated risks and designed their premium structures based on this Court’s holding in *Montano*. The Court of Appeals’ holding in this case, based upon the alleged *appearance* of two premiums, misapplied *Montano* and a valid rejection of stacking.

The doctrine of *stare decisis* “lies at the very core of the judicial process of interpreting and announcing law.” *Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 33, 125 N.M. 721, 965 P.2d 305 (citations omitted). This Court requires “special justification” in order to depart from precedent. *Id.*, ¶ 34; *see also Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 15, 134 N.M. 43, 73 P.3d 181. Before dispensing with decades’ worth of precedent regarding application of the *Montano*, this Court should consider “common-sense factors as whether the precedent is a remnant of abandoned doctrine, whether the precedent has proved to be unworkable, whether the changing circumstances have deprived the precedent of its original justification, and the extent to which parties relying on the precedent would suffer hardship from its overruling.” *See State v. Montoya*, 2013-NMSC-020, ¶ 40, 306 P.3d 426 (internal quotation marks and citation omitted). None of these are applicable here.

The reason why *Montano* has not been previously questioned by trial court judges, who have applied it for nearly two decades, is because it reflects, and is consistent, with the purpose and intent of the UM Statute. *Montano* has been and continues to remain the most effective way to execute the intent of the UM Statute and provide guidance not only to the lower courts, but also to insurers and insureds in New Mexico.

The continued affordability of UM/UIM coverage will encourage the citizens of New Mexico to purchase such insurance. Should an insured choose to purchase non-stacked coverage, insurers need only obtain a signed, written waiver of stacked UM/UIM coverage when the insured selects non-stacked coverage. The Court of Appeals' decision eliminates the clarity provided by *Montano* and, instead, resurrects the pre-*Montano* case-by-case ambiguity analysis that was deemed by the Supreme Court to be "unworkable." *Montano*, ¶ 17 (stating, "our traditional case-by-case ambiguity analysis has proved *unworkable*").

#### IV. CONCLUSION

There are important and sound public policy concerns that weigh in favor of reversing the Court of Appeals' decision in this case. Despite the efforts to terminate litigation regarding offers of stacked UM/UIM coverage in *Montano*, insureds have continued to argue and litigate as to how premiums for such coverage should be conveyed to them by insurers. The insureds' arguments are not



only inconsistent, but their focus on the ambiguity analysis which was abandoned in *Montano* undermines their choice to purchase lower UM/UIM limits or non-stacked UM/UIM coverage.

Reverting to the case-by-case ambiguity analysis will impact insurers issuing automobile policies in New Mexico, including APCIA's members. Insurers and insureds have an equally strong interest in maintaining a healthy, robust insurance market in New Mexico, which should be safeguarded by this Court through the laws and policies it implements. Amicus has a bona fide concern that a ruling from this Court that is adverse to Appellant and other insurers may cause individual insurers to take a harder look at the merits of deploying capital to the New Mexico auto insurance market. Any impairment of the availability or affordability of insurance will have a significant adverse effect on policyholders throughout the state, with no corresponding benefit to them.

Industry-wide implications arise out of the Court of Appeals' emphasis on Allstate's "premium structure." If the district court's ruling is not reinstated, the lower courts will be faced with resolving the conflict between the holding in *Montano*—that insurers need only obtain a written rejection of stacked coverage—and the Court of Appeals' holding in this case—that courts must go beyond the selection/rejection form and consider an insurer's premium structure to determine whether the rejection is valid. This will waste precious judicial resources in the

State's already over-burdened district courts, and those burdens will inevitably be passed on to the New Mexico appellate courts for years to come. In addition, resurrection of the "unworkable" "case-by-case ambiguity analysis" will create turmoil for insurers who have been given no guidance whatsoever as to how premiums for stacked versus non-stacked coverage should be conveyed to insureds in policy documents so as not to be ambiguous.

For the reasons set forth herein, Amicus respectfully requests that the Court of Appeals' decision be reversed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of April 2024, a true and correct copy of the foregoing was filed electronically and served to all counsel of record through the New Mexico court's e-filing/service system.

/s/ Meena H. Allen  
Meena H. Allen