



IN THE NEW MEXICO SUPREME COURT

LINDA GARCIA,

Plaintiff-Appellee and Respondent,

v.

No. S-1-SC-40157

Ct. App. No. A-1-CA-38005

ALLSTATE FIRE AND
CASUALTY INSURANCE COMPANY,

Defendant-Appellant and Petitioner.

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

**BRIEF IN CHIEF OF ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY**

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CERTIFICATE OF COMPLIANCE

As required by Rule 12-318(G), we certify that this Brief complies with the type-volume limitation of Rule 12-318(F)(2) and (F)(3). The body of the Brief in Chief does not exceed 35 pages. According to Microsoft Office Word, the body of the Brief in Chief, as defined by Rule 12-318(F)(1), contains 5,769 words.

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INTRODUCTION

This appeal seeks this Court’s clarification, if not mere reiteration, of its holding in *Montano v. Allstate*, 2004-NMSC-020, ¶ 1, 135 N.M. 681, 92 P.3d 1255, that the test for waiver of stacked uninsured-motorist (“UM”) coverage looks to whether insureds knowingly exercised their legal right to decline such coverage. The district court correctly applied the *Montano* waiver test. Indeed, it examined the insurance policy and the Selection/Rejection Form that the insured completed when adding a second car to the policy, and it concluded that she knowingly waived coverage.

But the Court of Appeals reversed without applying the *Montano* waiver test. Instead, the Court of Appeals turned back the clock to the prior test that this Court in *Montano* had rejected as “unworkable”: the “ambiguity” analysis of *Lopez v. Foundation Reserve Insurance Co.*, 1982-NMSC-034, 98 N.M. 166, 646 P.2d 1230. Instead of determining whether the insured knowingly waived stacked coverage through her selection of non-stacked coverage, the Court of Appeals faulted the insurer’s declarations page for displaying the single UM premium as shared between the two vehicles insured under the policy. The court then declared the policy ambiguous without addressing how that could be in light of the declarations page’s clear and unambiguous statement that the “Uninsured Motorist Insurance Bodily limits of insured vehicles may not be stacked.” In so doing, the court never

considered whether the insured knowingly rejected stacked UM coverage, as required by the *Montano* waiver test.

This retreat to the *Lopez* test's preoccupation with how premium(s) are displayed is contrary to the "new course" and "new approach" that this Court said it was charting in *Montano*. It is also contrary to this Court's recent explanation in *Ullman v. Safeway Insurance Co.*, 2023-NMSC-030, ¶ 76, 539 P.3d 668, that the *Montano* waiver analysis applies even if an insured "pays multiple premiums."

The *Montano* waiver test respects an insured's statutory right to select, reject, or adjust the stacking of UM coverage as well as the general policies favoring freedom of contract. As the district court correctly found, Linda Garcia knowingly chose non-stacked coverage in exchange for a lower premium, as reflected in Allstate Fire & Casualty Insurance Company's UM Selection/Rejection Form, and her written UM waiver was incorporated into Allstate's policy. Once Garcia knowingly waived stacked UM coverage, it became irrelevant under *Montano* how the premium was shown on the policy's declarations page. This Court should reverse the Court of Appeals' contrary holding and affirm that the district court had it right in the first place.

QUESTION PRESENTED

Did the Court of Appeals err by failing to follow this Court's direction in *Montano v. Allstate* to give full effect to an explicit rejection of stacked UM/UIM coverage in exchange for a lower premium, where the insurer's offer explained stacking and provided a premium for each stacked and non-stacked coverage?

SUMMARY OF FACTS AND PROCEEDINGS

A. Linda Garcia knowingly chose non-stacked UM coverage and waived stacked coverage, only to claim stacked coverage after her accident.

In March 2016, plaintiff Linda Garcia purchased an Allstate automobile policy that insured one vehicle, a Chevy Tahoe. [RP 149–55] The policy carried bodily injury liability limits of \$25,000/\$50,000 and UM coverage in the same amount. [RP 152] A few months later, in August 2016, Garcia added a Dodge Neon to her policy. [RP 67 ¶ 1; RP 78 ¶ 2] The addition of the Dodge Neon made the policy a multi-car policy, so Allstate presented Garcia with the Uninsured Motorists Selection/Rejection Form. [RP 135–39]

The Selection/Rejection Form included several admonitions to the insured to read the form's language carefully when deciding UM coverage. It also included a detailed definition and explanation of "stacked" and "non-stacked" coverage that differentiated between, respectively, (a) adding together the limits for each insured vehicle or (b) applying the limit for only one vehicle (depending on the

circumstances of the loss, the vehicle involved in the accident or the vehicle with the highest limit):

If you elect to purchase Uninsured Motorists Insurance for Bodily Injury, the applicable limits for each motor vehicle shown on the Policy Declarations for this policy are added together (stacked) to determine the total amount of available coverage. If you elect to purchase non-stacked Uninsured Motorists Insurance for Bodily Injury, the total amount of available coverage is limited to the amount shown on your Policy Declarations for the vehicle involved in the loss. If the loss occurs while occupying someone else's vehicle, or if you are struck as a pedestrian, the highest limit of Uninsured Motorists Insurance for Bodily Injury available for any one vehicle on the policy will apply.

