

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

LINDA GARCIA,

Plaintiff/Appellee/Respondent,

vs.

No. S-1-SC-40157

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,

Defendant/Appellant/Petitioner.

NEW MEXICO TRIAL LAWYERS ASSOCIATION'S
AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFF-APPELLEE-RESPONDENT

Julio C. Romero
Martinez, Hart, Sanchez
& Romero, P.C.
1801 Rio Grande Blvd.
Albuquerque, NM 87104
Phone: (505) 343-1776
julior@osolawfirm.com

Geoffrey R. Romero
Law Offices of
Geoffrey R. Romero
4801 All Saints Road NW
Albuquerque, NM 87120
Phone: (505) 247-3338
geoff@geoffromerolaw.com

David J. Stout
NMTLA, Chair of
Amicus Committee
1117 Stanford NE
1 UNM MSC 11-6070
Albuquerque, NM 87131
Phone: (505) 277-0080
stout@law.unm.edu

Nikko Harada
Harada and Winters Law Firm
Post Office Box 65659
Albuquerque, NM 87193-5659
Phone: (505) 484-6695
nharada@hwlawnm.com

Counsel for Amicus New Mexico Trial Lawyers Association ("NMTLA")

Statement of Compliance – Length Limitations

Pursuant to Rule 12-320(D)(3) NMRA, this Amicus brief complies with the limitations set forth under Rule 12-318(F),(G) NMRA:

1. This Amicus brief was prepared using Times New Roman typeface set at a 14-point font size;
2. This Amicus brief does not exceed the thirty-five (35) page limitation;
3. This Amicus brief contains a total of **6,650 words**; and
4. The word-count information was obtained using the word-count feature on Microsoft Word Office 2021.

/s/ Nikko Harada

Nikko Harada

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I. INTRODUCTION¹

The New Mexico Trial Lawyers Association (“NMTLA”) supports the position of Plaintiff-Appellee-Respondent and moves the Court for leave to file this *Amicus Curiae* brief because of the serious questions raised when Uninsured Motorist/Underinsured Motorist (“UM/UIM”) coverage is interpreted in the context of a consumer who has purchased UM/UIM coverage on multiple vehicles, the insurer has charged multiple premiums, and a consumer then makes a claim for stacked coverage. “Stacking” is the insured’s ability to access all of the UM/UIM coverage purchased for a single accident, regardless of which—or any—insured vehicle is involved. The insurer, Defendant-Appellee-Petitioner Allstate Insurance Company (“Allstate”), denied stacked coverage based on the insured’s “choices” at the time the policy was purchased. Allstate’s practice, at the time a policy is purchased, however, is to confuse and mislead the insured causing unknowing and uninformed selections and rejections of coverage—especially as those selections pertain to stacking of coverages. This case presents an opportunity to clarify recent decisions regarding stacking and UM/UIM coverages in the context of multiple

¹ Pursuant to Rule 12-320(C) NMRA, *Amicus* discloses that no party or party’s counsel authored this brief in whole or in part. Also, no person, other than the New Mexico Trial Lawyers Association, its members, and its counsel, contributed money that was intended to fund the preparation or submission of this brief.

premiums paid, to determine whether Allstate allows insureds to make informed UM/UIM coverage decisions.

This *Amicus Curiae* brief is set forth in three parts. First, in *infra* Section II, the brief analyzes New Mexico law favoring expansive UM/UIM coverage and requirements for insurers in offering UM/UIM coverage. Second, in Section III, the brief notes that Ms. Garcia's waiver of stacked coverage was invalid, because Allstate sold UM/UIM coverage on a per-policy basis rather than on a per-vehicle basis, thwarting the plain language and purposes of the UM/UIM statute. The brief closes by explaining that Allstate's UM/UIM Selection/Rejection premium billing practice does not permit insureds to make knowing and intelligent rejections of UM/UIM coverage.

II. PROPER NOTICE UNDER RULE 12-320(D) NMRA.

Pursuant to Rule 12-320(D)(1) NMRA, all parties received timely notice of NMTLA's intent to file this *Amicus Curiae* Brief.² NMTLA timely moved and submitted this *Amicus Curiae* Brief pursuant to Rule 12-320(D)(2) NMRA.

III. LEGAL ARGUMENT

The Court of Appeals was correct in its conclusion that Plaintiff is entitled to stack her Allstate coverages because: (1) Allstate's form requires insureds to

² On February 9, 2024, NMTLA notified all parties of its intent to file a motion seeking leave to file this *Amicus Curiae* Brief.

purchase UM/UIM coverage on all cars or no cars and does not permit the insured to purchase UM/UIM coverage on a per-vehicle basis; (2) Allstate charges multiple premiums for UM/UIM coverage even where an insured has “rejected” stacked coverage; and (3) Allstate’s form misleads insureds about the amount of stacked coverage that is available, associated premiums, and the amount of coverage the insured is “rejecting”.

A. New Mexico Law Favors Expansive UM/UIM Coverage, Requires the Insurer to Offer Minimum and Maximum UM/UIM Coverage, Corresponding to the Insured’s Minimum and Maximum Liability Limits, With Respect to Any Vehicle, and Reforms Policies to Include Coverage.

