IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

LINDA GARCIA, Plaintiff – Respondent v. ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY Defendant – Petitioner.	)	Docket No. S-1-SC-40157 Court of Appeals No. A-1-CA-38005

ON A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF THE STATE OF NEW MEXICO

PLAINTIFF – RESPONDENT'S ANSWER BRIEF

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This case was presented to the district court on cross-motions for summary judgment. The documents presented to the District Court included the March 22, 2016 policy documents [RP 149-155]; Allstate's Uninsured Motorists Insurance Selection/Rejection Form [RP 135]; the August 22, 2016 amended policy documents [RP 140 - 148] and the August 23, 2016 renewal policy documents [RP 94-134]. The facts as presented to the district court were based upon these documents.

1. Linda Garcia insured one vehicle (a 2002 Tahoe) under a policy with Allstate. [RP 155].

2. Allstate charged Linda Garcia $38.78 for uninsured motorist coverage with limits of $25,000.00 per person and $50,000.00 per accident bodily injury and $25,000.00 property damage. [RP 152].

3. In August 2016, Linda Garcia added a 2004 Dodge Neon to the policy. [RP 99].

4. Allstate prepared and presented to Linda Garcia a 5-page uninsured motorist insurance selection/rejection form. [RP 135-139].

5. Linda Garcia initialed [RP 138] and signed [RP 139] the uninsured motorist

insurance selection/rejection form.

6. Linda Garcia initialed and signed the box indicating "I select non-stacked Uninsured Motorist Insurance for Bodily Injury and non-stacked Uninsured Motorist Insurance for Property Damage at limits: equal to my Bodily Injury and Property Damages Liability Insurance limits of $25,000/$50,000/$25,000 for all vehicles on the policy, for $89.13." [RP 138].

7. On August 22, 2016, Allstate issued its amended auto policy declarations to Linda Garcia. [RP 220-222].

8. The amended auto policy declarations showed that for a premium of $40.89 on her 2002 Chevy Tahoe Linda Garcia would receive $25,000.00 per person and $50,000.00 per accident bodily injury and $25,000.00 property damage. [RP 221].

9. The amended auto policy declarations also showed that for a premium of $48.24 on her 2004 Dodge Neon Linda Garcia would receive $25,000.00 per person and $50,000.00 per accident bodily injury and $25,000.00 property damage. [RP 221].

10. On August 23, 2016, Allstate issued its renewal auto policy declarations. [RP 98 - 102].

11. The renewal auto policy declarations showed that for a premium of $47.05 on her 2002 Chevy Tahoe Linda Garcia would receive $25,000.00 per person and $50,000.00 per accident bodily injury and $25,000.00 property damage. [RP 99].

12. The renewal auto policy declarations also showed that for a premium of $55.55 on her 2004 Dodge Neon Linda Garcia would receive $25,000.00 per person and $50,000.00 per accident bodily injury and $25,000.00 property damage. [RP 99],

13. Both the amended policy declarations and the renewal policy declarations stated "Uninsured Motorist Insurance Bodily Injury limits of insured vehicles may not be stacked." [RP 221-222, 99].

14. On December 16, 2016, while the renewal policy was in force, Linda Garcia was struck by an automobile while walking across a pedestrian cross walk in Clovis, New Mexico. [BIC 6].

15. The driver who struck Linda Garcia had $25,000.00 liability insurance. [BIC 6].

16. Linda Garcia made a claim against Allstate for an additional $25,000.00 in underinsured motorist benefits, claiming her policy should be reformed to provide $25,000.00 UIMBI coverage per vehicle on each of the two (2) vehicles insured on the policy for a total of $50,000.00 in UIMBI coverage. [BIC 6].

17. Allstate denied the claim on the basis Linda Garcia had only $25,000.00 in total UIMBI coverage. [BIC 6].

18. The matter came before the district court on cross-motions for summary judgment. [RP 64 – 76 and 234 – 250].

19. On her motion for summary judgment before the District Court, Linda Garcia put forward statement of undisputed material facts #2 as follows: "Linda Garcia paid a premium of $47.05 for UM/UIM coverage on one vehicle and a premium of $55.55 for UM/UIM coverage on her other vehicle. [Page 10 of Exhibit 2 of Complaint]" [RP 67]

20. Allstate, in its Response to the motion for summary judgment, stated: "Allstate does not dispute that Fact No.2 accurately sets forth the premium on Plaintiff's renewal policy which was in effect at the time of the accident." [RP 78].