[RP 52]

The Selection/Rejection Form listed Garcia's three options for UM bodily injury coverage:

- purchase stacked UM coverage for a premium of \$158.65,
- purchase non-stacked UM for a premium of \$89.73, or
- completely reject UM coverage.

[RP 54–55] Garcia indicated her choice by initialing the option of “non-stacked” UM coverage for \$89.73. This option gave a single premium price for both automobiles.

2) **SELECTION OF NON-STACKED UNINSURED MOTORISTS INSURANCE FOR BODILY INJURY AND NON-STACKED UNINSURED MOTORISTS INSURANCE FOR PROPERTY DAMAGE**

I select **non-stacked** Uninsured Motorists Insurance for Bodily Injury and **non-stacked** Uninsured Motorists Insurance for Property Damage at limits:

LG
(initials) **equal to my Bodily Injury and Property Damage Liability Insurance limits of \$25,000/ \$50,000/ \$25,000** for all vehicles on the policy, for \$ 89.13 or

(initials) **lower than my Bodily Injury and Property Damage Liability Insurance limits for all vehicles on the policy with the selection below:**

I select lower limits of:

Bodily Injury			Property Damage		
Initial Below	Limits	Premium	Initial Below	Limits	Premium
_____	\$ 25,000/\$ 50,000	\$79.73	_____	\$10,000	\$7.66
_____			_____	\$25,000	\$9.40

[RP 55] Garcia signed the Selection/Rejection Form, acknowledging that she had read the notice and understood the UM coverage option she had selected.

SECTION B

I HAVE READ THIS NOTICE AND UNDERSTAND THAT THE COVERAGE PROVIDED BY UNINSURED MOTORISTS INSURANCE FOR BODILY INJURY AND PROPERTY DAMAGE IS SUBJECT TO THE TERMS AND CONDITIONS OF MY POLICY. I UNDERSTAND THAT THE OPTIONS THAT I HAVE SELECTED WILL APPLY TO ALL FUTURE RENEWAL, CONTINUATION, REINSTATEMENT, SUBSTITUTE, TRANSFER, AMENDED, AND REPLACEMENT POLICIES UNLESS I NOTIFY ALLSTATE AND ITS AFFILIATE COMPANIES OTHERWISE IN WRITING. I FURTHER UNDERSTAND THAT THE PREMIUM ASSOCIATED WITH THE OPTIONS I HAVE SELECTED MAY CHANGE.

THE REJECTION, SELECTION OR MODIFICATION OF UNINSURED MOTORISTS INSURANCE IS A PART OF YOUR POLICY AND WILL BE REFLECTED ON THE POLICY DECLARATIONS.

LINDA GARCIA
Name of Applicant/Insured

Linda Garcia
Signature of Applicant/Insured

9-22-16
Date

836874546
Application/Policy Number

[RP 56]

Allstate then provided Garcia with amended policy declarations that reflected the two cars now on the policy. [RP 220–24] The declarations reflected her selection of non-stacked coverage, and showed the single premium listed on the Selection/Rejection Form as shared between the two vehicles: \$40.89 for the Chevy Tahoe, and \$48.24 for the Dodge Neon. [RP 221–22] The coverage detail for each vehicle confirmed that UM coverage was *non-stacked*. [RP 221–22]

In September 2016, Garcia renewed her Allstate policy. Because she had chosen not to re-enroll in Allstate’s “ePolicy” program, she was no longer eligible for the “eSmart” discount. [RP 103] This meant that her premium for non-stacked coverage increased to \$102.60. [RP 989–98] Along with the amended declarations, Garcia received a Supplement to Policy Declarations stating that she had selected “**non-stacked**” UIM coverage:

Supplement to Policy Declarations

This document forms a part of your Policy Declarations.

Regarding your Uninsured Motorists Insurance coverage, you have:

selected **non-stacked** Uninsured Motorists Insurance for Bodily Injury at limits **equal to** your policy’s Bodily Injury Liability Insurance limits of \$25,000/\$50,000.

[RP 102] At no time before or after the renewal period did Garcia write to Allstate and request a change of her choice of non-stacked coverage to stacked coverage.

Three months after Garcia selected non-stacked UM coverage for her policy, in December 2016, a car struck Garcia as she crossed a pedestrian walk area. [RP 1 ¶ 4] Garcia settled her claim against the tortfeasor with his insurer, State Farm. Garcia then filed a claim with Allstate that asserted her entitlement to stacked UM coverage limits of \$50,000, rather than non-stacked coverage limits of \$25,000. [RP 2-3 ¶ 15] In response, Allstate pointed out that Garcia had rejected stacked UM coverage. [RP 3 ¶¶ 14, 20]

B. The district court rejected Garcia’s claim because she had knowingly waived stacked coverage, but the Court of Appeals reversed based on the presentment of the single premium in the policy declarations.