New Mexico’s UM/UIM statute, NMSA 1978, Section 66-5-301 (1983), “embodies a public policy of New Mexico to make uninsured motorist coverage a part of every automobile liability insurance policy issued in this state, with certain limited exceptions.” *Romero*, 1990-NMSC-111, ¶ 6. The guiding intent of the statute was “to expand insurance coverage and to protect individual members of the public against the hazard of culpable uninsured motorists.” *Id.* Section 66-5-301(A) provides in pertinent part:

No motor vehicle or automobile liability policy insuring against loss resulting from liability imposed by law for **bodily injury or death suffered by any person and for injury to or destruction of property of others** arising out of the ownership, maintenance or use of a motor vehicle shall be ... issued ... in New Mexico *with respect to any motor vehicle* registered or principally garaged in New Mexico *unless coverage is provided therein or supplemental thereto in minimum limits for bodily injury or death and for injury to or destruction of*

*property as set forth in Section 66-5-215 NMSA 1978 and such higher limits as may be desired by the insured, **but up to the limits of liability specified** in bodily injury and property damage liability provisions of the insured's policy[.]*

Id. (bolding and italics added). The statute requires insurers to offer consumers the maximum amount of UM/UIM, a requirement that exists “to encourage insureds to purchase such coverage.” *Montaño v. Allstate Indem. Co.*, 2004-NMSC-020, ¶ 16, 135 N.M. 681. However, because some consumers may not be able to afford the maximum coverage, there is a risk that lower-income insureds would be priced out of coverage in the absence of other options. *See Progressive Nw. Ins. Co. v. Weed Warrior Servs.*, 2010-NMSC-050, ¶ 12, 149 N.M. 157. The statute therefore embodies the principle that “lower levels of UM/UIM coverage are preferred to none at all.” *Id.* Consistent with the idea of making lower levels of UM/UIM coverage available according to what an insured may be able to afford the statute mandates that the coverage which must be offered “**with respect to any vehicle**” may be rejected in whole or in part. NMSA 66-5-301 (C) requires: “The named insured shall have the right to reject uninsured motorist coverage as described in Subsections A and B of this section.” Section (A) describes the offer of coverage as being one made, “with respect to any vehicle.” Courts “consistently have held that the uninsured motorist statute and contracts arising thereunder should be construed liberally in favor of coverage in order to implement the remedial purposes behind that statute.” *Britt v. Phx. Indem. Ins. Co.*, 1995-NMSC-075, ¶ 11, 120 N.M. 813. Allowing an

insured to make UM/UIM coverage selections with respect to “any vehicle” in accordance with the mandatory language of the statute fulfills this purpose. An insured who has five cars may not be able to afford UM/UIM coverage on all five vehicles but may afford it on three. Purchase of UM/UIM coverage on a policy wide, take it or leave it basis does not allow the insured to purchase the maximum amount of UM/UIM coverage she can afford.

To achieve the stated remedial purposes, New Mexico law places paramount emphasis on the form and manner of how insurers present offers to the insured and in obtaining UM/UIM selections or rejections. *See Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, ¶¶ 15, 17, 19, 21, 149 N.M. 162. Under the statute, insurers must offer, **“with respect to any motor vehicle,”** the “minimum” and “maximum” level of UM/UIM coverage to an insured, based on the minimum and maximum liability-limits the insured purchased. *See* § 66-5-301(A). If the insured does not understand the full extent of coverage available for purchase on a per vehicle basis, and at what cost, the insured cannot intelligently decide how much coverage to purchase or reject. *See Jordan*, 2010-NMSC-051, ¶¶ 17-18, 21, 24. New Mexico law therefore requires insurers to give consumers understandable and correct information regarding the maximum and minimum amounts of UM/UIM coverage available for purchase and the corresponding costs for each level of stacked coverage, so that the insured can make a knowing and informed decision regarding how much coverage

they need and can afford. *See id.* ¶¶ 20, 24, 27. All multi-vehicle UM/UIM policies (*i.e.*, policies insuring more than one vehicle) are presumed to include stacked UM/UIM coverage unless the insurer obtains a valid written rejection of stacked coverage from the insured. *Montaño*, 2004-NMSC-020, ¶¶ 18-19. New Mexico law, intent on protecting the consumer and preserving her choices, also requires that the insurer attach or endorse a rejection (*i.e.*, provide affirmative evidence of the rejection) of UM/UIM coverage to a policy in a manner that allows the insured a fair opportunity to reconsider or later reflect on any decision to reject. *See id.* ¶¶ 22, 32, 35.

If an insurer does not obtain a valid rejection of UM/UIM coverage, insurers must reform the policy to provide UM/UIM coverage. *Marckstadt v. Lockheed Martin Corp.*, 2010-NMSC-001, ¶ 15, 147 N.M. 678; *Jordan*, 2010-NMSC-051, ¶ 2. If a policy is reformed to provide UM/UIM coverage, reformation of the policy includes stacked coverage under New Mexico law. *Arias v. Phoenix Indem. Ins. Co.*, 2014-NMCA-027, ¶¶ 1, 14, 495 P.3d 1136.

Because insurers continued “to offer UM/UIM coverage in ways that are not conducive to allowing the insured to make a realistically informed choice,” *Jordan*, 2010-NMSC-051, ¶ 20, the *Jordan* Court stated it was “necessary to prescribe workable requirements for a valid and meaningful rejection of UM/UIM coverage

in amounts authorized by statute.” *Id.* A policy is reformed to provide UM/UIM coverage equal to liability limits

[i]f an insurer does not (1) offer the insured UM/UIM coverage equal to his or her liability limits, (2) inform the insured about premium costs corresponding to the available levels of coverage, (3) obtain a written rejection of UM/UIM coverage equal to the liability limits, and (4) incorporate that rejection into the policy in a way that affords the insured a fair opportunity to reconsider the decision to reject[.]

