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ADVANCE SHEET HEADNOTE
March 25, 2024

2024 CO 17

No. 22SC450, *Essentia Ins. Co. v. Hughes*—Uninsured/Underinsured Motorist Benefits—§ 10-4-609, C.R.S. (2023)—*DeHerrera v. Sentry Ins. Co.*, 30 P.3d 167 (Colo. 2001)—Specialty Antique/Classic-Car Policies—Adjunctive Specialty Antique/Classic-Car Policies Functioning in Tandem with Standard Regular-Use-Vehicle Policies.

The supreme court determines that an uninsured/underinsured motorist ("UM/UIM") limitation deserves different treatment when it is found in a specialty antique/classic-car policy that contains certain terms. More specifically, the court holds that a specialty antique/classic-car policy that requires an insured to have a regular-use vehicle and to insure it through a standard policy that provides UM/UIM coverage may properly limit its own UM/UIM coverage to the use of any antique/classic car covered under the specialty policy.

An adjunctive antique/classic-car policy, which excludes UM/UIM benefits with respect to situations involving a regular-use vehicle but works in tandem with a standard regular-use-vehicle policy that provides UM/UIM coverage, satisfies both the language of section 10-4-609, C.R.S. (2023), and the public policy

goals underpinning the statute. Because that's precisely the type of specialty antique/classic-car policy at issue here, the court concludes that the regular-use-vehicle exclusion in the UM/UIM provision is valid and enforceable under Colorado law. Accordingly, the court reverses the court of appeals' judgment and reinstates the district court's summary judgment in favor of the insurance company and against the insured.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 17

Supreme Court Case No. 22SC450
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA1356

Petitioner:

Essentia Insurance Company,

v.

Respondent:

Beverly Hughes.

Judgment Reversed
en banc
March 25, 2024

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JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, and **JUSTICE HART** joined.
JUSTICE BERKENKOTTER dissented.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 Antique/classic cars are as American as apple pie. The annals of American culture are replete with references to these iconic cars. Indeed, they have inspired many an American song—Mustang Sally, Little Red Corvette, and Pink Cadillac come to mind.

¶2 Consistent with this sweet slice of Americana, our General Assembly encourages ownership and collection of antique/classic cars by setting their registration fees extraordinarily low. And, recognizing that these types of cars are not used for general transportation, insurance companies typically insure them under specialty policies with much more affordable premiums than those charged in standard policies for regular-use vehicles. One such specialty insurance policy is the subject of this appeal.

¶3 As required by Colorado's statutory framework, the specialty antique/classic-car policy before us provided uninsured/underinsured motorist ("UM/UIM") benefits—that is, benefits that take effect when an insured individual is involved in an accident with an at-fault driver who either doesn't have liability insurance or has insufficient liability insurance. However, the policy explicitly limited UM/UIM coverage to situations involving the use of the two listed antique/classic cars. This limitation prevented the insured from tapping

UM/UIM benefits under the specialty policy with respect to an accident while driving her regular-use vehicles.

¶4 A division of the court of appeals concluded that the regular-use-vehicle exclusion in the UM/UIM provision of the specialty policy was invalid and unenforceable. *Hughes v. Essentia Ins. Co.*, 2022 COA 49, ¶ 4, 516 P.3d 31, 32. In so doing, the division relied on *DeHerrera v. Sentry Insurance Co.*, 30 P.3d 167, 175 (Colo. 2001), where we held that UM/UIM benefits cover *persons* injured by uninsured or underinsured motorists and can't be tied to the occupancy or use of *a particular vehicle or type of vehicle*. In *DeHerrera*, we reasoned that Colorado's UM/UIM statute, section 10-4-609, C.R.S. (2023), "contains no provision excluding protection for an insured based on the kind of vehicle an insured occupies at the time of injury." *Id.* Based largely on *DeHerrera*'s construction of section 10-4-609, the division reversed the district court's entry of summary judgment in favor of the insurance company and against the insured.

¶5 Although we understand why the division felt constrained by *DeHerrera*, the UM/UIM limitation in that case did not appear in a specialty antique/classic-car policy. And today we determine for the first time that a UM/UIM limitation deserves different treatment when it is found in a specialty antique/classic-car policy that contains certain terms.

¶6 We hold that a specialty antique/classic-car policy that requires an insured to have a regular-use vehicle and to insure it through a standard policy that provides UM/UIM coverage may properly limit its own UM/UIM coverage to the use of any antique/classic car covered under the specialty policy. In our view, an adjunctive antique/classic-car policy, which excludes UM/UIM benefits with respect to situations involving a regular-use vehicle but works in tandem with a standard regular-use-vehicle policy that provides UM/UIM coverage, satisfies both the language of section 10-4-609 and the public policy goals underpinning the statute. Because that's precisely the type of specialty antique/classic-car policy at issue here, we conclude that the regular-use-vehicle exclusion in its UM/UIM provision is valid and enforceable under Colorado law. Accordingly, we reverse the division's judgment and reinstate the district court's summary judgment in favor of the insurance company and against the insured.

I. Facts and Procedural History

¶7 Beverly Hughes was injured in a two-car accident while driving a vehicle owned by her employer and provided to her for her regular use. The other driver was negligent and at fault. But that driver was underinsured, carrying a policy with bodily injury limits of $25,000.

¶8 At the time of the accident, Hughes was insured by two automobile insurance policies: one issued by Travelers Insurance ("Travelers") and another

issued by Essentia Insurance Company ("Essentia"). Travelers covered Hughes' regular-use vehicles. Essentia, in turn, covered Hughes' antique/classic cars, a 1967 Ford Mustang and a 1930 Ford Model A. Under Essentia's specialty policy, Hughes' husband was the primary insured, but Hughes was insured too.

¶9 Hughes recovered the policy limits under the other driver's insurance ($25,000). Additionally, she sued both Travelers and Essentia for UIM benefits. She eventually settled with Travelers, recovering the full UIM limits under its policy ($250,000).

¶10 As relevant here, Essentia's specialty policy provided low-cost coverage for the two listed antique/classic cars—the annual premium for both cars during the 2018–19 timeframe was $423; of that, only $53 was for UM/UIM benefits. The policy defined an "antique vehicle" as "a motor vehicle 25 years or more of age," and a "classic vehicle" as "a motor vehicle of unique or rare design and of limited production that is an object of curiosity." By contrast, it defined a "regular use vehicle" as "a motor vehicle which is used for regular driving to work, school, shopping, errands or for general transportation and is not an 'antique vehicle' or 'classic vehicle.'" The policy restricted the use of the antique/classic cars: They were to be (1) "maintained primarily for . . . car club activities, exhibitions, parades, other functions of public interest or for a private collection"; and (2) driven "only infrequently for other purposes."