Garcia then sued Allstate for a declaratory judgment seeking to reform her policy to provide stacked UM coverage of \$50,000. [RP 1–4] In her complaint, Garcia alleged that Allstate was obligated to offer her the option of selecting or rejecting stacked UM coverage on per-vehicle basis, and that the premium reflected on the Selection/Rejection Form was incorrect because the premium amount for the two vehicles combined did not equal the sum of the separate amounts listed in the declarations. [RP 3 ¶ 19]

After full briefing and a hearing on the parties’ cross-motions for summary judgment [RP 268–70], the court issued an order in January 2019 granting Allstate’s motion and denying Garcia’s motion. [RP 275–76] The court summarized Garcia’s argument as an assertion that Allstate’s UM coverage offer was not a “‘meaningful’ offer because it did not properly disclose all the costs.” [RP 275] The court disagreed, finding that the “forms presented and signed by [Garcia] did show the premium costs for both the stacked and non-stacked options, and that [Garcia] initialed and signed the non-stacked option.” [RP 276]

On Garcia’s appeal, in a September 2023 opinion, the Court of Appeals reversed the district court. *Garcia v. Allstate Fire & Casualty Ins. Co.*, 2024-NMCA-010, 541 P.3d 162. The court acknowledged this Court’s holding in *Montano* but

found that the *Montano* analysis applied only if the insurer offered unstacked coverage “follow[ing] the model outlined in *Montano*.” *Id.* ¶ 15. Finding Allstate’s Selection/Rejection Form did not offer UM coverage under that model, the court applied the *Lopez* ambiguity analysis to evaluate whether Allstate had effectively excluded stacked coverage. The Court of Appeals went on to incorrectly conclude that the difference between the single UM premium on the Selection/Rejection Form and the presentment of that single UM premium on the declarations page created an ambiguity. Based on its finding of an ambiguity, the court declined to review whether Garcia had validly rejected stacked UM coverage, and it did not discuss the district court’s findings that Garcia had in fact knowingly and reasonably waived stacked coverage.

ARGUMENT

I. The Court of Appeals failed to follow this Court’s precedent in *Montano* and *Ullman* by ignoring whether the insured knowingly chose non-stacked coverage, and by focusing instead on inferences of ambiguity from the presentment of the premium in a later policy declaration.

The Court of Appeals did not apply the correct precedent in analyzing whether Garcia’s policy included non-stacked or stacked coverage. Instead of focusing on whether Garcia had knowingly waived stacked coverage as required under *Montano*, the court incorrectly applied the abandoned premium-ambiguity analysis from *Lopez* and other intervening decisions. In relying on that effectively abrogated authority and not employing the *Montano* waiver analysis, the Court of Appeals failed to give

effect to the statutory right to select or reject UM coverage and failed to enforce the parties' written contract. This Court reviews de novo the grant or denial of summary judgment, reviewing the issues "as if we were ruling on the motion in the first instance." *Ullman*, 2023-NMSC-030, ¶ 26 (quotation omitted). As well, the Court reviews de novo questions of law, including the interpretation of insurance contracts and insurance regulations to "determine the form and manner that offers and rejections of UM/UIM coverage must take." *Id.* (quotations omitted).

A. This Court in *Montano* adopted a new waiver analysis that looks to whether a policyholder waived stacking, not the premium structure.

This Court should reaffirm the holding of *Montano* that the test for whether a policy provides stacked or non-stacked coverage turns on whether the insurer obtained from the insured "a separate, comprehensible and written disclaimer of stacking." *Montano*, 2004-NMSC-020, ¶ 18. *Montano*'s clear and readily applied "waiver test" reflects the legal nature of stacking of policy limits. Stacking is not a product of legislation, but instead a judicial recognition that UM coverage follows the insured and does not attach to individual vehicles. *See id.* ¶¶ 9, 17. If an individual has purchased UM coverage on more than one vehicle, the Court has concluded that fairness mandates that an insured have the right to aggregate that coverage in the event of an accident. *See Morro v. Farmers Ins. Grp.*, 1988-NMSC-006, ¶ 5, 106 N.M. 669, 748 P.2d 512. But in New Mexico, UM coverage is not

mandatory, and New Mexicans have the statutory right to reject UM coverage. NMSA 1978, § 66-5-301(C) (1983) (providing that “the named insured shall have the right to reject uninsured motorist coverage”). The right to reject coverage includes the right to select *less* UM coverage. See *Progressive Nw. Ins. Co., v. Weed Warrior Servs.*, 2010-NMSC-050, ¶¶ 14-15, 149 N.M. 157, 245 P.3d 120.