Id. ¶ 22. And if, as in this case, the insurer offers stacked UM/UIM coverage for sale, an invalid waiver of stacked coverage requires the insurer to provide stacked coverage. *See Lueras v. GEICO Gen. Ins. Co.*, 2018-NMCA-051, ¶ 35, 424 P.3d 665 (Attrep, J. concurring), *aff’d in part and remanded in part by Ullman v. Safeway Ins. Co.*, 2023-NMSC-030, 539 P.3d 668; *Arias*, 2014-NMCA-027, ¶¶ 1, 14.

This Court strictly scrutinizes whether insurers have informed the insured as to the “maximum amount” of insurance available to the insured. *See Jordan*, 2010-NMSC-051, ¶ 15; *Weed Warrior*, 2010-NMSC-050, ¶ 14 (construing the remedial statute “liberally”). “The provision of the maximum possible amount of UM/UIM coverage in every insurance policy is the default rule, and any exception to that rule must be ‘construed strictly to protect the insured.’” *Jordan*, 2010-NMSC-051, ¶ 15 (quoting *Romero*, 1990-NMSC-111, ¶ 6). Section 66-5-301 also requires the insurer to offer the minimum levels of coverage corresponding to the limits set forth by the Mandatory Financial Responsibility Act, NMSA 1978, §§ 66-5-201 to -239 (1955,

as amended through present). *See Jordan*, 2010-NMSC-051, ¶ 16; *Weed Warrior*, 2010-NMSC-050, ¶¶ 5, 10, 12.

The *Jordan* Court’s requirement that the insurer must “inform the insured about premium costs corresponding to the available levels of coverage,” 2010-NMSC-051, ¶ 22, includes the requirement that “that insurers disclose the premium costs for each available level of *stacked* coverage as a means of guaranteeing that consumers can knowingly exercise their statutory rights to UM/UIM coverage.” *Whelan v. State Farm Mut. Auto. Ins. Co.*, 2014-NMSC-021, ¶ 25, 329 P.3d 646 (emphasis added). As explained in *Jordan*, *Montaño* required insurance carriers to “provide insureds with the premium costs for each available level of stacked coverage in order to allow insureds to contract for the amount of coverage they can afford and want to purchase.” *Jordan*, 2010-NMSC-051, ¶ 24 (explaining *Montaño*, 2004-NMSC-020, ¶ 20). The failure to do so is then strictly construed against the insurer and in favor of maximum coverage available under the policy.

B. An All-or-Nothing Waiver is Invalid, Because it Purports to Sell Stacked UM/UIM Coverage on a Per-Policy Rather than Per Vehicle Basis and Impermissibly Conditions Purchase of Coverage on Some Vehicles on the Purchase of Coverage for All Vehicles, Thwarting the Text and Purposes of the UM/UIM Statute.

Allstate’s all-or-nothing approach to UM/UIM coverage is designed to discourage the purchase of stacked coverage. Under Allstate’s all-or-nothing approach for offering and obtaining rejections of UM/UIM coverage, insureds like

Ms. Garcia face limited choices. Even though she insured two (2) vehicles with Allstate, she was required to either: (1) pay premiums for a stacked option for UM/UIM coverage on all two vehicles on the policy; (2) reject stacking, but still pay two premiums for UM/UIM coverage on each of two vehicles; or (3) reject UM/UIM coverage entirely. Insureds like Ms. Garcia do not have the option to purchase UM/UIM on two vehicles. If they want UM/UIM coverage, an all-or-nothing waiver requires insureds to pay the stacked premium on both vehicles or pay premiums on two vehicles, but at a rate for which Allstate would deny access to the two coverages and deny stacking. Allstate does not impose this all-or-nothing choice with respect to coverages other than UM/UIM coverage. Allstate's premium billing practices (1) violates the text and remedial purposes of the uninsured motorist statute and (2) disregards the principles announced by the New Mexico Supreme Court in *Montaño*.

1. Allstate's "All Or Nothing" UM/UIM offer of coverage violates Section 66-5-301, as well as the remedial purposes of the uninsured motorist statute.

The text of the uninsured motorist statute makes clear that consumers must have the option to purchase or reject UM/UIM minimum and maximum levels of coverage on each vehicle. The statute states:

No motor vehicle or automobile liability policy [...] shall be delivered or issued for delivery in New Mexico with respect to **any motor vehicle** . . . unless coverage is provided therein or supplemental thereto in **minimum limits for bodily injury or death** and for injury to or destruction of property as set forth in Section 66-5-215 NMSA 1978 **and** such higher limits as may be desired by the insured, but **up to the**

limits of liability specified in bodily injury and property damage liability provisions of the insured's policy . . .

Section 66-5-301(A) (bolding added). The use of the phrase “**any motor vehicle**” indicates that the relevant unit of analysis is the number of vehicles, not the number of policies. Under the statute, an insurer operating in New Mexico may not offer liability coverage “with respect to any motor vehicle” unless UM/UIM coverage is offered as well. The statute requires that an insured be allowed to reject the coverage described in Section (A). *See* § 66-5-301 (C). Nothing in the text of the statute permits an insurer to condition an offer of UM/UIM coverage for one vehicle on the purchase of UM/UIM coverage for other vehicles. Allstate, however, did just that.