ARGUMENT

ISSUE I: The Court of Appeals properly ordered reformation of the policy to include stacked uninsured motorist coverage because the policy was ambiguous whether it charged a single premium or multiple premiums.

ISSUE I-A: The Court, in *Montano,* created a new requirement for insurers to obtain written rejections of stacking, replacing the former case-by-case analysis of anti-stacking clauses.

Prior to Montano v. Allstate Indemnity Company, 2004-NMSC-020, 135 N.M. 681, insurance carriers were given a glimmer of hope that they could successfully draft anti-stacking provisions that would be upheld by the New Mexico courts. That possibility was foreclosed by *Montano*, which held "anti-stacking clauses are no longer effective at precluding stacking." *Montano*, 2004-NMSC-020, ¶21.

In *Montano,* the Supreme Court said "we must re-evaluate the dicta in *Rodriguez* that suggested that it was possible for an insurer to draft standard contract language that would preclude stacking. " *Montano*, 2004-NMSC-020, ¶17. The dicta in *Rodriguez* referred to in *Montano* is the statement: "We do not declare that it is impossible for an insurance company to issue uninsured motorist coverage that is immune to stacking." Rodriguez v. Windsor Insurance Company, 1994-NMSC-075, 118 N.M. 127, ¶21. The result of the *Montano* Court's re-evaluation of *Rodriguez* was to close the door on the possibility of an effective anti-stacking clause. *See - Montano*, 2004-NMSC-020, ¶28

The *Montano* Court also recognized that its holding "expands the holding in *Lopez*, or perhaps even calls it into doubt." *Montano*, 2004-NMSC-020, ¶21 The *Montano* "expansion" of *Lopez* provided insureds more protection, not less. *Lopez,* like *Rodriguez,* had left open the possibility of an effective anti-stacking clause, by saying "There may be circumstances in which insurance companies may cover multiple vehicles in one policy and charge multiple premiums yet not make multiple payments for a claim related to one vehicle." Lopez v. Foundation Reserve Insurance Company, Inc, 1982-NMSC-034, 98 N.M. 166, ¶ 20. *Montano* ended that possibility by declaring all anti-stacking clauses "no longer effective at precluding stacking" *Montano*, 2004-NMSC-020, ¶21, and by making it clear that "we have always understood stacking to be the remedy for an

ambiguous contract **or** the charging of multiple premiums." *Montano*, 2004-NMSC-020, ¶9 (bolding and emphasis added).

Montano, created a new requirement for insurers to obtain written rejections of stacking, replacing the former case-by-case analysis of anti-stacking clauses. Montano also preserved the requirement to stack coverage in multi-vehicle polices that do not **both** unambiguously preclude stacking **and** clearly charge only a single premium.

ISSUE 1-B1: The Court in *Montano* continued the requirement that to limit stacking in a multi-vehicle policy the policy has to unambiguously preclude stacking and clearly charge only a single premium

Montano left open the possibility of limiting intra-policy stacking on multiple-vehicle policies, "when the policy **clearly** only charges a single premium and **unambiguously** precludes stacking." *Montano*, 2004-NMSC-020, ¶ 15. (bolding and emphasis added). After *Montano*, no insurer should have expected the courts to enforce an anti-stacking clause or to deny stacking in a policy that does not clearly charge a single premium. The "new course" charted by *Montano*, kept alive the requirement that the policy must clearly charge only one (1) premium, and added the new requirement that the insurer must obtain an unambiguous written rejection of stacking. Unless the insurer meets **both** of these requirements uninsured motorist coverage stacks.

Both Allstate and Amicus APCIA argue that *Montano* did away with an

evaluation of whether the insured was clearly charged only a single premium for uninsured motorist coverage, leaving the "sole requirement to prevent judicial stacking was for the insurer to obtain a written rejection from the insured." [AmB 6] [BIC 11] The *Montano* Court explained that its reason for "charting a new course" was to provided insureds more protection, not less. The *Montano* Court said: "In the face of increasingly complex insurance contracts and pricing strategies, we have become convinced that our case law, which includes the suggestion in *Rodriguez* of a safe harbor, is no longer sufficient to **protect the reasonable expectations of insureds** and to ensure that they get what they pay for." *Montano*, 2004-NMSC-020, ¶17 (bolding added). Protection of the reasonable expectations of insureds being the purpose for the change, it is counterintuitive to suggest the Court would have eliminated the protections given to insureds by the *Lopez* and *Rodriquez* ambiguity analysis.