Before *Montano*, in reliance on a line of cases that began with *Lopez*, 1982-NMSC-034, courts assumed that an insurer could validly exclude stacking from a policy with an anti-stacking clause. While the Court in *Lopez* conceded that there may be circumstances where an additional premium charge was warranted for each additional vehicle if there was additional risk, *id.* ¶ 20, the Court was concerned that an ambiguity in the language of the anti-stacking clauses or the premium structure in the policies’ declarations pages would mean that the policyholder did not understand her UM coverage when she purchased the policy. Following this “ambiguity” analysis, courts evaluated stacking challenges by looking for ambiguities in the policy language or stated premium structure; if they found any, they would reform the policy to provide stacked coverage. See, e.g., *Jimenez v. Found. Reserve Ins. Co.*, 1988-NMSC-052, 107 N.M. 322, 757 P.2d 792 (anti-stacking clause could not salvage an unclear premium structure); *Rodriguez v. Windsor Ins.*, 1994-NMSC-075, 118 N.M. 127, 879 P.2d 759 (requiring stacking

where policy's use of the word "included" was sufficiently ambiguous that policyholder would not understand that she did not have multiple coverages).

In *Montano*, because the *Lopez* "case-by-case ambiguity analysis has proved unworkable" and flooded the courts with disputes, this Court expressly announced a "new course" and "new approach." 2004-NMSC-020, ¶¶ 17–18. *Montano* drew from "the history of stacking litigation in this State" the conclusion that "anti-stacking clauses are almost inherently ambiguous and are no longer effective at precluding stacking." *Id.* ¶ 21. More importantly, *Montano* found that the *Lopez* ambiguity analysis did not take into consideration the insureds' right under the UM statute to reject UM coverage, *id.* ¶ 19, which includes the right to select less UM coverage for a lesser premium, *Weed Warrior*, 2010-NMSC-050, ¶¶ 14-15.

The Court's "new approach" discarded the prior focus on premiums, and instead looked to whether the insured had executed a knowing waiver of stacked coverage. The Court began by directing courts "to treat stacked coverage as extra coverage for which the parties have contracted, and to which the insured is entitled by default, unless the insurance company undertakes the burden of obtaining a separate, comprehensible and written disclaimer of stacking." *Id.* ¶ 18 (quoting *U.S. Fidelity & Guar. Co. v. Ferguson*, 698 So. 2d 77, 84 (Miss. 1997) (Dan Lee, C.J., specially concurring)). Under this test, the sole issue for the court is whether, at the time of purchase, the policyholder knowingly chose to waive stacked coverage in

favor of non-stacked coverage. As explained in *Montano*, this test “best balances the interests of permitting private contractual relations between the parties and honoring the broad intent of the UM statute.” *Id.* (cleaned up). Under *Montano*’s rationale, “those who want stacked coverage pay for it, and those who don’t want it, don’t pay for it.” *Id.* (cleaned up). The Court emphasized that the focus would henceforth be on the insured’s knowing waiver of 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.

The *Montano* waiver test for stacked UM coverage is an extension of the UM *rejection* test previously adopted by this Court. It is well established that “an insurer may not exclude UM/UIM coverage from an automobile liability policy unless it has offered it to the insured, and the insured has exercised the right to reject the coverage through some positive act.” *Marckstadt v. Lockheed Martin Corp.*, 2010-NMSC-001, ¶ 15, 147 N.M. 678, 228 P.3d 462. As this Court has observed, “the choice of the insured to purchase any lower amount of [UM/UIM coverage] functions as a rejection of the maximum of coverage statutorily possible.” *Weed Warrior*, 2010-NMSC-050, ¶ 15. Just as an insurer cannot exclude UM coverage from a policy, it may not exclude stacking from a policy—the insured must exercise its right to do so.

B. *Montano*'s waiver analysis implicitly overruled the ambiguity analysis of the *Lopez* line of cases.

The Court of Appeals erroneously held that *Montano* did not “overrule the ambiguity line of cases” or “alter the line of authority holding that stacking is the appropriate remedy when multiple premiums are paid.” *Garcia*, 2024-NMCA-010, ¶ 15. It reasoned that because *Montano* did not directly overrule the *Lopez* ambiguity analysis, once a court found that there were multiple premiums, it was “unnecessary to address whether there was a valid written offer of UM/UIM coverage.” *Id.* ¶ 1. But the Court of Appeals’ standing firm on the *Lopez* ambiguity analysis flies in the face of *Montano*’s clear language and the Court’s adoption of the “new approach” on a purely prospective basis.

1. *Montano* expressly indicated that it was adopting a “new approach.”

Holding to *Lopez* ignores the Court’s broad statement in *Montano* that it was “tak[ing] this opportunity to chart a new course” and that “a new approach is needed to satisfy these twin goals of our stacking jurisprudence.” *Montano*, 2004-NMSC-020, ¶ 17. The Court expressly “recognize[d] this holding expands the holding in *Lopez*, or perhaps even calls it into doubt,” but the Court deemed “it necessary in order to effectuate the two functions of our stacking jurisprudence: fulfilling the reasonable expectations of the insured and ensuring that the insured receive what he or she pays for.” *Id.* ¶ 21 (emphasis added).

2. *Montano*'s prospective-only application demonstrates that there is a new rule.