Allstate's sales practice here subverts the statute's remedial purposes, because Allstate forces the insured to either pay two premiums for stacked coverages, pay two lower premiums for unstacked UM/UIM coverages, or reject all UM/UIM coverages. The insureds are never afforded the opportunity to pay one premium for one UM/UIM coverage, two premiums for two coverages which by definition would stack. Nor are the insureds permitted to reject one or two of the UM/UIM coverages offered. The public policy underlying Sections 66-5-301(A) and (C) is to encourage consumers to purchase all of the UM/UIM coverage that they can afford, in order to protect New Mexico families against the tragic results of auto accidents with culpable uninsured motorists. This policy “is consistent with the requirement that the insurer offer the maximum amount of UM/UIM coverage to the insured in order

‘to encourage insureds to purchase such coverage.’” *Weed Warrior Servs.*, 2010-NMSC-050, ¶ 12 (quoting *Montaño*, 2004-NMSC-020, ¶ 16). The insured must also be able to reject a portion of the maximum insurance to which the insured is entitled or reject UM/UIM coverage altogether. *See Jordan*, 2010-NMSC-051, ¶ 21. Reaffirming its prior analysis in *Montaño*, the New Mexico Supreme Court in *Jordan*, reiterated that reading Section 66-5-301 (A), (B) and (C) together, the Legislature plainly intended to give each insured the right to reject UM coverage in its entirety or to reject “a portion of the maximum coverage to which an insured is entitled.” *Jordan*, 2010-NMSC-051, ¶ 27.

Allstate’s UM/UIM stacking rejection premium billing practices demonstrate it decided not to comply with the rejection mechanisms it was ordered to follow in *Jordan*, and in *Montaño*, but instead to perpetuate decades of litigation as reflected in the litigation at issue below. *See also Jordan*, 2010-NMSC-051, ¶¶ 20-21. Allstate’s premium billing practices thwart *Jordan*, and its iterated purposes, by restricting the UM/UIM coverage selections available to an insured. A lower-income household may insure four vehicles with Allstate but possess the means only to purchase two or three UM/UIM coverages. If the family lacks the means to purchase stacked UM/UIM coverage on all four vehicles, the family ends up with less coverage than they could and would have purchased if given the option to select or reject coverage on each vehicle. The more vehicles on the policy, the greater the

pressure on the consumer to either choose a “stacking rejection”—even though the insured will continue to pay multiple premiums for “non-stacked coverage,” —or even more likely, to reject UM/UIM coverage altogether. Allstate’s premium billing practices are designed to coerce insureds to “reject stacking” (but still pay multiple premiums for unstacked UM/UIM coverage), or worse, to encourage insureds to reject UM/UIM coverage completely. Allstate’s intent to coerce insureds to select reduced limits or reject UM/UIM insurance completely is apparent, because Allstate imposes the all-or-nothing choice on UM/UIM coverage but not on comprehensive coverage.

2. Allstate’s “All or Nothing” offer of UM/UIM coverage disregards *Montaño* requirements.

Following *Montaño*, insurers must comply with the principles set forth in *Montaño*, as well as the pre-*Montaño* ambiguity analysis set forth in *Rodriguez v. Windsor Insurance Company*, 1994-NMSC-075, 118 N.M. 127. The *Montaño* Court, taking guidance from the special concurrence in *United States Fidelity and Guaranty Company v. Ferguson*, 698 So.2d 77 (Miss.1997), set forth a new procedure and interpreted Section 66-5-301(A) and (C) to require insurers: (1) to offer UM/UIM coverage for each vehicle, and (2) to stack UM/UIM coverage by default, “unless the insurer undertakes the burden of obtaining a separate, comprehensible, and written disclaimer of stacking.” *Montaño*, 2004-NMSC-020, ¶¶18, 19. As stated in *Montaño*:

[W]e also take guidance from Sections **66-5-301(A) and (C)**, which together suggest that insurance companies obtain the written rejection of each stacked coverage from its insureds in order to limit that coverage. Section 66-5 301(A) provides that no vehicle liability policy shall be delivered with respect to **any vehicle** registered or principally garaged in New Mexico unless UM coverage is provided therein.

Id. ¶ 19 (emphasis added). The Court emphasized the language from the statute “with respect to *any vehicle*[.]” which establishes the basis for its per vehicle offer and selection requirement. *Id.* (emphasis in original). Because UM/UIM coverage was required to be offered on each vehicle, the insured would be entitled to stacking by default absent a comprehensible, written rejection of stacking. *Id.*

The *Montaño* Court provided insurers with explicit instructions on how to offer UM/UIM coverage on each vehicle and how to obtain a valid rejection of such coverage on any one vehicle insured under the policy. The Court held that in order to limit stacking based on an anti-stacking provision, an insurer must obtain a “written rejection of each stacked coverage.” *Id.* ¶ 19. The Court provided the following illustration of its holding:

As an illustration of our holding, in a multiple-vehicle policy insuring three cars, the insurer shall declare the premium charge for each of the three UM coverages and allow the insured to reject, in writing, all or some of the offered coverages. Thus, hypothetically, in the case of a \$25,000 policy, if the premium for one UM coverage is \$65, two coverages is an additional \$60, and three coverages \$57 more, the insured who paid all three (for a total premium of \$182) would be covered up to \$75,000 in UM bodily injury coverage. However, the insured may reject, in writing, the third available coverage and pay \$125 for \$50,000 of UM coverage; or the insured may reject, in writing, the second and third coverages and pay \$65 for \$25,000 of UM

coverage; or the insured may reject all three UM coverages. In any event, the coverage would not depend on which vehicle, if any, was occupied at the time of the injury. Thus, the insured's expectations will be clear, and an insured will only receive what he or she has paid for.