¶11 In light of the circumscribed uses of the antique/classic cars, Essentia's specialty policy required Hughes and her husband to (1) have a "regular use vehicle" for "regular driving" or "general transportation" and (2) purchase and maintain separate standard insurance for such a vehicle and any other vehicle furnished or available for regular use. Additionally, Essentia's specialty policy provided that the standard policy on any regular-use vehicle must "[s]atisfy all minimum state insurance requirements, including . . . [UM/UIM] coverage." Coverage under Essentia's specialty policy was expressly conditioned on the standard policy remaining in effect without reduction of coverage or limits of liability. Essentia's specialty policy emphasized that it was not a "primary personal vehicle insurance" policy and that Essentia reserved "the right to rescind, cancel and/or not renew this policy if at any time during the policy period" there was not a separate standard insurance policy in effect for a regular-use vehicle.

¶12 Importantly, the provision in Essentia's specialty policy requiring a regular-use vehicle covered by a standard policy with UM/UIM benefits went hand in hand with a separate provision in the specialty policy limiting UM/UIM benefits to situations involving the use of the covered antique/classic cars. Pursuant to the latter provision, the specialty policy excluded UM/UIM benefits with respect to situations involving a regular-use vehicle. It did so in part by defining "insured" as follows:

> 1. You or a family member while using or occupying *your covered auto*.
> 2. You or a family member while not occupying a motor vehicle.
> 3. Any other person while occupying *your covered auto* with permission from you.
> 4. Any person, for damages that person is legally entitled to recover because of bodily injury to a person described in this definition in 1., 2., or 3. Above.

(Emphases added and quotation marks omitted). The specialty policy further clarified that "'insured' shall NOT mean and does NOT include" the insured, a family member, or any other person "*while occupying, operating or otherwise using any vehicle* owned by, or furnished or available for the *regular use* of, you, or any person related to you who resides with you, *if that vehicle is not your covered auto*." (Emphases added and second and third quotation marks omitted).

¶13 In compliance with Essentia's specialty policy, Hughes and her husband had regular-use vehicles, which were listed on Travelers' standard policy. That policy provided Hughes with UM/UIM benefits.

¶14 After Hughes filed this lawsuit, Essentia moved for summary judgment or, in the alternative, a determination of law. It argued that Hughes was not an "insured" under the UM/UIM provision of the specialty policy because she was driving a regular-use vehicle, not one of the antique/classic cars listed in that policy, at the time of the accident. Hughes countered that the regular-use-vehicle exclusion in the UM/UIM provision of Essentia's specialty policy violated

DeHerrera's pronouncement that section 10-4-609 ties UM/UIM coverage to persons rather than vehicles.

¶15 The district court sided with Essentia and entered summary judgment in its favor. First, the court noted that the specialty policy was specifically limited to antique/classic cars and Hughes had been driving a regular-use vehicle at the time of the accident. Essentia was able to offer insurance coverage for the antique/classic cars at a lower premium, explained the court, based on the parties' agreement that those cars would not be regularly used, which meant that the risk of an accident was lower.

¶16 Second, the court ruled that *DeHerrera* was satisfied by the requirement in Essentia's specialty policy to have a "regular use vehicle" for "regular driving" or "general transportation" and to purchase and maintain separate standard insurance with UM/UIM benefits for such a vehicle. The court recognized that Colorado's public policy aims to protect against financial loss caused by negligent, financially irresponsible motorists. But it observed that Essentia's specialty policy protected against such loss by requiring a separate insurance policy with UM/UIM benefits for a regular-use vehicle. Thus, the court reasoned that the specialty policy adhered to our decision in *DeHerrera*.

¶17 Hughes appealed, and a division of the court of appeals reversed. *Hughes*, ¶ 6, 516 P.3d at 33. The division concluded that the regular-use-vehicle exclusion

in the UM/UIM provision of Essentia's specialty policy was invalid and unenforceable because it was "squarely contrary to *DeHerrera*'s central holding: that section 10-4-609 provides coverage for *persons* and doesn't tie protection against uninsured motorists to the insured's occupancy of any particular type of vehicle." *Id.* at ¶ 23, 516 P.3d at 35. In the division's view, Essentia's specialty policy improperly limited "statutorily mandated coverage under section 10-4-609 by tying the UM/UIM coverage to occupancy in certain vehicles, something that *DeHerrera* explicitly precludes." *Id.* at ¶ 36, 516 P.3d at 37. Although the division fully acknowledged that Hughes was seeking to recover "more than she bargained for" with Essentia, it felt bound by *DeHerrera* to rule that the regular-use-vehicle exclusion in the UM/UIM provision of the specialty policy was invalid and unenforceable. *Id.* at ¶ 30, 516 P.3d at 36. Thus, the division held that our interpretation of section 10-4-609 in *DeHerrera* entitled Hughes "to recover UM/UIM benefits under the Essentia policy for the injuries she sustained" during her accident. *Id.* at ¶ 32, 516 P.3d at 36.

¶18 The division added that public policy (regarding the freedom to include in a contract whatever conditions and exclusions an insurer and an insured desire) could not rescue Essentia. *Id.* at ¶¶ 33–36, 516 P.3d at 36–37. Having determined that Essentia's specialty policy fell short of section 10-4-609's requirements, the

division was unwilling to rely on public policy to enforce the regular-use-vehicle exclusion in question. *Id.* at ¶ 36, 516 P.3d at 37.

¶19 Essentia sought certiorari review in our court. We granted its petition and agreed to consider the following question:

> Whether a specialty antique/classic-car policy's "regular use vehicle" exclusion in its uninsured/underinsured-motorist ("UM/UIM") endorsement is enforceable under section 10-4-609, C.R.S. (2022), where the policy requires the insured to maintain a separate policy for regular-use vehicles providing full UM/UIM coverage.

II. Standard of Review

¶20 Whether an insurance policy provision complies with section 10-4-609 is a question of law that we review de novo. *Allstate Ins. Co. v. Huizar*, 52 P.3d 816, 819 (Colo. 2002). Further, we review de novo orders granting summary judgment. *Harvey v. Cath. Health Initiatives*, 2021 CO 65, ¶ 15, 495 P.3d 935, 938 (Colo. 2021). Summary judgment is appropriate only when "the material facts are undisputed . . . [and] the pleadings and supporting documents show that the moving party is entitled to judgment as a matter of law." *Ryser v. Shelter Mut. Ins. Co.*, 2021 CO 11, ¶ 13, 480 P.3d 1286, 1289; *accord* C.R.C.P. 56(c). When considering a motion for summary judgment, "a court must grant the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts, and it must resolve all doubts against the moving party." *Ryser*, ¶ 13, 480 P.3d at 1289.