This Court's departure from the *Lopez* ambiguity analysis is confirmed by its decision to give the new *Montano* waiver rule purely prospective application. *Id.* ¶ 22. In taking that rare step, *see Beavers v. Johnson Controls World Servs., Inc.*, 1994-NMSC-094, ¶ 18 n.7, 118 N.M. 391, 881 P.2d 1376 (observing that the rule had been applied only once), the Court acknowledged "that our holding described above is a new, and not an easily foreshadowed aspect to our jurisprudence on stacking." *Montano*, 2004-NMSC-020, ¶ 22.

The Court examines three factors when deciding whether to apply a rule only prospectively: whether the rule announces a new principle of law by overruling past precedent on which litigants may have relied; whether retroactive application would "advance or retard" the rule; and whether it would be inequitable to apply the new rule against the parties. *See Montano*, 2004-NMSC-020, ¶ 22 (quoting *Beavers*, 1994-NMSC-094, ¶ 23). After finding that *Montano* announced a rule that was "not easily foreshadowed," the Court determined that it would be inequitable to apply it against an insurer "before it has an opportunity to alter its policy language." *Id.* ¶ 22. Notably, the Court declined to give purely prospective application to the rules announced in the two other stacking cases (one last year) before the Court. *See Ullman*, 2023-NMSC-030, ¶ 50 (finding that this although case changed "an outmoded and unjust rule of law," a selective prospective approach was more

appropriate); *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, ¶ 20, 149 N.M. 162, 245 P.3d 1214 (finding that the equities did not favor prospective-only application). The “new course” that the Court charted in *Montano* was a radical departure, not just a tweak.

C. The Court of Appeals misconstrued *Montano*’s holding and incorrectly applied the *Lopez*’s ambiguity analysis *Montano* replaced.

Despite these considerations, the Court of Appeals evaluated the case as if the *Lopez* ambiguity analysis were still viable. Instead of treating *Montano* as a “new course” entirely, the Court of Appeals treated it as merely a second step, however out of place from the first. The Court of Appeals’ focus on the presentation of the premium in the policy misses the holding—and the purpose—of the *Montano* waiver test, which presumes UM stacking in all policies and then focuses on whether the insured knowingly waived stacking. This Court recognized that very point in its recent opinion in *Ullman*.

When evaluating this case, the Court of Appeals solely examined whether Allstate’s “premium structure for uninsured/underinsured motorist (UM/UIM) coverage in a multi-vehicle policy is ambiguous.” *Garcia*, 2024-NMCA-010, ¶ 1. To be specific, the court relied on Garcia’s assertion that she “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.” *Id.* ¶ 16. The court dismissed Allstate’s contention

that it showed “a single premium” shared “among the vehicles on the declarations page,” asserting without analysis that “this purported structure suffers from the same problem identified in *Rodriguez* in that it ‘disingenuously leads the reader of the policy to believe that she is getting more than paid for.’” *Garcia*, 2024-NMCA-010, ¶ 16 (quoting *Rodriguez*, 1994-NMSC-075, ¶ 18).

But *Montano* did not require that a policy offer a premium for stacked and non-stacked coverage in a particular manner before an individual’s knowing choice of stacked or non-stacked coverage will be honored. Nor did *Montano* prevent an insurer from charging one premium for unstacked UM coverage and different higher premium for stacked coverage. In *Montano*, the question was whether an “insurer could enforce a limitations-of-stacking clause that would have permitted an insured to stack coverages from only two of the four vehicles he had insured.” *Id.* (citing *Montano*, 2004-NMSC-020, ¶¶ 3-7). The Court said “no.” The Court merely explained that an insurer *could* offer a policyholder the option to selectively stack and offered an illustration of how to do so. *See Ullman*, 2023-NMSC-030, ¶ 46. In the illustration, *Montano* suggested that, to eliminate ambiguity in a premium structure, an insurer could offer stacked coverage in increments whereby a policyholder could purchase stacked UM coverage for one, two, three, or four vehicles as long as it laid out the premium in a manner that would allow the insured to understand that the first premium provided UM coverage for only one vehicle, the

second premium provided stacked coverage for two vehicles, and so forth. *See Montano*, 2004-NMSC-020, ¶ 20.

But Allstate’s policy was not attempting to offer stacking options based on the number of vehicles. Unlike *Montano*’s four-vehicle policy, Garcia’s policy insured only two vehicles. The Selection/Rejection Form signed by Garcia when she elected coverage showed one premium for non-stacked coverage, one premium for stacked coverage, and a third option to completely reject UM coverage. [RP 54–55] The Court of Appeals discounted the fact that the Selection/Rejection Form listed only *one* premium. *Garcia*, 2024-NMCA-010, ¶ 16. That the policy’s declarations page shared that one premium between the two vehicles does not mean that there were two different premiums, and Allstate *never* conceded that there were multiple premiums. [RP 67 ¶ 4; RP 78 ¶ 2; RP 80 ¶ 13; *see also* Allstate AB 11–12] Nor did the Court of Appeals explain why the later-delivered declarations page that the policyholder did *not* have before her when buying insurance should override the offer of a single lower premium for non-stacked coverage on the Selection/Rejection Form that the policyholder executed in order to choose the coverage she desired.