Amicus ACPIA says "post-Montano cases have acknowledged that the premium ambiguity analysis does not apply in cases related to accidents that occurred after Montano." [AmB 8] Amicus APCIA cites the unpublished opinion in Hoover v. Metropolitan Property and Casualty Insurance Company, No. 28776, 2009 WL 6763997, (N.M. Ct. App Jan 7, 2009.) The plaintiff in *Hoover* was injured on July 19, 2001 (before *Montano)* so the *Hoover* court treated the case as a pre-*Montano* case, meaning the insurer "was not required to obtain an insured's

express rejection of either additional uninsured/ underinsured motorist coverage above and beyond the "one minimum coverage," or to obtain an insured's express rejection of stacking." *Hoover*, ¶ 2. In *Hoover*, there was only one premium charged for one uninsured motorist insurance coverage and only one premium shown for uninsured motorist coverage. *Hoover*, ¶ 3 and ¶4. In *Hoover*, the plaintiff failed to explain how the claimed ambiguity in the contract "might lead a reasonable insured to believe that she could stack uninsured motorist coverage when she had paid a single premium." *Hoover*, ¶ 4. Unlike the policy Allstate delivered to Linda Garcia, the *Hoover* policy clearly charged only one premium for one coverage. That factual difference distinguishes *Hoover* from this case.

Amicus APCIA also cites Jaramillo v. Government Employees Insurance Company, 573 F. App'x 733 (10th Circuit 2014) [AmB 8] In *Jaramillo*, the insureds rejected all uninsured motorist coverage. There is no indication in *Jaramillo* that GEICO issued to the Jaramillos policy declaration suggesting the Jaramillos had paid for any uninsured motorist coverage. There was no ambiguity related to the question of whether the Jaramillos had paid multiple premiums for multiple coverages. For that reason, *Jaramillo* is not applicable to the issues in this case.

There is nothing in the *Montano* holding suggesting the court was abandoning its "traditional ambiguity analysis" of policy premium structure.

Montano, 2004-NMSC-020, ¶22. The *Montano* Court found that "because of Allstate's premium structure it is no simple matter for a reviewing court, much less an insured, to determine whether Allstate charges a single premium or multiple premiums." *Montano*, 2004-NMSC-020, ¶22. The *Montano* Court found the Allstate policy failed to meet the requirements set forth in *Rodriquez. Montano*, 2004-NMSC-020, ¶22.

Analyss of policies that do not clearly charge a single premium:

In *Rodriguez,* the Court observed that in cases where the number of premiums charged is not clear, "analyzing the number of premiums charged cannot be isolated from inquiring into the insured's reasonable expectations." *Rodriguez* 1994-NMSC-075, ¶12. "The essential factor in determining whether more than one premium has been charged is whether a reasonable insured reading the policy terms would think that she was paying more than one premium for more than one coverage." *Rodriguez* 1994-NMSC-075, ¶12.

Like *Rodriguez,* the policy issued to Linda Garcia listed the vehicles on the declarations on a vehicle-by-vehicle basis. *Rodriguez,* 1994-NMSC-075, ¶18. The declarations delivered to Linda Garcia did not just say "included" like *Rodriguez*, but actually stated a specific and separate premium for each of Linda Garcia's two insured vehicles. [RP 99] In addition, the policy says "A coverage applies only when a premium for it is shown on the policy declarations." [RP 107]

The policy in *Rodriguez* contained a very similar provision –that is, "We will insure you for the coverages and Limits of Liability for which a premium is shown in the declarations of the policy." *Rodriguez,* 1994-NMSC-075, ¶7

In *Rodriquez,* the declarations listed the insured vehicles on a vehicle-by-vehicle basis and under the uninsured motorist section, it listed a premium for the first insured vehicle and stated "included" under the premium for the other vehicles insured under the policy. *Rodriguez,* 1994-NMSC-075, ¶¶5-6. The *Rodriguez* Court reasoned that this might lead a reasonable insured to "understand that more than one premium is charged, more than one coverage is purchased and stacking of coverage is permitted. *See Rodriguez,* 1994-NMSC-075, ¶3. Surely, if the word "included" in *Rodriguez* was replaced with a statement of specific and separate premiums for each vehicle, (which is the case with the declarations issued to Linda Garcia), the result would be the same. The case for a finding of ambiguity in Linda Garcia's case seems much stronger than the ambiguity created by using the word "included' in the *Rodriguez* declarations. *Rodriquez* was rightly decided based on its ambiguity in the number of premiums charged and so is this case.