¶21 On this much, the parties agree. But that's where the agreement ends.

III. Analysis

¶22 At the outset, it's important to understand what's not before us today. The question we confront is not whether Essentia should prevail based on the terms of its specialty policy—i.e., whether Hughes agreed to receive no UM/UIM benefits under that policy as it relates to any accident involving a regular-use vehicle or, correspondingly, whether Hughes is seeking to recover more than she bargained for in that policy. Essentia's specialty policy expressly excluded UM/UIM benefits related to any accident involving a regular-use vehicle. But that's beside the point because the question here is whether, irrespective of the specialty policy's terms, Colorado law nevertheless entitles Hughes to recover UM/UIM benefits under that policy for injuries sustained during an accident involving her regular-use vehicle. Put differently, we must determine whether section 10-4-609 renders the regular-use-vehicle exclusion in the UM/UIM provision of Essentia's specialty policy invalid and unenforceable.

¶23 A policy provision that attempts to "dilute, condition, or limit statutorily mandated coverage" may be invalid and unenforceable. *Terranova v. State Farm Mut. Auto. Ins. Co.*, 800 P.2d 58, 60 (Colo. 1990). For that reason, "[a] policy that limits UM/UIM benefits under circumstances where the General Assembly intended for UM/UIM benefits to be recovered is invalid" and cannot be enforced. *DeHerrera*, 30 P.3d at 173.

¶24 Because our General Assembly did not set out to enact comprehensive requirements for UM/UIM coverage, we must look to both the plain language of section 10-4-609 and the statute's purpose to determine whether the regular-use-vehicle exclusion in the UM/UIM provision of Essentia's specialty policy violates a legislative mandate and is thus invalid and unenforceable. *See id.* (citing *Terranova*, 800 P.2d at 62). We are not venturing into uncharted territory, however. We trekked section 10-4-609's treacherous terrain in *DeHerrera,* where we declared an exclusion in the UM/UIM provision of a standard automobile insurance policy invalid and unenforceable. *DeHerrera*, 30 P.3d at 168. Not surprisingly, then, as we stand at the trailhead of our analytical expedition, we are escorted by *DeHerrera*.

A. Section 10-4-609 and *DeHerrera*

¶25 We recognized in *DeHerrera* that, under section 10-4-609, an insurer has an obligation to *offer* UM/UIM benefits in "an automobile liability or motor vehicle liability policy." 30 P.3d at 173. Except for transportation network companies, an insured may reject such an offer in writing. *See* § 10-4-609(1)(a)(II). But where an insured does not do so, section 10-4-609(1)(a)(I) imposes the following requirement on the insurer:

> [A] motor vehicle liability policy insuring against loss resulting from liability . . . for bodily injury or death . . . arising out of the ownership, maintenance, or use of a motor vehicle . . . must provide coverage or supplemental coverage . . . *for the protection of persons* insured under

> the policy who are legally entitled to recover damages from owners or operators of *uninsured motor vehicles* . . . .

(Emphases added.) This provision establishes that an insured who purchases UM/UIM coverage is entitled to recover benefits for injuries sustained during an accident with a tortfeasor who lacks liability insurance. *See DeHerrera*, 30 P.3d at 173. Of particular interest here, a different provision in the same statute makes benefits available to an insured when the tortfeasor is an owner or operator of an underinsured (as opposed to uninsured) motor vehicle. *See* § 10-4-609(4). Therefore, "if an insured's damages exceed the limits of the tortfeasor's liability coverage, an injured insured may receive compensation from her own policy to cover the remaining portion of her damages, up to the limits of her UM/UIM insurance." *DeHerrera*, 30 P.3d at 174; *see also* § 10-4-609(1)(c) (same).

¶26 UM/UIM coverage is "in addition to any legal liability coverage." § 10-4-609(1)(c). It functions as a bridge that spans the gap between a tortfeasor's insurance liability limits and the amount of damages sustained by an insured, up to the amount of the UM/UIM coverage purchased.

¶27 Section 10-4-609's purpose is "to protect insureds against the risk of inadequate compensation" for injuries caused by an uninsured or underinsured at-fault motorist. *DeHerrera*, 30 P.3d at 174. As we explained in *DeHerrera*, "UM/UIM coverage replaces the benefits an innocent injured insured would have recovered from an uninsured or underinsured tortfeasor, if the tortfeasor had been

insured for liability coverage to the same extent that the injured insured was covered for UM/UIM benefits." *Id.*

¶28 Thus, the UM/UIM statute furthers the legislature's public policy of "assur[ing] the widespread availability to the insuring public of insurance protection against financial loss caused by negligent financially irresponsible motorists." *Id.* (quoting Ch. 91, sec. 1, 1965 Colo. Sess. Laws 333). We have stressed that this legislative intent deserves "great weight" given the significant public policy goal of protecting persons from the too-often devastating injuries sustained in car accidents. *Id.*

¶29 We now look under the hood of *DeHerrera* to examine the parties' specific dispute in that case. Elizabeth DeHerrera was insured under a motor vehicle policy issued by Sentry Insurance Company ("Sentry"). *Id.* at 168. DeHerrera sued Sentry after it denied her claim for UIM benefits in relation to injuries sustained by her son in an accident with a pickup truck that had a limited amount of liability insurance. *Id.* Sentry had denied coverage because DeHerrera's son had been riding a motorcycle at the time of the accident, and its policy excluded from coverage persons injured while occupying a vehicle that was not a "four-wheeled motor vehicle." *Id.* at 168–69. The parties filed cross-motions for summary judgment, and the district court granted Sentry's motion. *Id.* at 169. DeHerrera then appealed, and a division of the court of appeals affirmed. *Id.*

¶30 We reversed. *Id.* Although the plain language of section 10-4-609 did not expressly answer the question presented, we held that, when considered in conjunction with the statute's legislative purpose, it required an insurer "to provide UM/UIM benefits" to any person insured under the policy for damages sustained "in an accident caused by an uninsured or underinsured motorist without regard to the vehicle occupied by the insured at the time of injury." *Id.* Thus, we concluded that, regardless of the provisions of Sentry's policy, section 10-4-609 mandated coverage. *Id.*

¶31 Mindful of section 10-4-609's purpose to protect insureds against the risk of inadequate compensation for injuries caused by an uninsured or underinsured tortfeasor, we reasoned in *DeHerrera* that it was error to focus on the *type of vehicle* insured, rather than on *the class of persons* insured. *Id.* at 176. DeHerrera's son was insured under the policy because he was related to DeHerrera and resided with her. *Id.* And because DeHerrera "had purchased UM/UIM insurance from Sentry in limits higher than the limits of the underinsured motorist's liability policy," the UM/UIM statute required "that UM/UIM insurance apply . . . irrespective of the vehicle [her son] occupie[d] at the time of injury." *Id.* Accordingly, we remanded the case to the court of appeals so it could return it to the district court with instructions to enter summary judgment in DeHerrera's favor. *Id.* at 169.