In any event, this Court made clear in *Ullman* that premium structure is not determinative. Instead, courts are to look at the policy as a whole and “then determine whether, *in light of the documents constituting Defendant-insurers’ offers of UM/UIM coverage*, the contested language created ambiguities in the offer,

violated the public policy of New Mexico, or so misled insured as to defeat a knowing and intelligent waiver of coverage.” *Ullman*, 2023-NMSC-030, ¶ 63 (emphasis added). Recognizing that *Montano* provided only a hypothetical illustration addressed to the particular factual circumstances of that case, the Court clarified that “an insurance company should obtain written rejections of stacking in order to limit its liability based on an anti-stacking provision.” *Id.* Indeed, the Court indicated that multiple premiums did not preclude an effective waiver of stacking: “*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.*” *Id.* ¶ 76 (emphasis added).

Consistent with *Ullman*, courts applying New Mexico law after *Montano* have examined stacking waivers without *any* analysis of the premium charged or allocation of premium. *See, e.g., Allstate Fire and Casualty Co. v. Trissell*, 2017 WL 6028515 (D.N.M. Dec. 5, 2017) (applying *Montano and Jordan* and concluding that insured validly rejected stacked coverage under same policy form); *Hawley v. Farm Bureau Prop. & Cas. Ins. Co.*, 840 F. App’x 354 (10th Cir. 2021); *Wilsford v. Farmers Ins. Co. of Ariz.*, 2022 WL 1421885 (D. N.M. May 5, 2022); *Gov’t Emps. Ins. Co. v. Shroyer*, 2015 WL 12669885 (D.N.M. Dec. 1, 2015). As one court accurately summarized, “[i]n the end, what is required is a meaningful offer of UM coverage and a knowing and intelligent rejection of such coverage.” *Shroyer*, 2015

WL 12999885, at *5. The Court of Appeals’ analysis failed to reach “what is required” under *Montano*.

D. The *Montano/Ullman* test should be maintained because it reflects core principles of the statutory rights under the UM statute and general principles of freedom of contract.

The *Montano* waiver test, shorn of any remnants of the *Lopez* ambiguity analysis, should be preserved as the operative standard because it focuses on matters most central to New Mexico public policy: freedom of contract, especially as to UM coverage.

In New Mexico, UM coverage is a matter of choice. The purpose of the Mandatory Financial Responsibility Act, NMSA 1978, § 66-5-201 to -239 (1955, as amended through 2016), “is to require and encourage residents of the state of New Mexico who own and operate motor vehicles upon the highways of the state to have the ability to respond in damages to accidents arising out of the use and operation of a motor vehicle.” *Padilla v. Dairyland Ins. Co.*, 1990-NMSC-025 ¶ 4, 109 N.M. 555, 787 P.2d 835 (quoting NMSA 1978, § 66-5-201.1). In *Montano*, the Court declined to make stacking obligatory “in all cases on a take-it-or-leave it basis” because that “would reduce the freedom of the parties to contract for less coverage and thus their freedom to decide how much coverage they can afford.” *Montano*, 2004-NMSC-020, ¶ 16. It refused “to declare all antistacking language void as against public policy or to make stacking mandatory in every case, concluding that such a

requirement might price some potential insureds out of the UM/UIM market.” *Ulmann*, 2023-NMSC-030, ¶ 32 (citing *Montano*, 20024-NMSC-020, ¶¶ 15–16). In the end, New Mexico residents are entitled to reject UM coverage entirely, NMSA 1978, § 66-5-301(C), or to select *less* UM coverage, *Weed Warrior*, 2010-NMSC-050, ¶¶ 14–15. Their choices should not be overridden by a *post hoc* reading of the presentment of the premium in declarations pages created after those choices were made.

Without question, New Mexico values the important policy of freedom of contract. “Great damage is done where businesses cannot count on certainty in their legal relationships and strong reasons must support a court when it interferes in a legal relationship voluntarily assumed by the parties.” *United Wholesale Liquor Co. v. Brown-Forman Distillers Corp.*, 1989-NMSC-030, ¶ 14, 108 N.M. 467, 775 P.2d 233 (further citation omitted). New Mexico courts enforce contracts unless a contract violates a law, a rule of public morals, or a principle of justice. *See Gen. Elec. Credit Corp. v. Tidenberg*, 1967-NMSC-126, ¶ 14, 78 N.M. 59, 428 P.2d 33. The right to stack coverage is a “matter of contract interpretation that does not rise to the level of a fundamental principle of justice.” *Shope v. State Farm Ins. Co.*, 1996-NMSC-052, ¶ 9, 122 N.M. 398, 925 P.2d 515.

Here, Garcia unequivocally chose to reject stacked coverage. Relying on that choice, Allstate charged her a non-stacked-coverage premium. If a policyholder is

permitted to retract that choice even in the face of all the evidence demonstrating that the choice was made, both parties have been deprived of their right to contract freely. Insurers will have no choice but to assume that a policy will always include stacking. Policies will be priced accordingly, and New Mexicans' options for affordable coverage will shrink. The Court of Appeals' failure to enforce the insured's express rejection of stacking thus frustrates the legislative intent behind the UM statute and New Mexico's strong public policy of freedom of contract.