Allstate does not challenge the legal principle that stacking is required "if an individual has purchased UM coverage on more than one vehicle." [BIC 9] Although Allstate accepts this well-settled principal, Allstate would deny an effective review of the policy to determine whether more than one premium was

charged or whether the policy is ambiguous whether more than a single premium was charged. The standard is whether the policy "clearly" only charges one premium. A policy that does not "clearly" charge only one premium is treated no differently than a policy that clearly charges multiple premiums. In both instances the reasonable insured would be led to believe that more than one coverage was being purchased and that stacking is permitted.

Allstate says the sole issue for this court is whether, at the "time of purchase," the policyholder **knowingly** chose to waive stacked coverage. [BIC 11] (**bolding added)**. This statement implies the "time of purchase" is that brief moment in time Linda Garcia initialed and signed the uninsured motorist selection/rejection form. The New Mexico uninsured motorist jurisprudence looks at the purchase of uninsured motorist coverage as a process—a process involving meaningful offer and disclosure of coverage options and costs, obtaining any rejections in writing, and incorporating any written rejection into the policy in a way that affords the insured an opportunity to reconsider their choices. No one part of that process negates the need for the other parts of the process.

In this case, Allstate, presented Linda Garica with policy declarations that stated separate premiums for uninsured motorist coverage on each of her two insured vehicles. [RP 143-144, 99] Allstate told Linda Garcia "A coverage applies only when a premium for it is shown on the Policy Declaration." [RP 107]

This statement reinforces the belief created by listing each vehicle separately and declaring a separate premium for each listed vehicle. In combination, these declarations are a powerful suggestion to an insured that she was paying a separate premium for each vehicle and that she was entitled to stack coverages.

Allstate's statement of the sole issue in this case, [BIC 11], includes the condition of "knowingly." The concept of "knowingly" in the uninsured motorist jurisprudence requires all of the steps of the process be properly fulfilled. That is because each step of the process is a safeguard put in place by this Court to ensure insurance consumers, like Linda Garcia, have a chance to make a "realistically informed choice." Jordan v. Allstate Insurance Company, 2010-NMSC-051, ¶20, 149 N.M. 162, 245 P.3d 1214 (explaining that "these consolidated cases indicate that insurers continue to offer UM/UIM coverage in ways that are not conducive to allowing the insured to make a realistically informed choice." Ambiguities introduced into this process by insurance carriers deprive the insureds of the chance to make a realistically informed choice—that is a knowing and intelligent choice. In this case, Allstate created the ambiguity that had to do specifically with whether Linda Garcia was being charged multiple premiums for multiple coverages. This is not a case where Allstate secured a written rejection of stacking and clearly charged a single premium—which are the dual requirements of *Montano.* Without both requirements being met, there is no "knowing" rejection of

coverage.

Allstate admits an insured's choice must be a "knowing" choice. [BIC, page 11]. This "knowing," by its very nature, cannot be exclusive of an ambiguity analysis. Otherwise, an insurance carrier could make an ambiguous offer of coverage, an ambiguous disclosure of the price[s] of the offered coverage, an ambiguous written selection/rejection of coverage, and/or an ambiguous incorporation of the written selection/rejection into the policy. In Allstate's view, as long as the insured signed a selection form rejecting stacked coverage, none of these other requirements matter. Under Allstate's view, these other essential matters would be off limits for court review. That is not the state of the law or the "new approach" suggested by *Montano*. The new course charted by *Montano* was for the protection of the insured's reasonable expectations, and that cannot be assured without the *Rodriguez* ambiguity analysis.

ISSUE I-B-2 - Prospective application of the new requirement to obtain written rejections of stacking did not eliminate the requirement to stack coverages when multiple premiums are paid

The new rule created by the *Montano* court was to declare all anti-stacking clauses ineffective. "*Montano* imposed rejection requirements judicially for the first time, which was why this Court explicitly rejected retroactivity." Whelan v. State Farm Mutual Automobile Insurance Company, 2014-NMSC-021, ¶28, 329 P.3d 646, 654. Allstate and Amicus APCIA both characterize the prospective

application of *Montano* as evidence that the *Montano* court abandoned the additional requirement that the insurer clearly only charge a single premium to avoid stacking. But their characterization of *Montano* is wrong.