B. *DeHerrera* Is Not Dispositive

¶32 The division below reversed the district court's summary judgment order, ruling that the regular-use-vehicle exclusion in the UM/UIM provision of Essentia's specialty policy collided with our construction of section 10-4-609 in *DeHerrera*. *Hughes*, ¶¶ 5–6, 516 P.3d at 32–33. In the process, the division implied that its proverbial wheels had been clamped by *DeHerrera*: "Whether *DeHerrera* reflects wise, fair, or prudent public policy is a question for the legislature (or the supreme court in the event it wishes to revisit *DeHerrera*); in the meantime, we are bound by *DeHerrera*." *Id.* at ¶ 36, 516 P.3d at 37. To be sure, the court of appeals is bound by this court's case law. But we don't view *DeHerrera* as dispositive here. While *DeHerrera* is no doubt a beacon that partially illuminates our analytical journey, it is by no means a GPS system capable of guiding us to our destination.

¶33 As in *DeHerrera*, section 10-4-609 does not explicitly answer the question we are called upon to address today. The statute does not mention specialty antique/classic-car policies, let alone those which, like Essentia's, require the insured to have a regular-use vehicle and to insure it through a standard policy that provides UM/UIM coverage. So, once again, just as in *DeHerrera*, we must construe the language of section 10-4-609 in the context of the legislature's purpose in enacting the statute. We circle back then to our General Assembly's intent in passing section 10-4-609.

¶34 We made clear in *DeHerrera* that our decision there was animated by the chief public policy goal underlying the legislature's enactment of section 10-4-609: securing for the insuring public extensive access to insurance protection against financial loss stemming from accidents caused by negligent, financially irresponsible motorists. *DeHerrera*, 30 P.3d at 174. The legislature accomplished this compelling goal by using an insured's UM/UIM coverage to countervail an uninsured or underinsured tortfeasor's liability limits. *Id.* Section 10-4-609 allows UM/UIM benefits to step in to aid an innocent insured who is injured in an accident with an uninsured or underinsured tortfeasor. *See DeHerrera*, 30 P.3d at 174.

¶35 Had we upheld the UM/UIM limitation in *DeHerrera*, we would have thwarted, not promoted, the legislature's public policy because we would have denied DeHerrera the UM/UIM protection she had acquired through her Sentry policy. And allowing Sentry to avoid paying DeHerrera UM/UIM benefits based on the four-wheeled-motor-vehicle exclusion in its policy would have been tantamount to giving an insurer license to skirt the legislature's public policy. That's a result we were unwilling to countenance. As we explained, any insurance policy that "denies statutorily mandated coverage is void and unenforceable." *Id.* at 173.

¶36 The division didn't see any daylight between the UM/UIM limitation in Sentry's standard policy and the UM/UIM limitation in Essentia's specialty policy. But we do.

¶37 True, much like Sentry's standard policy, which limited UM/UIM benefits to situations involving the use of four-wheeled motor vehicles, Essentia's specialty policy limited UM/UIM benefits to situations involving the use of one of the antique/classic cars listed in the policy. But—and this is a pivotal difference—Essentia's specialty policy was expressly conditioned on the insured having a regular-use car and insuring it through a standard policy with UM/UIM benefits. As such, Essentia's specialty policy is an adjunctive policy that functions in tandem with a standard policy.

¶38 Through its specialty policy, Essentia ensured that Hughes would have UM/UIM coverage for the antique/classic cars listed in the policy, as well as UM/UIM coverage for any regular-use vehicle. Those provisions in Essentia's specialty policy dovetailed nicely and provided the comprehensive UM/UIM coverage that we determined in *DeHerrera* is mandated by Colorado's public policy. Whereas DeHerrera sought from Sentry the only UM/UIM benefits available to her, Hughes already received UM/UIM benefits from Travelers (as a result of the provision in Essentia's specialty policy requiring a standard policy with UM/UIM benefits on any regular-use vehicle) and now seeks to double-dip

and recover additional UM/UIM benefits from Essentia. We see no basis in either the language of section 10-4-609 or the statute's purpose to greenlight such a windfall for an insured like Hughes. Hence, our analytical ascent to the summit of section 10-4-609 diverges from the path we took in *DeHerrera*.

¶39 Hughes nevertheless insists that section 10-4-609, as construed in *DeHerrera*, requires *every* policy to have UM/UIM coverage that is person-oriented, not vehicle-oriented. According to Hughes, UM/UIM benefits must be available under both Essentia's specialty policy and the standard regular-use-vehicle policy it required. But nothing in *DeHerrera* supports this proposition. To the extent this is an inference Hughes draws from *DeHerrera*'s disposition, she overlooks that we dealt with a *standalone* regular-use-vehicle policy there. In stark contrast, here, we deal with an *adjunctive* specialty policy that operates in conjunction with a standard policy that must include UM/UIM coverage for regular-use vehicles. That Essentia complied with the language of section 10-4-609 and the public policy underlying the statute through two policies working in tandem instead of a standalone policy doesn't alter the conclusion that there was no violation of Colorado law here.

¶40 The district court saw it the same way. In its well-reasoned order, it discerned that, unlike Sentry's policy in *DeHerrera*, Essentia's specialty policy protected against financial loss caused by negligent, financially irresponsible

motorists. Thus, concluded the district court, whereas Sentry's standard policy ran afoul of Colorado's public policy, Essentia's specialty policy honored it.

¶41 Critically, like the district court, we recognize the reason why a specialty antique/classic-car policy like Essentia's typically doesn't offer UM/UIM coverage for regular-use vehicles. UM/UIM coverage under such a policy is tailored to the limited use and low risks that inhere to antique/classic-car ownership. The premium for this type of policy is quite low precisely because a limited-use vehicle poses little risk to the insurer. Were we to adopt Hughes' position and extend *DeHerrera* to specialty policies like Essentia's, it would alter the fundamental nature of the risks insured; this, in turn, would supercharge the associated premiums.