Id. ¶ 20. Following the process explicitly set forth by the Court in *Montaño* allows an insured to clearly understand the coverage that is available and allows the insured to make an intelligent decision as to how much UM/UIM coverage the insured needs and can afford. Providing the per vehicle selection satisfies the statute requirement that the offer be made with respect to any vehicle (Section (A)) and that the insured can reject the coverage described in sections A and B (Section (C)), and furthers the public policy to encourage the purchase of UM/UIM coverage—the insured who cannot afford UM/UIM coverage on each vehicle is not priced out of UM/UIM coverage by a requirement to buy such coverage on an “all or nothing” basis. The insured can knowingly choose less than all but more than one or none. *Id.* ¶ 16.

Despite *Montaño*'s clarity and illustration, Allstate's all-or-nothing waiver does not offer insureds the opportunity to make an independent selection or rejection of UM/UIM coverage on each of the two vehicles on the policy. Ms. Garcia was denied the opportunity to purchase one or two coverages, and denied the opportunity to reject some of the coverages offered. Allstate further required Ms. Garcia to pay two premiums for two coverage on two vehicles even where the insured purportedly rejects stacked UM/UIM coverage. Ms. Garcia was never offered a single coverage

for a single premium. This is contrary to the Supreme Court's instructions in *Montaño*. 2004-NMSC-020, ¶ 20.

The *Montaño* Court also applied and did not abrogate or limit the “ambiguity” analysis set forth in *Rodriguez*. Allstate's UM/UIM coverage rejection/waiver premium billing practices, which charge multiple premiums but purports to deny stacking, fails under this analysis as well. Under the “ambiguity analysis,” an insurer could only successfully limit stacking if the insurer made “a plain and affirmative declaration [to the insured] that the amount charged [for UM/UIM coverage] represents a single premium for a single amount of coverage.” *Montaño*, 2004-NMSC-020, ¶ 1. The *Montaño* Court applied the ambiguity analysis to the facts of that case, because the requirement for a written rejection had only prospective application. *Id.* ¶ 22. Because the insured could not determine whether a single premium had been paid for a single coverage or if multiple premiums were paid for multiple coverages, the *Montaño* Court held that the policy was inherently ambiguous. *Id.* ¶¶ 22, 27. *Montaño* reaffirmed that in order to have an effective rejection of stacking, an insurer must provide “a plain and affirmative declaration” that the amount charged for UM/UIM coverage represents “a single premium for a single amount of coverage[.]” *Montaño*, 2004-NMSC-020, ¶ 27.

The Uninsured Motorist Insurance Selection/Rejection Form used by Allstate [RP 052-056] fails to meet the disclosures mandated by *Montano* and *Jordan*, in that

it did not state the premium for \$25,000.00 UIM bodily injury coverage and the premium for \$50,000.00 in UIM bodily injury coverage, which were the two options offered to Linda Garcia. Instead, the Uninsured Motorist Insurance Selection/Rejection Form used by Allstate offered:

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 Damage Liability Insurance Limits of \$25,000/\$50,000/\$25,000 for all vehicles on this policy for \$168.05 [RP 054]

or

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 Damage Liability Insurance Limits of \$25,000/\$50,000/\$25,000 for all vehicles on this policy for \$89.13

[RP 55] *Montano* placed the burden on Allstate to make a clear and unambiguous disclosure, which it did not.

Allstate's disclosures [RP 54-55] stated a premium amount that combined both property damage and bodily injury coverage. In order to compare the bodily injury coverage options and make an informed choice, an applicant, like Ms. Garcia, would have to appreciate this fact and then subtract the premium for property damage coverage from the total premium to determine the costs of the bodily injury coverage. In this case it would be $\$89.13 - \$9.40 = \$79.73$ or $\$168.05 - \$9.40 = \$158.65$. Although the premiums for bodily injury and property damage are set out

under the “I select lower limits of.” section of the form [RP54-55], this does not help solve the confusion. In fact, it suggests the premium amounts stated are for “lower limits,” that is, something less than what the applicant has selected.

If an applicant, like Ms. Garcia, could make it through the first step, the applicant would then have to calculate the amount of coverage being purchased under the options for either “stacked” or “non-stacked” bodily injury coverage. The Allstate disclosure could have advised Ms. Garcia that for a premium of \$79.73 she would get \$25,000.00 in bodily injury UM/UIM coverage and for a premium of \$158.65 she would get \$50,000.00 in bodily injury UM/UIM coverage. Allstate did not choose to make this a clear and unambiguous disclosure—instead, it relied on the applicant’s ability to appreciate the difference between stacked and non-stacked coverage and to calculate the amount of coverage and costs for themselves.

Page 1 of 5 of the selection form used by Allstate [RP 52] contains a “Note about stacked and non-stacked uninsured motorist insurance for bodily injury.” If an applicant could find this Note, then read and understand the Note, the applicant would still have to determine the amount of coverage shown on the ‘Policy Declarations’ and then do the math. In cases where the Policy Declaration are issued after the selection form is executed and processed by Allstate, this step would be impossible. Finally, Allstate’s disclosure [RP 54-55] does not state that an election

to select “non-stacked” coverage is a “rejection” of \$25,000.00 in UIM bodily injury coverage.