If the *Montano* Court had applied the new rule [requiring rejections in writing] in *Montano*, Allstate may have lost that appeal on the basis that the purported limitations of liability clause was invalid to exclude stacking. The *Montano* court thought it unfair to apply the new rule to Allstate without first giving Allstate a change to modify its policy language. *See Montano*, 2004-NMSC-020, ¶22. The *Montano* court went on to decide the case based upon other well-established law that was not part of the "new rule." The Court decided the case against Allstate because it could not determine that Allstate clearly charged only a single premium. *See Montano*, 2004-NMSC-020, ¶22. Therefore, Allstate's insurance contract failed to meet the requirements set forth in *Rodriquez* and stacking was required. *See Montano*, 2004-NMSC-020, ¶22.

The *Montano* Court did not say that it would apply the *Rodriguez* requirements because it would be unfair to Montano to apply a "new approach." This strongly suggests there was no change in the rule that a multiple-vehicle policy must clearly charge a single premium to avoid stacking. The *Montano* Court's reliance upon the ambiguity analysis in *Rodriguez* further shows that, when it is not clear whether there is a single premium charged, the Court resolves

the issue through an ambiguity analysis. No court would "implicitly" make the drastic change suggested by Allstate. [BIC 13]. The Court would come straight out and announce a reversal of the existing law.

ISSUE I-C The New Mexico Court of Appeals properly determined that the ambiguity analysis set forth in *Rodriguez* remains good law for evaluating insurance contracts when a question arises as to whether the amount charged represents a single premium for a single amount of coverage; and the Court of Appeals properly applied the law to the facts of this case.

In this case, like *Montano* and *Rodriguez*, it was not clear that only one premium was charged. The policy declarations state the coverages on a vehicle-by-vehicle basis and state separate premium charges for uninsured motorist coverage for each vehicle. Allstate claims that it charged a single premium and merely allocated that premium between the two insured vehicles. This does not change the fact that the Allstate-created documents are ambiguous with respect to the issue whether Linda Garcia paid multiple premiums for uninsured motorist coverage.

In *Jordan v. Allstate 2010-NMSC-051*, this Court described the requirement to incorporate an insured's decision to reject coverage into the policy "in a way that will clearly and unambiguously call to the attention of the insured the fact that such coverage has been waived." Id., at ¶18. When Allstate presented the declarations to Linda Garcia, it did so in a manner suggesting she was paying a separate premium for uninsured motorist coverage on each of her two (2) insured

vehicles. It may have been clear to Allstate what Allstate was doing, but Allstate's practice of quoting multiple per-vehicle premiums in the policy declarations tells insured they have paid multiple premiums and have purchased more coverage. Allstate has not explained how their practice works to better inform an insured as to what they are purchasing and how much they are paying. Amicus APCIA calls Allstate's practice "being transparent." [AmB 2]. But this practice is just the opposite of transparent. It is ambiguous, confusing and leads an insured to believe they are getting more coverage. The practice is of no value to the insured—it does not advance the cause of allowing an insured to make a realistically informed choice and it interferes with the insured's ability to re-evaluate the coverage selections incorporated into the policy. The practice suggests to the insured they paid separate premiums for separate coverage. Allstate does not challenge the legal principle that stacking is required "if an individual has purchased um coverage on more than one vehicle." [BIC 9]. In this case, Allstate declared to Linda Garcia she had paid separated premiums on each of her two vehicles and under the well-established law recognized by Allstate, Linda Garcia is entitled to stack her coverages.

The New Mexico Court of Appeals properly determined that the ambiguity analysis set forth in *Rodriguez* remains good law for evaluating insurance contracts when a question arises as to whether the amount charged represents a single

premium for a single amount of coverage. The Court of Appeals properly applied the law to the facts of this case and determined that Linda Garcia is entitled to stack her uninsured motorist coverage.

ISSUE I-D – *Montano* struck a proper balance between the need to protect the reasonable expectations of insureds and freedom of contract in the context of auto insurance agreements.