II. Applying the *Montano* waiver rule, Garcia validly rejected stacked UM coverage and the policy did not include it at the time of the loss.

While *Montano* does not delineate the evidence needed to show that an insured knowingly chose to reject stacked coverage, this Court explained in *Jordan v. Allstate* that an insurer must “offer UM/UIM coverage in a meaningful way,” and any rejection must be “knowingly and intelligently made.” *Jordan*, 2010-NMSC-051, ¶ 18. An insurer can show that a policyholder may make a meaningful, knowing rejection when it “(1) offer[s] the insured UM/UIM coverage equal to his or her liability limits, (2) inform[s] the insured about premium costs corresponding to the available levels of coverage, (3) obtain[s] a written rejection of the UM/UIM coverage equal to the liability limits, and (4) incorporate[s] that rejection into the policy in a way that affords the insured a fair opportunity to reconsider the decision to reject.” *Id.* ¶ 22. Allstate fully complied with all applicable requirements, and Garcia's waiver of stacked UM coverage should be enforced.

A. Allstate offered UM coverage in a meaningful way.

The first prong of the *Jordan* test is met if the insurer offered UM limits in the maximum amount statutorily available, which is the minimum liability limits required by NMSA 1978, § 66-5-215. Here, Garcia completed a Selection/Rejection Form that explained she could choose UM coverage for the maximum amount of \$25,000/\$50,000. The form further explained that she could purchase stacked UM coverage, non-stacked UM coverage, or no UM coverage at all.

Garcia argued that Allstate’s disclosure was not meaningful because it did not give the dollar amounts of stacked limits and non-stacked limits. [**Garcia BIC 7**] According to Garcia, she could not “figure out how stacking versus non-stacking worked and what it meant in the level of coverage being actually offered.” [*Id.*] But this Court recently clarified that “insurers need not set out a matrix of all stacking possibilities in their offers of UM/UIM coverage to adequately inform insured of the potential effects of stacking.” *Ullman*, 2023-NMSC-030, ¶ 43. This was a two-vehicle policy with two choices: to stack UM coverage or to decline to stack. Although Allstate did not state the actual dollar limits, its explanation of stacking provided a plain-language definition that made it clear how stacking worked and how to determine the coverage amounts:

NOTE ABOUT STACKED AND NON-STACKED UNINSURED MOTORISTS INSURANCE FOR BODILY INJURY:

If you insure more than one vehicle on this policy with us, you have the option to purchase either stacked or non-stacked Uninsured Motorists Insurance for Bodily Injury. Non-stacked Uninsured Motorists Insurance for Bodily Injury is available at a lower premium.

If you elect to purchase stacked Uninsured Motorists Insurance for Bodily Injury, the applicable limits for each motor vehicle shown on the Policy Declarations for this policy are added together (stacked) to determine the total amount of available coverage. If you elect to purchase non-stacked Uninsured Motorists Insurance for Bodily Injury, the total amount of available coverage is limited to the amount shown on your Policy Declarations for the vehicle involved in the loss. If the loss occurs while occupying someone else's vehicle, or if you are struck as a pedestrian, the highest limit of Uninsured Motorists Insurance for Bodily Injury available for any one vehicle on the policy will apply.

[RP 52]. The Selection/Rejection Form plainly outlined the available coverages available for the two-car policy, and Allstate offered the available UM coverage in a meaningful way.

B. Allstate informed Garcia about premium costs.

The next step requires an insurer to inform the insured about the premium costs. Allstate did so. Garcia's three options for UM coverage included the information that she could choose stacked coverage for a premium of \$168.05, unstacked coverage for a premium of \$89.13, or no UM coverage at all. The premium costs are clearly stated. Garcia chose non-stacked coverage for a lower premium. [RP 54–55]

C. Garcia's rejection of stacked coverage was knowingly and intelligently made.

The third prong asks whether Garcia's rejection of stacked coverage was knowingly and intelligently made. Garcia's initial policy included only one vehicle. About six months later, she bought a second vehicle, and she was given the Selection/Rejection Form. Because the form was not relevant until Garcia acquired a second vehicle, it was obvious that the second vehicle introduced something new

into her policy: the opportunity to stack. The Selection/Rejection Form explained what stacking was and what the premium difference would be. [RP 52-56] It then laid out Garcia's choices of stacked coverage, unstacked coverage, rejection of coverage. [RP 52-56] Further, the Selection /Rejection Form provides:

In order to properly complete this form, you must initial, not check, the option you wish to select. Please note that if you fail to properly complete and return this document, you will be deemed to have selected Uninsured Motorists Insurance for Bodily Injury at limits equal to your Bodily Injury Liability limits and those limits will be stacked. You will also be deemed to have selected Uninsured Motorists Insurance for Property Damage at limits equal to your Property Damage Liability limits. Further, you will be charged the corresponding premium for these limits and coverages.