A *Montano*-compliant disclosure would have informed Ms. Garcia that for a premium of \$79.73 she would have \$25,000.00 in UIM bodily injury coverage; or for a premium of \$158.65 she would have \$50,000.00 in UIM bodily injury coverage. It would have further informed Linda Garcia that selection of \$25,000.00 in UM/UIM bodily injury coverage is a rejection of \$25,000.00 in additional UM/UIM bodily injury coverage. Allstate’s disclosure did not meet these minimal requirements. As a matter of law, Ms. Garcia is entitled to have her policy reformed to provide \$50,000.00 of uninsured motorist bodily injury coverage. Allstate relies heavily on the Supreme Court’s opinion in *Ullman*, issued in 2023. In that case, “a consumer purchased an automobile insurance policy providing liability coverage for multiple vehicles but rejected any UM/UIM coverage. Each insured was then involved in an accident with an underinsured or uninsured motorist, and all sought UM/UIM benefits from their insurers. In each case, the insurer denied the claim on the basis that the insured had rejected UM/UIM.” *Ullman*, 2023-NMSC-030, ¶ 3. While Safeway allowed per vehicle selections or rejections of coverage, Safeway’s form incorrectly indicated if you reject coverage on one vehicle you reject all UM/UIM coverage, and the policy also contained the misleading representation that stacking was never allowed under the policy. The Court stated: “To Secure a

Knowing and Intelligent Waiver of UM/UIM Coverage, an Insurer Must Explain That, in the Event of a Covered Loss, the Insured's Policy May Entitle Them to Stack Coverages on Multiple Vehicles.” *Id.* ¶ 27.

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. We impose this requirement to ensure that coverages meet the consumers’ reasonable expectations. *See Jimenez*, 1988-NMSC-052, ¶ 10, 107 N.M. 322, 757 P.2d 792.

Ullman, 2023-NMSC-030, ¶ 43. The Court also found that additions of new vehicles to a policy did not trigger a requirement for the insurance company to create a new contract to comply with *Jordan*, but did require insurers to comply with the requirements of Section 66-5-301(C). *See Ullman*, 2023-NMSC-030, ¶ 56. Contrary to Allstate’s argument in its Brief in Chief, the Court, in *Ullman*, did not jettison the *Lopez* ambiguity analysis but, instead, remanded that to the District Court for further development. In this matter, as explained by the Court of Appeals below, it found Allstate’s premium structure is ambiguous, noting: “Under a line of authority dating back more than forty years, our Supreme Court has consistently held that where an insurance company charges a separate UM/UIM premium for each vehicle under a multi-vehicle policy, ‘it is only fair that the insured be permitted to stack the coverages for which he has paid.’” *Garcia v. Allstate Fire & Cas. Ins. Co.*, 2024-

NMCA-010, ¶ 8, 541 P.3d 162 (citing *Lopez v. Found. Reserve Ins. Co., Inc.*, 1982-NMSC-034, 98 N.M. 166). This Court again cited *Lopez* in *Ullman*:

For example, an insured who purchases UM/UIM insurance for two vehicles in the amount of \$50,000 per person/\$100,000 per occurrence, and pays two premiums for such coverage, may be permitted to stack the two coverages and receive benefits of up to \$100,000/\$200,000 for a covered loss. *See Lopez v. Found. Rsrv. Ins. Co.*, 1982-NMSC-034, ¶¶ 1, 25, 98 N.M. 166, 646 P.2d 1230 (holding that an insured who paid two separate premiums for coverage in the amount of \$30,000 per accident would be entitled to stack two \$30,000 coverages), *holding modified on other grounds by Montano*, 2004-NMSC-020, ¶ 1, 135 N.M. 681, 92 P.3d 1255. Resolving whether an insurer must disclose in its UM/UIM selection/rejection form that an offer to insure multiple vehicles will result in stacking requires us to interpret Section 66-5-301 and its implementing regulation, 13.12.3.9 NMAC.

Ullman, 2023-NMSC-030, ¶ 29. This Court again emphasized in *Ullman*, that insurance companies are required to provide a “meaningful offer” of UM/UIM coverage:

failure to disclose the stacked coverages available to insureds ‘runs afoul of the guiding principle behind *Jordan*—that ‘in order for the offer and rejection requirements of [the UM/UIM statute] to effectuate the policy of expanding UM/UIM coverage, the insurer is required to *meaningfully offer* such coverage and the insured must *knowingly and intelligently act* to reject it before it can be excluded from the policy.

Ullman, 2023-NMSC-030, ¶ 39 (quoting *Lueras*, 2018-NMCA-051, ¶ 35 (Attrep, J., specially concurring)). The Court confirmed that “where the contract contained no mention of effect of payment of multiple premiums on multiple vehicles, it was ambiguous and warranted construal of its terms against the insurer.” *Ullman*, 2023-NMSC-030, ¶ 56. *Ullman* did not reject or overrule the *Lopez* ambiguity analysis

and again emphasized that the touchstone is that the insurer must meaningfully offer UM/UIM coverage and allow an insured to knowingly and intelligently reject such coverage before it can be excluded. This Court should affirm the Court of Appeals' decision that Ms. Garcia is entitled to stack her Allstate coverages.