This Court has established a set of rules for insurance carriers to following in selling their uninsured motorist coverage in the State of New Mexico. These rules have been established with a respect for the "freedom of contract" claims made by insurers, but with the knowledge that the rules are for the protection of insureds, who have limited knowledge of insurance law and little or no hand in writing the insurance documents. The hope has been that, by following this Court's rules, insurers will offer uninsured motorist coverage in ways that are conducive to allowing the insured to make a realistically informed choice. *Jordan*, 2010-NMSC-051, ¶20

Allstate argues that the *Jordan* incorporation requirement amounts to nothing more than a post-hoc reading of the presentment of the premium in a declarations page. [BIC 20]. Allstate was aware of the *Jordan* incorporation requirement when it declared to Linda Garcia that she had paid a premium of $47.05 for her 2002 Chevy Tahoe and a separate premium of $55.55 for her 2004 Dodge Neon. There was certainty in what Allstate was required by law to do --

Allstate just did not follow the well-established law. Allstate was required to present to Linda Garcia declarations that were clear and unambiguous. If Allstate wished to avoid stacking, it could have presented policy declarations without the ambiguity. Allstate threatens dire consequences to the insurance industry [BIC 21] if it is required to follow this Courts rules. But Allstate has always been free to abide by the well-established rules announced by this Court and to avoid stacking by following the rules—clearly charge only a single premium and obtain a written rejection of stacking. All insurers have known this for more than two (2) decades.

ISSUE II: New Mexico's law recognizes the disparity in bargaining power between insurers and their insureds and has placed the onus on insurers to provide sufficient information to insureds to secure meaningful and knowing selection of insurance coverage

New Mexico uninsured motorist and "stacking" jurisprudence has established rules for insurance carriers who want to avoid payment of uninsured motorist benefits to their insureds. The cases recognize that in the face of increasingly complex insurance contracts and pricing strategies, more had to be done to protect the reasonable expectations of insureds. *See Montano*, 2004-NMSC-020, ¶17. *See also* Azar v. Prudential Ins. Co. of Am., 2003-NMCA-062, ¶ 15, 133 N.M. 669, 68 P.3d 909 (explaining: "In the insurance context, New Mexico courts have recognized a fiduciary duty 'because of the fiduciary obligations inhering in insurance relationships and because of concerns arising from the bargaining position typically

occupied by the insured and insurer.' *Romero v. Mervyn's,* 109 N.M. 249, 255 n. 3, 784 P.2d 992, 998 n. 3 (1989); *Allsup's,* 1999–NMSC–006, ¶ 37, 127 N.M. 1, 976 P.2d 1.").

The focus of the UIM and stacking jurisprudence is correctly aimed at the conduct of the insurance carriers, who have the expertise and who create and issue the insurance documents. *See Rodriguez,* 1994-NMSC-075, ¶14 Insurance carriers, like Allstate, have been told the steps they must take to avoid the "seemingly inherent ambiguities" of their insurance contracts. *See Jordan,* 2010-NMSC-051, ¶24. The hope was to have "Insurance carriers meaningfully enable consumers to make a knowing and intelligent purchase or rejection of UM/UIM coverage. *See Jordan,* 2010-NMSC-051, ¶24.

In an effort to guide the insurance industry, this Court has established a number of requirements. There is a requirement to offer UIM coverage equal to the insureds liability limits; a requirement to inform the insured about the premium cost corresponding to the available levels of coverage offered; a requirement to obtain rejections of coverage in writing; and a requirement to incorporate any rejection into the policy to afford the insured an opportunity to reconsider any rejection of coverage. These requirements were put in place to provide additional protection for insureds, not to relieve insurers from the well-established obligation to write and deliver clear and unambiguous contracts.

All of these requirements work together to enable consumers to make a knowing and intelligent purchase of the uninsured motorist coverage they want and can afford. Compliance by insurers with any one of the requirements does not obviate the need for the insurer to comply with all of the other requirements. All of the requirements should work together to give an insured a chance to make a "realistically informed choice."

ISSUE II-A Allstate did not make a meaningful offer of uninsured motorist coverage.

ISSUE II-B – Allstate did not make a meaningful disclosure of costs of the various levels of coverage offered.