[RP 52] Garcia made the decision to complete the form and insert her initials next to her selection of non-stacked UM coverage. [RP 55] Garcia then acknowledged that she had read the Selection/Rejection Form and understood that the options she selected:

I HAVE READ THIS NOTICE AND UNDERSTAND THAT THE COVERAGE PROVIDED BY UNINSURED MOTORISTS INSURANCE FOR BODILY INJURY AND PROPERTY DAMAGE IS SUBJECT TO THE TERMS AND CONDITIONS OF MY POLICY. I UNDERSTAND THAT THE OPTIONS THAT I HAVE SELECTED WILL APPLY TO ALL FUTURE RENEWAL, CONTINUATION, REINSTATEMENT, SUBSTITUTE, TRANSFER, AMENDED, AND REPLACEMENT POLICIES UNLESS I NOTIFY ALLSTATE AND ITS AFFILIATE COMPANIES OTHERWISE IN WRITING. I FURTHER UNDERSTAND THAT THE PREMIUM ASSOCIATED WITH THE OPTIONS I HAVE SELECTED MAY CHANGE.

THE REJECTION, SELECTION OR MODIFICATION OF UNINSURED MOTORISTS INSURANCE IS A PART OF YOUR POLICY AND WILL BE REFLECTED ON THE POLICY DECLARATIONS.

LINDA GARCIA

Name of Applicant/Insured

Linda Garcia
Signature of Applicant/Insured

9-22-16

Date

836874546

Application/Policy Number

[RP 56] Additionally, the policy also explained stacking in the Limits of Liability section of the policy. [RP 37] There is simply no evidence that Garcia did not make her decision knowingly and intelligently, and the district court correctly concluded she had.

D. Garcia’s selection of non-stacked UM coverage was clearly incorporated into her policy.

Finally, the fourth requirement is that the insurer incorporate in the policy the insured’s choice to reject stacked coverage. As explained by *Jordan*, the regulation regarding incorporation of the policyholder’s choice in the policy requires an insurer to “clearly state[] on the declarations page that the UM/UIM coverage equal to the policy limits have been rejected.” *Jordan*, 2010-NMSC-051, ¶ 32; accord *Vigil v. Rio Grande Ins. of Santa Fe*, 1997-NMC-124, ¶¶ 7, 11, 124 N.M. 324, 950 P.2d 297 (holding that a rejection was made part of the policy because the declaration pages included the statements “UNINSURED MOTORIST COVS. REJECTED and “UNINSURED MOTORISTS COVERAGES HAVE BEEN REJECTED”).

Garcia’s selection of non-stacked coverage is reflected in the coverage detail in the declarations. For each insured vehicle, the declarations page of the policy plainly states that the coverage is non-stacked: “Uninsured Motorists Insurance Bodily Injury limits of insured vehicles may not be stacked.” [RP 16] Additionally, a Supplement to the Policy Declarations reiterates that Garcia has “selected **non-stacked** Uninsured Motorists Insurance for Bodily Injury limits **equal to** your policy’s Bodily Injury Liability Insurance limits of \$25,000/\$50,000.” [RP 19 (emphasis in original)] The district court correctly found that Garcia had chosen the non-stacked option and rejected stacking and that “there is no genuine dispute about this fact.” [RP 276] The district court further found that “all other requirements

under New Mexico law were implemented by Allstate and therefore, Allstate is entitled to judgment as a matter of law.” [RP 276]

In *Ullman*, this Court further clarified what an insurer must do to show that a policyholder made a knowledgeable choice to reject stacked coverage. “[O]ffers of UM/UIM insurance going forward must include a brief discussion of stacking,” but “need not set out a matrix of all stacking possibilities ... to adequately inform insureds of the potential effects of stacking.” *Ullman*, 2023-NMSC-030, ¶ 43. Allstate’s Selection/Rejection Form complied with this standard by providing a clear explanation of stacked coverage versus non-stacked coverage. In sum, Garcia made a knowing and meaningful choice to reject stacked coverage in return for a lower premium. She made her choice from among her available options, and she had a short description of what stacked and non-stacked coverage entailed. Garcia’s choice was informed, and she received the non-stacked coverage for which she paid. Garcia cannot reasonably have expected stacked coverage for the accident just three months after she decided to reject stacked coverage and pay a lower premium.

CONCLUSION

The Court should reverse the ruling of the Court of Appeals and reinstate the district court’s grant of summary judgment for Allstate on the ground that Garcia knowingly chose non-stacked UM coverage.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 12-214 NMRA 2006, Allstate requests that this matter be scheduled for oral argument. This appeal presents important issues regarding an insured's election of uninsured motorist coverage limits and the implementation of the choice made. The Court's decision in this case will have widespread ramifications for both insurers and insureds in the State of New Mexico and would benefit from full and complete discussion of this question.

Respectfully submitted,

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WE HEREBY CERTIFY that on this 10th day of April, 2024, we filed the foregoing electronically through the court's electronic filing system, which caused the following parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing and also served via email to:

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