3. Any stacking rejection in the present case is invalid, because Allstate's UM/UIM coverage offer and selection/rejection process were contrary to law and policy.

Considering the landscape of New Mexico law on UM/UIM coverage and selection/rejection of stacking, Allstate failed to obtain a valid rejection of stacked coverage from Ms. Garcia. Ms. Garcia insured two vehicles with Allstate. Therefore, Allstate should have offered UM/UIM on each of the two vehicles. Allstate was required to provide her with the premium price for UM/UIM coverage on each of her two vehicles and to allow her to select or reject coverage on each vehicle. She should have been able to purchase a single UM/UIM coverage for a single premium charge, or to purchase stacked coverage on two vehicles. *See Weed Warrior Servs.*, 2010-NMSC-050, ¶ 12 (noting that *Montaño* “discussed the importance of insureds being able to choose the amount of stacking to carry in their auto insurance policies”). Allowing the consumer to meaningfully choose the amount of UM/UIM coverage to purchase effectuates the public policy of expanding UM/UIM coverage to all insureds. *See id.* ¶ 7; *Gulbransen v. Progressive Halycon Ins. Co.*, 2010-NMCA-082, ¶ 9, 148 N.M. 585 (explaining that the UM/UIM statute “embodies a

strong public policy” to expand insurance coverage). Allstate’s waiver premium billing practices did not comply with the law where it did not offer to the insured, and allow the insured to reject, UM/UIM coverage on a per-vehicle basis.

C. Because Allstate Charged Multiple Premiums for UM/UIM Coverage, It Must Provide Multiple Coverages.

Linda Garcia paid a separate premium for \$25,000.00 in UM/UIM bodily injury coverage on her 2002 Tahoe and she also paid a separate premium for \$25,000.00 in UM/UIM bodily injury coverage on her 2004 Neon. [RP 99]. Having paid separate premiums for coverage, Linda Garcia is entitled to stack the coverage for a total of \$50,000.00 UM/UIM bodily injury coverage. Even where Allstate successfully induces policyholders to sign a “stacking rejection,” it still charges multiple premiums—separate premiums for UM/UIM coverage on each vehicle. Allstate’s practices violate the long-standing rule that where multiple premiums are charged, multiple coverages must be extended.

The Supreme Court has “always understood stacking to be the remedy for an ambiguous contract *or* the charging of multiple premiums.” *Montaño*, 2004-NMSC-020, ¶ 9 (emphasis added). “Insurance policy clauses that prohibit stacking are particularly repugnant to public policy when the injured insured has paid separate premiums for underinsured/uninsured motorist coverage on each vehicle.” *Jimenez v. Found. Reserve Ins. Co.*, 1988-NMSC-052, ¶ 10, 107 N.M. 322. “[I]f an insurance company charges separate premiums for each vehicle covered under

uninsured/underinsured motorist protection, even if the second premium is a reduced premium, fairness requires that the insured be allowed to stack the coverages for which he or she has paid.” *Id.* (citing *Lopez*, 1982-NMSC-034, ¶ 14).

Nothing in *Montaño*’s analysis requiring a written rejection of stacked coverage changed the basic principle that “when multiple premiums are charged for UM coverage on multiple cars, even in the face of a truly unambiguous limitation-of-liability clause, stacking will be required.” *Montaño*, 2004-NMSC-020, ¶ 23. As noted by this Court ten years after *Montaño* was decided, “our Supreme Court has consistently upheld the availability of stacking, as against policy language excluding it, as a matter of public policy when the insured has paid multiple premiums.” *Wilkeson v. State Farm Mut. Auto. Ins. Co.*, 2014-NMCA-077, ¶ 9, 329 P.3d 749 (citing *Montaño*, 2004-NMSC-020, ¶ 23).

Here, Allstate plainly—and knowingly—charged Ms. Garcia multiple UM/UIM premiums. [RP 99]. The declarations page does not include any “plain and affirmative declaration that the amount charged represents a single premium for a single amount of coverage.” *Montaño*, 2004-NMSC-020, ¶ 1. Therefore, even if the policy contains an anti-stacking provision, policy language regarding stacking is unambiguous, the fact of multiple premiums requires stacked coverage. *Montaño*, 2004-NMSC-020, ¶ 23. This case is controlled by the unbroken line of precedent, beginning with *Lopez*, 1982-NMSC-034, and continuing through *Montaño* in 2004,

that holds where multiple premiums were paid, stacked coverage must be provided. *Montaño*, 2004-NMSC-020, ¶¶ 9, 23; *Jimenez*, 1988-NMSC-052, ¶ 10; *Lopez*, 1982-NMSC-034, ¶¶ 16-18; *Wilkeson*, 2014-NMCA-077, ¶¶ 9-10 (noting that multiple premiums mandate stacked coverage under New Mexico law, but deciding the case under California law). Because Allstate charged Ms. Garcia two premiums, she is entitled to the benefits of two stacked coverages. Because the policy does not clearly represent that a single premium is charged for a single coverage, Allstate’s policy “fails to meet the requirements set forth in *Rodriguez* for a truly unambiguous policy.” *Montaño*, 2004-NMSC-020, ¶ 27. Ms. Garcia is entitled to stack her coverages. *See id.*

D. Allstate’s UM/UIM Selection/Rejection Premium Billing Practices Did Not Permit Ms. Garcia to Make a Knowing and Intelligent Rejection of UM/UIM Coverage.