This Court provided insurance companies with illustrations of clear disclosures. *See Montano,* 2004-NMSC-020, ¶19. If Allstate followed the *Montano* illustration, it might have advised Linda Garcia that for a premium of $79.73 she would have $25,000.00 per person UIMBI coverage and for a premium of $ 158.65 she would have $50,000.00 per person UIMBI coverage. [RP137-138]

Instead of following the *Montano* illustration, Allstate used its own standard form -- a 5-page selection rejection form. [RP 137-138]

Both the stacked [RP 137] and non-stacked [RP 138] options stated Linda Garcia would be selecting limits "equal to my bodily injury and property damage liability insurance limits of $25,000/$50,000/$25,000 for all vehicles on the policy"

The Allstate selection/rejection form did not state the dollar amount of coverage available under the stacked versus unstacked options. Allstate left it to Linda Garcia to read and understand the note about stacked and non-stacked coverage [RP 135] and to calculate the amount of coverage being offered.

The Allstate selection/rejection form advises that "if you are struck as a pedestrian the highest limit of uninsured motorist insurance for bodily injury available for any one vehicle on the policy will apply." [RP 135] The disclosure form says the bodily injury limits are $25,000/$50,000 – but it does not state whether the applicable "highest limit" was $25,000.00 or $50,000.00. An "average purchaser of automobile insurance", with "limited knowledge of insurance law" might not understand. Ullman v. Safeway Ins. Co., 2023-NMSC-030, ¶41, 539 P.3d 668

Linda Garcia's 2016 claim predated the 2023 *Ullman* decision. The Court, in *Ullman*, held the plaintiff's total rejection of UIM coverage invalid because the insurer had failed to provide a disclosure of the amounts of coverage and costs of coverage for the various levels of stacked coverage available. *Ullman*, 2023-NMSC-030, ¶51 Going forward, the *Ullman* court said insurers would not be required to provide a matrix of all stacking possibilities, but that they have to provide a declaration that clarifies that an insured who purchases insurance on multiple vehicles and pays multiple premiums would be entitled to stack benefits. *See Ullman*, 2023-NMSC-030, ¶43.

The Allstate selection rejection form says "The premiums shown on this document are per policy. [RP 135]. There is no explanation of what that means or what that has to do with uninsured motorist coverage. Again, Allstate left it up to the Linda Garcia to figure out what was meant.

The Allstate form used the "split limit" expression "$25,000 / $50,000 / $25,000" to describe the amount of UIM coverage. While this expression is readily understood by judges, lawyers and insurance professionals, it does not add clarity to the disclosures given to a reasonable insured.

Additionally, Allstate combined the cost of UIMBI coverage ($79.73 or $158.65) with the cost of UIMPD coverage ($9.40), which it only offered as unstacked UIMPD coverage. The declarations issued by Allstate do not state whether the UIMPD may or may not be stacked. [RP 98-99 and 143-144].

Before adding a second vehicle to her policy, Allstate charged Linda Garca $38.78 for uninsured motorist insurance for her Chevy Tahoe. This premium provided $25,000.00 each person and $50,000.00 each accident bodily injury coverage and $25,000.00 each accident property damage coverage. [RP 152].

When Linda Garcia added her Dodge Neon to the policy, her premium for the same level of coverage on the Chevy Tahoe increased to $47.05 [RP 99] and she was charged and paid a separate and additional premium of $55.55 for the additional coverage on her Dodge Neon [PR 99]. The premiums declared to Linda

Garcia would have suggested to any reasonable insured that this kind of increase in premium meant a corresponding increase in benefits.

Linda Garcia argued that Allstate did not make a meaningful offer of uninsured motorist coverage, but that issue was not addressed by the Court of Appeals. Having found the policy was ambiguous regarding whether Linda Garcia was charged multiple separate premiums for uninsured motorist coverage, the Court of Appeals found it was unnecessary to address these other issues.

Allstate did not make a meaningful disclosure of the amounts of coverage being offered or the costs of coverage. For this additional reason, the policy should be reformed to include stacked coverage.

ISSUE II-C - Allstate did not obtain a knowing and intelligent waiver from Linda Garcia because it failed to make meaningful offer of coverage or disclosure of the costs of the coverage offered. Insureds can only provide meaningful and knowing written rejections of UIM coverage if insurers provide sufficient, clear and unambiguous information to insureds.