¶42 The facts of this case prove the point. Hughes and her husband paid a total annual premium of $423 to insure both of their antique/classic cars. Out of that total, the UM/UIM coverage was only $53. Requiring the UM/UIM coverage to encompass any regular-use vehicle would not, and could not, be commensurate with the low premium charged. And it would make the cost of UM/UIM coverage out of whack with the cost of the other aspects of the total premium—$74 for liability and $280 for collision and non-collision damage. The reality is that a specialty antique/classic-car policy is simply a bird of a different feather.

¶43 In rejecting Hughes' position, we take comfort in knowing that we're not on a jurisprudential island. Some sister states, too, differentiate between specialty antique/classic-car policies and standard regular-use-vehicle policies. As the Supreme Court of Connecticut recently observed:

> [A]ntique vehicles used only for such activities as parades and exhibitions are materially different from vehicles used for general transportation purposes. *Because those antique vehicles are not used for transportation, it is perfectly reasonable for owners of such vehicles to seek to purchase insurance at a cost commensurate with their limited use; it is similarly reasonable for insurers to issue specialty policies covering antique vehicles for substantially reduced premiums.*

Gormbard v. Zurich Ins. Co., 904 A.2d 198, 209 (Conn. 2006) (emphasis added). The court in *Gormbard* went on to hold that "an insurance carrier that issues a reduced premium, specialty automobile liability insurance policy on an antique automobile . . . may limit uninsured and underinsured motorist coverage under that specialty policy to accidents involving the occupancy or use of the antique automobile." *Id.* at 199.

¶44 Significantly, Connecticut's UM/UIM statute, like section 10-4-609 (as we construed it in *DeHerrera*), mandates, as a general matter, that UM/UIM coverage "be portable." *Id.* at 209. But Connecticut's high court determined that this mandate "was intended to apply to ordinary, personal use vehicles, and not to antique vehicles 'maintained solely for use in exhibitions, club activities, parades or other functions of public interest.'" *Id.* (quoting from the plaintiff's insurance

policy). For purposes of Connecticut's UM/UIM statutory requirement, the *Gormbard* court perceived "no reason why the legislature would have intended to treat antique vehicles that are rarely, if ever, operated on [Connecticut's] highways, in the same manner as vehicles maintained for regular highway travel." *Id.* To rule otherwise, explained the court, would be inconsistent with "the substantially reduced premium" of a specialty antique/classic-car policy and would "result in a windfall recovery by the plaintiff," something the legislature likely didn't intend. *Id.* at 209–10. Hence, the court concluded that, while the sound public policy undergirding the UM/UIM statute in Connecticut (favoring person-oriented protection over vehicle-oriented protection) generally prohibits an insurer from tying UM/UIM benefits to the use of a specific vehicle, that public policy does not extend to a specialty antique/classic-car policy. *Id.* at 199, 210.

¶45 Other courts have likewise enforced limitations on UM/UIM coverage in the narrow context of specialty antique/classic-car policies despite the existence of a public policy generally barring vehicle-centric UM/UIM coverage. *See, e.g.*, *Metlife Auto & Home v. Palmer*, 839 A.2d 83, 84, 88–89 (N.J. Super. Ct. App. Div. 2004); *St. Paul Mercury Ins. Co. v. Corbett*, 630 A.2d 28, 30, 33 (Pa. Super. Ct. 1993). *Corbett* and *Palmer* are of the same ilk as *Gormbard*. Like *Gormbard*, they grasped the special nature of limited-use antique/classic cars and the substantially reduced premiums charged to insure such cars. 904 A.2d at 208.

¶46 True, there is no uniformity among other jurisdictions, *see, e.g.*, *St. Paul Mercury Ins. Co. v. Zastrow*, 480 N.W.2d 8, 14–15 (Wis. 1992) (declining to permit "vehicle oriented motorist coverage" for antique cars without the legislature expressly sanctioning it), *superseded by statute as recognized in Blazekovic v. City of Milwaukee*, 610 N.W.2d 467, 471–72 (Wis. 2000); *Am. S. Home Ins. Co. v. Lentini*, 286 So. 3d 157, 160 (Fla. 2019) (disapproving of a lower court's decision permitting a UM limitation in an antique-automobile policy, reasoning that the language of the UM/UIM statute did not distinguish between different types of motor vehicles). But we deem *Gormbard*, *Corbett*, and *Palmer* better reasoned and more persuasive. Having discussed *Gormbard*, we now take a closer look at *Corbett* and *Palmer*.

¶47 In *Corbett*, Corbett was injured in a hit-and-run accident while driving a regular-use vehicle owned by his employer. 630 A.2d at 29. After recovering UM benefits from the standard insurance policy on that vehicle, he sought UM benefits under a specialty policy insuring his antique/classic car. *Id.* The specialty policy's insurer denied his claim and sought a judgment declaring that it was under no obligation to provide UM benefits because its policy limited coverage to injuries sustained while Corbett was operating the antique/classic car listed in its policy. *Id.*

¶48 The Pennsylvania superior court concluded that the limitation in the UM provision of the specialty policy did not violate Pennsylvania's uninsured motorist

statute. *Id.* at 32–33. After noting that Corbett had paid a substantially reduced premium for the policy, the court expressed concern that invalidating the challenged limitation would result in substantially higher premiums for specialty antique/classic-car policies:

> The very limited use of antique automobiles does not subject them to the normal exposure or danger from uninsured motorists. These vehicles are seldom driven on highways for fear of wear and tear or breakdown. In fact, owners of antique automobiles often have their antique cars transported on flatbed trucks. *Because of the decreased risks associated with antique vehicles, premiums for these special insurance policies are lower than those for personal automobile policies. To invalidate the restrictions found in the policy would force insurance companies to raise rates on antique automobile policies to account for the attendant increased risks.* If coverage is permitted under the circumstances presented . . . the distinctions between antique automobile insurance and other types of insurance will be eradicated and premiums for antique vehicle insurance will be on par with personal automobile insurance. This result was not contemplated by the Legislature . . . .

Id. at 32–33 (emphasis added); *see also St. Paul Mercury Ins. Co. v. Perry*, 227 F. Supp. 2d 430, 435, 439 (E.D. Pa. 2002) (following *Corbett* and indicating that failing to enforce the UM/UIM provision of a specialty antique-automobile policy limiting coverage to situations in which the insured is occupying the covered antique vehicle would "eradicate[]" "the distinctions between antique automobile insurance and other types of insurance" (quoting *Corbett*, 630 A.2d at 33)).