The Supreme Court has instructed that “in order for the offer and rejection requirements of Section 66-5-301 to effectuate the policy of expanding UM/UIM coverage, the insurer is required to *meaningfully offer* such coverage and the insured must *knowingly and intelligently act* to reject it before it can be excluded from a policy.” *Marckstadt*, 2010-NMSC-001, ¶ 16 (emphasis original); *Weed Warrior Servs.*, 2010-NMSC-050, ¶ 7. In the absence of a valid coverage rejection altogether, “the coverage that must be extended is the full measure accorded her by the default positions afforded by law,” and “[t]his includes UM/UIM coverage generally,

specifically to be stacked as to each of [the insured's] vehicles.” *Arias*, 2014-NMCA-027, ¶ 15. Ms. Garcia’s policy must be reformed to include stacked coverage, because the Allstate forms failed to provide Ms. Garcia with all of the information necessary to make an informed choice or reconsider the choices she made.

An insurer is required to provide the insured “‘affirmative evidence of the extent of coverage’ to enable him or her to make informed choices about coverage.” *Marckstadt*, 2010-NMSC-001, ¶ 19 (quoting *Romero*, 1990-NMSC-111, ¶ 9). Allstate failed to do that. The Uninsured Motorist Insurance Selection/Rejection Form used by Allstate fails to meet the disclosures mandated by *Montano* and *Jordan*, in that it did not state the premium for \$25,000.00 UIM bodily injury coverage and the premium for \$50,000.00 in UIM bodily injury coverage, which were the two options offered to Linda Garcia. Instead, the Uninsured Motorist Insurance Selection/Rejection Form used by Allstate offered:

“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 Damage Liability Insurance Limits of \$25,000/\$50,000/\$25,000 for all vehicles on this policy for \$168.05 [RP 054]

or

“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 Damage Liability Insurance

Limits of \$25,000/\$50,000/\$25,000 for all vehicles on this policy for \$89.13.

[RP055]

Allstate's selection/rejection form is invalid for yet another reason: Allstate forces the insured to select non-stacked UM property damage coverage. The UM/UIM statute, Section 665-301, requires that both uninsured motorist bodily injury coverage ("UMBI") and UMPD be offered up to the liability limits of the policy, and our case law affirms that the statute does not permit the insurer to offer UMBI without offering UMPD. *See Gulbransen*, 2010-NMCA-082, ¶¶ 8-9. *Gulbransen* thus stands for principle that insurers must offer all four statutorily required UM/UIM coverages—uninsured motorist bodily injury, uninsured motorist property damage, underinsured motorist bodily injury, and underinsured motorist property damage—at coverage levels "equal to the liability limits of the policy." *Id.* ¶ 12 (internal quotation marks and citation omitted). Allstate, however, offered stacked UMBI coverages but did not allow the policyholder to select or reject any amount of stacked UMPD coverage, based on the number of vehicles on the policy. Although the loss in this case involved bodily injury rather than property damage, the issue is not which coverages applies. *See Kaiser v. DeCarrera*, 1996-NMSC-050, ¶ 10, 122 N.M. 221 (noting the importance of the insurer's compliance with the regulations, and not the impact of the particular defect on the insured). The issue is whether Allstate's waiver forms meaningfully offered the statutorily required

coverages and afforded the policyholder the opportunity to make a knowing and intelligent decision. *See Marckstadt*, 2010-NMSC-001, ¶ 16. Because the unavailability of stacked UMPD coverage rendered the selection as a whole invalid, “the coverage that must be extended is the full measure accorded her by the default positions afforded by law,” including stacked coverage of both UMBI and UMPD. *Arias*, 2014-NMCA-027, ¶ 15. Allstate therefore failed to meaningfully offer coverage and failed to obtain a knowing and intelligent rejection of coverage.

IV. CONCLUSION

Three independent grounds support affirmance of the Court of Appeals: (1) Allstate impermissibly sold UM/UIM coverage without obtaining a per-vehicle rejection of stacked coverage as required by *Montaño*; (2) Allstate impermissibly charged multiple premiums while denying multiple coverages; (3) By failing to disclose the total of stacked coverage being rejected, Allstate prevented a knowing and intelligent rejection of coverage. Each of these issues is independently sufficient to affirm the Court of Appeals.

HARADA & WINTERS LLC

/s/ Nikko Harada

Nikko Harada

Post Office Box 65659

Albuquerque, New Mexico 87193-5659

Phone: 505.484.6695

nharada@hwlawnm.com

and

Geoffrey R. Romero
LAW OFFICES OF GEOFFREY R. ROMERO
4801 All Saints Road NW
Albuquerque, New Mexico 87120
Phone: 505.247.3338

and

David J. Stout
Co-Chair, Amicus Committee, NMTLA
1117 Stanford NE
1 UNM MSC 11-6070
Albuquerque, New Mexico 87131-0001
Phone: 505.277.0080
stout@law.unm.edu

and

**MARTINEZ, HART,
SANCHEZ & ROMERO, P.C.**

/s/ Julio C. Romero
Julio C. Romero
Co-Chair, Amicus Committee, NMTLA
1801 Rio Grande NW
Albuquerque, New Mexico 87104
Phone: 505.343.1776
julior@osolawfirm.com

Counsel for NMTLA

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing pleading was filed electronically and served to all counsel of record this 30th day of May, 2024, via the Court's e-filing/service system:

/s/ Julio C. Romero

Nikko Harada

Julio C. Romero