After making an offer of coverage and disclosing the comparison costs of coverage, the insurance carrier is required to obtain any rejection of coverage in writing. *See Jordan,* 2010-NMSC-051, ¶22,

Linda Garcia initialed and signed the Allstate form, but that was done without the benefit of a meaningful disclosure. Without a meaningful disclosure, how can the

selection be deemed knowing and intelligent. Obtaining a written selection did not obviate the need for a meaningful disclosure of the amount of coverage offered and the cost of coverage. The requirement for written rejection of coverage is just one of the requirements placed upon insurance carriers. Obtaining initials and a signature on the selection/rejection form does not relieve the insurer of its other obligations.

Allstate could have explicitly advised Linda Garcia that the selection of unstacked coverage was the rejection of half of the UIMBI coverage available on her policy. Allstate could have told Linda Garcia that the selection of unstacked coverage was the rejection of $25,000.00 of UIMBI coverage. Instead, Allstate provided Linda Garcia with a 5-page roadmap to figure this out for herself. Allstate included a request to read the notice carefully [RP 135] and a statement "I have read the notice [RP 139] Allstate places great stock in the fact that it told Linda Garcia to read the documents carefully, but nowhere in that 5-page notice is there any mention of the fact that she was rejecting UIMBI coverage or any mention of the amount of coverage being rejected.

Linda Garcia did not knowingly and intelligently reject coverage because she was not properly informed of the amounts of coverage available to her and the costs of that coverage. The policy should be reformed to provide stacked coverage.

ISSUE II-D Allstate did not properly incorporate a rejection of coverage into the policy in a way that afforded Linda Garcia a fair opportunity to reconsider her selection of uninsured motorist coverage.

After obtaining a rejection of uninsured motorist coverage in writing, Allstate was required to incorporate that rejection into the policy in a way that afforded Linda Garcia a fair opportunity to reconsider the decision to reject. *Jordan,* 2010-NMSC-051, ¶22,

On August 22, 2016, Allstate issued policy documents including the amended auto policy declarations [RP142-146].

The policy issued by Allstate included the statement "A coverage applies only when a premium for it is shown on the policy declarations." [RP 24]. This is similar to the statement contained in the policy in *Rodriguez* , which creates additional ambiguity. *See Rodriguez* 1994-NMSC-075, ¶7. Following its method for disclosing the amount of coverage being offered, Allstate provided a "supplement to policy declarations" [RP 146], which included the statement "Regarding your uninsured motorists insurance coverage, you have: selected non-stacked uninsured motorist insurance for bodily injury at limits equal to your policy's bodily injury liability insurance limits of $25,000/$50,000." Allstate also included in the coverage detail for each vehicle the statement "Uninsured motorist insurance bodily injury limits of insured vehicles may not be stacked." [RP 143 – 144].

The policy in force on the date of loss included amendatory endorsement AU14561 [RP 100, 134] which advised Linda Garcia that she had the right to

purchase UIM coverage in an amount equal to her liability limits. The endorsement goes on to says "We have offered you and you have accepted the option to purchase Uninsured Motorist Insurance in an amount equal to your Bodily Injury and Property Damage Coverage limits." That statement was not only inadequate to alert a reasonable insured that she had rejected half of the coverage available, it was downright misleading. The endorsement suggests Allstate had offered and Linda Garcia accepted the amount of coverage she was legally entitled to purchase, which was $25,000.00 per person on each of the two insured vehicles for a total of $50,000.00. Given the significant increase in the cost of her UIMBI coverage, a reasonable insured could be led to think she was receiving more coverage for a higher premium – when in fact she was not. Allstate increased her premium for $25,000.00 uninsured motorist coverage from $38.78 [RP 152] to $89.13 [RP 138].

The policy declarations issued to Linda Garcia do not inform Linda Garcia that she has rejected $25,000.00 in uninsured motorist bodily injury coverage. The declarations do not advise Linda Garcia that she had rejected any level of coverage at all. The declarations do not use the words "reject," "rejected," "rejection," or the like.

Allstate did not properly incorporate a written rejection of coverage into the policy it issued to Linda Garcia. This issue was also not addressed by the Court of Appeals. Having found the policy was ambiguous regarding whether Linda Garcia

was charged multiple separate premiums for uninsured motorist coverage, the Court of Appeals found it was unnecessary to address this issue. The policy should be reformed to provide stacked coverage.

CONCLUSION

For all of the reasons stated above, this Court should affirm the September 28, 2023 *Opinion* of the New Mexico Court of Appeals.

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Certificate of Service

I certify that at the time of e-filing this Answer Brief, I requested e-service upon all counsel of record.

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