¶49 Similarly, in *Palmer*, the appellate division of the New Jersey superior court addressed whether an insurer that had issued a specialty policy for an antique/classic car could avoid paying pro rata contribution under the state's

statutory anti-stacking provision "by excluding [UM] coverage for injuries sustained by its insured while occupying an owned vehicle not insured by the antique automobile policy." 839 A.2d at 84. The court determined that specialty antique/classic-car policies "that limit the use of the insured vehicle and are offered at a significantly reduced premium are valid" and fall outside the scope of the anti-stacking provision. *Id.*

¶50 Notably, the specialty policy in *Palmer*, like the specialty policy here, was "conditioned upon the purchaser maintaining an independent 'standard or regular motor vehicle insurance policy . . . to cover motor vehicles that are intended for regular, rather than limited, use.'" *Id.* at 88. This condition in the specialty policy moved the needle in the *Palmer* court's analysis:

> [The anti-stacking provision] serves two legislative purposes. It is designed to provide maximum remedial protection to the innocent victims of financially irresponsible motorists and to reduce the drain on the financially-troubled Unsatisfied Claim and Judgment Fund. *Here, the exclusion sought to be validated essentially bars UM coverage for injuries sustained by an insured or family member while occupying an owned vehicle other than the antique vehicle covered by the policy; it does not prevent the claimant from obtaining the maximum remedial protection nor does it place any additional strain on the Unsatisfied Claim and Judgment Fund. In other words, it simply relies on the coverage expressly afforded . . . in the standard automobile policy issued to its insured* and relieves [the specialty policy insurer] from participating in pro rata contribution.

Id. (emphasis added) (citations omitted).

¶51 Much like the specialty policy in *Palmer*, Essentia's specialty policy here relied on the UM/UIM coverage in the standard regular-use-vehicle policy it

required. We emphasize that the adjunctive nature of Essentia's specialty policy, which worked in tandem with Travelers' standard policy, leads us to conclude that the regular-use-vehicle exclusion in the UM/UIM provision of the specialty policy is consistent with the language of section 10-4-609 and the legislature's purpose in bringing the statute to life.

¶52 In sum, we stand by *DeHerrera* but conclude that it is not dispositive here. We determine that a UM/UIM limitation deserves different treatment when it is found in a specialty antique/classic-car policy that contains certain terms. We hold that a specialty antique/classic-car policy that requires an insured to have a regular-use vehicle and to insure it through a standard policy that provides UM/UIM coverage may properly limit its own UM/UIM coverage to the use of any antique/classic car covered under the specialty policy. In our view, an adjunctive antique/classic-car policy, which excludes UM/UIM benefits with respect to situations involving a regular-use vehicle but works in tandem with a standard regular-use-vehicle policy that provides UM/UIM coverage, satisfies both the language of section 10-4-609 and the public policy goals underpinning the statute. Because that's precisely the type of specialty antique/classic-car insurance policy at issue here, we conclude that the regular-use-vehicle exclusion in its UM/UIM provision is valid and enforceable under Colorado law.

IV. Conclusion

¶53 For the foregoing reasons, we conclude that the division erred. We therefore reverse the division's judgment and reinstate the district court's summary judgment in favor of Essentia and against Hughes.

JUSTICE BERKENKOTTER dissented.

JUSTICE BERKENKOTTER, dissenting.

¶54 I write separately to dissent because, in my view, the majority (1) disregards the requirements of the uninsured/underinsured motorist ("UM/UIM") statute, section 10-4-609, C.R.S. (2023); (2) carves out an unprecedented and ill-advised exception to our holding in *DeHerrera v. Sentry Ins. Co.*, 30 P.3d 167, 174 (Colo. 2001); and (3) fails to grasp the true costs of what it describes as Essentia Insurance Company's ("Essentia") "affordable" policy.

¶55 Under the UM/UIM statute, and the *DeHerrera* decision, Beverly Hughes is entitled to UM/UIM coverage under her policies with *both* Travelers Insurance ("Travelers") and Essentia. But Essentia's policy forced Hughes to rely solely on Travelers's policy to protect her from negligent uninsured and underinsured drivers in all but one uncommon scenario: accidents involving her two antique/classic cars, the Ford Mustang and Ford Model A. Good enough, says the majority, concluding that coverage under one UM/UIM policy is as comprehensive as coverage under two UM/UIM policies. Maj. op. ¶ 38 (describing the provisions in Essentia's specialty policy as "dovetail[ing] nicely and provid[ing] the comprehensive UM/UIM coverage that we determined in *DeHerrera* is mandated by Colorado's public policy"). This, however, is not what the UM/UIM statute requires. The majority's math is also flawed. For an insured who is catastrophically injured by a negligent, uninsured or underinsured

motorist, being able to tap into two UM/UIM policies is unquestionably better than being limited to one. And here, for Hughes, the coverage that Essentia should've provided represents real money.

¶56 In my view, Essentia's policy is not "adjunctive," as the majority claims, *id.* at ¶ 37, but rather is avoidant insofar as it allows Essentia to minimize its obligation to its insureds under section 10-4-609 by improperly tying its UM/UIM coverage to specific vehicles. Because this is exactly the type of policy we determined was void and unenforceable in *DeHerrera*, I respectfully dissent.

I. Analysis

¶57 I begin with the UM/UIM statute. Section 10-4-609(1)(a)(I) provides:

> [A] motor vehicle liability policy insuring against loss resulting from liability . . . for bodily injury or death . . . arising out of the ownership, maintenance, or use of a motor vehicle . . . must provide coverage or supplemental coverage . . . *for the protection of persons* insured under the policy who are legally entitled to recover damages from owners or operators of *uninsured motor vehicles* . . . .

(Emphases added.) The purpose behind the UM/UIM statute is to guarantee the widespread availability of uninsured and underinsured motorist coverage to protect the insured public against financial loss caused by motorists who fail to carry adequate liability insurance. § 42-7-102(2)(b)(I), C.R.S. (2023). To this end, the UM/UIM statute fills the gap between a financially irresponsible tortfeasor's limited or nonexistent automobile liability coverage and the amount of damages sustained by an insured up to the amount of UM/UIM coverage purchased.

DeHerrera, 30 P.3d at 174; *Mullen v. Metro. Cas. Ins. Co.*, 2021 COA 149, ¶ 31, 507 P.3d 73, 79–80. Simply put, the UM/UIM statute is designed to ensure that responsible, insured individuals injured in automobile accidents will be compensated for their losses even if the other motorist, who causes the accident, is underinsured or uninsured. *Hughes v. Essentia Ins. Co.*, 2022 COA 49, ¶ 18, 516 P.3d 31, 34.

¶58 To guarantee that this important policy objective is fulfilled and to protect insured drivers from the potentially devastating consequences of motor vehicle accidents, the General Assembly *requires* insurers to offer UM/UIM coverage in *every* automobile liability policy. § 10-4-609(1)(a); *DeHerrera*, 30 P.3d at 173–74. This court defined the reach of section 10-4-609 over two decades ago in *DeHerrera*. In that case, the insured, Elizabeth DeHerrera, had an insurance policy with Sentry Insurance Company ("Sentry") that covered her son, who lived with DeHerrera and her husband. *DeHerrera*, 30 P.3d at 169. While DeHerrera's son was driving his off-road motorcycle, he was injured in an accident caused by the driver of a pickup truck. *Id.* The son's motorcycle was not covered by DeHerrera's Sentry policy. *Id.*

¶59 After the truck driver paid the limits of his automobile liability policy, DeHerrera submitted a claim for underinsured motorist benefits with Sentry. *Id.* But Sentry denied the claim, arguing that its policy excluded from coverage

persons occupying a vehicle other than a car, like the son's motorcycle. *Id.* at 171. We rejected Sentry's argument, holding that, when considered in conjunction with section 10-4-609's legislative purpose, an insurer was required "to provide UM/UIM benefits" to a person insured under the policy for damages sustained "in an accident caused by an uninsured or underinsured motorist *without regard to the vehicle occupied by the insured at the time of injury*." *Id.* at 169 (emphasis added). That is, we interpreted section 10-4-609 as mandating coverage irrespective of the vehicle occupied by the insured at the time of injury because the statute requires coverage for *persons—not vehicles*. *Id.* at 175. In reaching this conclusion, we explained that the "UM/UIM statute contains no provisions excluding protection for an insured based on the kind of vehicle an insured occupies at the time of injury." *Id.*

¶60 Essentia's policy, however, clearly violates this central principle in *DeHerrera*: It explicitly limits its UM/UIM coverage to Hughes and her family members' use of their two antique/classic cars. As a result, Hughes was left with no UM/UIM coverage under Essentia's policy for the injuries she sustained when she was driving a different vehicle (one provided by her employer for her regular use) that was involved in an accident with a negligent, underinsured driver. Notably, Essentia's policy also would have left Hughes and her family members

without coverage if any of them were injured as pedestrians by an at-fault, uninsured or underinsured driver.

¶61 The majority concludes, nonetheless, that Essentia's policy is not prohibited by the UM/UIM statute or *DeHerrera*. It offers various reasons for this determination, none of which persuasively explain why Essentia's policy isn't void for exactly the same reasons we outlined in *DeHerrera*. First, the majority stresses that Essentia's policy is a "specialty policy," unlike the policy at issue in *DeHerrera*, that provides "affordable" coverage for antique/classic vehicles. *See, e.g.*, Maj. op. ¶¶ 2, 37–38 (describing "Essentia's specialty policy" as the "pivotal difference" between this case and *DeHerrera*). Second, it emphasizes that these vehicles are different because they are (1) "maintained primarily for . . . car club activities, exhibitions, parades, other functions of public interest or for a private collection," and (2) driven "only infrequently for other purposes." *Id.* at ¶ 10. Third, Essentia's policy is different, we are told, because it requires its insureds to (1) have a "regular use vehicle" for "regular driving" or "general transportation" and (2) purchase and maintain separate standard insurance for such a vehicle and any other vehicle furnished or available for regular use. *Id.* at ¶¶ 11, 37. This is important, the majority emphasizes, because Essentia's policy further provides that the standard policy on any regular-use vehicle must "[s]atisfy all minimum

state insurance requirements, including . . . [UM/UIM] coverage." *Id.* at ¶ 11 (alteration in original).

¶62 Thus, in the majority's view, Essentia's policy is an "adjunctive policy" that works in tandem with its insureds' regular car policy. *Id.* at ¶ 37. In this way, the majority declares, "Essentia ensured that Hughes would have UM/UIM coverage for the antique/classic cars listed in the policy, as well as UM/UIM coverage for any regular-use vehicle." *Id.* at ¶ 38.

¶63 Finally, the majority suggests that this is the policy that Hughes bargained for, and that her receipt of UM/UIM benefits under Travelers's policy demonstrates that she was able to obtain the type of comprehensive UM/UIM coverage that we determined in *DeHerrera* was mandated by section 10-4-609. *Id.* Allowing Hughes to recover under Essentia's policy, the majority posits, would let Hughes "double-dip" and receive a windfall of a type not contemplated or required by *DeHerrera*. *Id.*

¶64 I cannot join today's ruling. In my view, the majority's analysis cannot be reconciled with our holding in *DeHerrera*. None of the reasons offered by the majority persuasively explain why Essentia's policy—which undisputedly limits its UM/UIM coverage to Hughes's use of her two covered vehicles—is not an invalid, unenforceable "policy that limits UM/UIM benefits under circumstances where the General Assembly intended for UM/UIM benefits to be recovered."

DeHerrera, 30 P.3d at 173; *see also Terranova v. State Farm Mut. Auto. Ins. Co.*, 800 P.2d 58, 60 (Colo. 1990) ("[A] term in a policy may be void and unenforceable if it violates public policy by attempting to 'dilute, condition, or limit statutorily mandated coverage.'" (quoting *Meyer v. State Farm Mut. Auto. Ins. Co.*, 689 P.2d 585, 589 (Colo. 1984))).

¶65 Instead, the majority's reasoning turns on considerations regarding the affordability of Essentia's policy, the kinds of vehicles Essentia insures, and the notion that Essentia's policy is adjunctive, working in tandem with the regular-use policy it required Hughes to acquire. The majority also leans hard on the assertion that Hughes is trying to double-dip. But none of these reasons explain why Essentia's policy does not improperly dilute its insureds' UM/UIM benefits. Consequently, I respectfully dissent.

A. Affordability Is Irrelevant to Whether Essentia's Policy Is Void and Unenforceable Under Section 10-4-609

¶66 The majority's concern about the affordability of antique/classic vehicle liability insurance is misplaced for two reasons. First, while Essentia is required to offer UM/UIM protection, a person shopping for an affordable liability policy for their antique/classic vehicle need not accept the UM/UIM coverage offered. § 10-4-609(1)(a)(II). Thus, even if the majority is correct that a policy offering the requisite UM/UIM protection would be significantly more expensive, a consumer

could still buy inexpensive liability coverage by simply opting not to buy the UM/UIM protection.

¶67 Second, affordability is irrelevant to whether Essentia's policy is void and unenforceable under section 10-4-609. This is because Essentia's policy—no matter its price—dilutes its insureds' UM/UIM coverage. Indeed, Essentia's policy doesn't, for instance, provide coverage for an insured's catastrophic injuries sustained in an accident caused by an uninsured, negligent motorist if the insured was driving their regular-use vehicle or any other vehicle besides the antique/classic car covered by Essentia's policy. And, while it's true that Essentia's policy requires its insureds to have a regular-use vehicle with coverage that complies with Colorado's UM/UIM requirements, that doesn't save the policy because section 10-4-609 is intended to protect persons, not vehicles; thus, *both* policies must comply with section 10-4-609. It is *those* policies that work in tandem to protect a financially responsible insured who is injured by a financially irresponsible tortfeasor.

¶68 To be sure, many insureds injured in accidents caused by negligent, uninsured or underinsured motorists will not sustain injuries that would justify recovery under more than one policy. But there are, without question, some who will sustain such catastrophic injuries. These are the insureds who most need the protection of the policy or policies that cover them. If Hughes, for instance,

suffered $500,000 in bodily injury damages, she would have had reason to look beyond Travelers's policy for additional UM/UIM coverage. Yet the majority never explains how Essentia's policy—which fails to comply with the requirements of section 10-4-609—can be saved by tying it to a policy that does comply since the insured must be offered the requisite UM/UIM coverage under both policies. Sure, the majority points to the "extraordinarily low" registration fees for some of the cars that Essentia insures, but it's a huge leap to suggest that those fees explain why the specific public policy reasons articulated by the General Assembly in section 10-4-609 and emphasized by this court in *DeHerrera* aren't dispositive here.

¶69 Essentia's policy is void under the statute for other reasons as well. Essentia has, for instance, so limited its UM/UIM coverage that it has no obligations to its insureds as pedestrians. Thus, if one of Essentia's insureds suffered catastrophic injuries after being struck walking down the street by a hit and run driver, Essentia would have no obligation to provide UM/UIM coverage to that person. When considered in this light, it turns out that Essentia's "affordable" policy comes at a very *high* price indeed.

¶70 Essentia's policy certainly came at a high price for Hughes. Because Essentia's policy limited its UM/UIM protection to Hughes's Ford Mustang and Ford Model A, she was only able to seek benefits under Travelers's policy. She

was shut out under Essentia's policy even though we unequivocally explained in *DeHerrera* that this type of vehicle-specific limitation was invalid. Essentia's policy isn't an affordable adjunctive policy, it's an unenforceable vehicle-based limitation that significantly dilutes its insureds' UM/UIM protection.

B. The Type of Vehicle and How Often It's Driven Does Nothing to Explain How Essentia's Policy Protects Persons

¶71 Relatedly, in my view, the majority's discussion of antique/classic cars completely loses sight of the purpose of the UM/UIM statute. The fact that insureds covered by Essentia's antique/classic vehicle policy agree to use their covered vehicles primarily for purposes like car club activities and parades, and to use them "infrequently" for other purposes, does nothing to explain how Essentia's policy protects persons, like Hughes, outside the narrow confines of her use of her covered vehicles.

¶72 Essentia's invalid exclusion of UM/UIM coverage for its insureds as pedestrians illustrates the point. If Hughes was injured by the uninsured driver of a little red Corvette while walking across a crosswalk during an antique/classic car parade, Essentia would have no obligation under its policy to provide her with UM/UIM coverage, no matter how serious her injuries. Put another way, this aspect of the majority's analysis turns on the risk to the insurer instead of the risk to the insured.

C. Hughes Is Not Trying to Double-Dip; Essentia's Policy Is Void Because It Reduces Its Insureds' UM/UIM Protection

¶73 The majority's reliance on Essentia's regular-use vehicle provision, and the notion that its policy is adjunctive, working in tandem with the regular-use vehicle's policy, similarly leads it off course. Among other problems, the majority fails to consider how its holding squares with section 10-4-609(1)(c), which bars an insurer from prohibiting UM/UIM "stacking."

¶74 Section 10-4-402(3.5), C.R.S. (2023), defines "[s]tacking" as "aggregating, combining, multiplying, or pyramiding limits of separate policies providing uninsured and underinsured motorist coverage as provided in section 10-4-609." Stacking can maximize UM/UIM coverage involving the same insurer and the same primary insured. 12 Jordan R. Plitt, et al., *Couch on Insurance* § 169:7 (3d ed.), Westlaw (database updated Nov. 2023) (explaining stacking within a single policy versus between policies, as well as other variants on stacking). It can also maximize coverage by allowing an insured to tap into UM/UIM coverage in multiple policies from the same insurer or from different insurers. *Id.* When an insured has multiple applicable UM/UIM policies, "the policies must be allowed to 'stack'—that is, a second policy's coverage begins where the first policy's coverage leaves off." *Ligotti v. Allstate Fire & Cas. Ins. Co.*, No. 22-cv-01155-PAB-MDB, 2023 WL 6216623, at *4 (D. Colo. Sept. 25, 2023) (quoting *Jordan v. Safeco Ins.*

Co. of Am., Inc., 2013 COA 47, ¶ 38, 348 P.3d 443, 451) (describing the interplay between the UM/UIM coverage available to the insured under policies issued by two different unaffiliated insurers).

¶75 Hughes is certainly not the only person to have vehicle liability and UM/UIM coverage under multiple policies. An injured insured may, for instance, have UM/UIM coverage under their personal vehicle liability policy and may also have UM/UIM coverage under their spouse's separate vehicle liability policy (as a member of the household). And while once upon a time the General Assembly prohibited the stacking of certain types of coverage, that has not been true since 2008. *See* § 10-4-609(1)(c) (prohibiting insurers from enforcing anti-stacking provisions); *see also Snell v. Progressive Preferred Ins. Co.*, 260 P.3d 37, 38 (Colo. App. 2010) ("[Senate Bill 07-256] also removed language from section 10-4-609(2) which had permitted insurers to include policy language prohibiting 'stacking' of UM/UIM limits in policies issued to an insured and resident relatives of the insured."). To my mind, this raises an important question: If Essentia can't prohibit Hughes from stacking UM/UIM coverage from both its policy and Travelers's policy, how can Essentia force her to limit her coverage to essentially accomplish the same end?

¶76 This is how the majority misses both the mechanics and the math of how these policies are intended to work in tandem, and why the majority's opinion

turns UM/UIM coverage on its head. Simply put, the majority fails to recognize that, by limiting UM/UIM protection to its insureds' use of their antique/classic vehicles, Essentia is improperly reducing the *total amount* of UM/UIM protection available to its insureds. Hughes is entitled to seek to recover UM/UIM benefits under both Travelers's policy and Essentia's policy so long as she can prove she sustained damages exceeding the amount of coverage provided under Travelers's policy.

¶77 I acknowledge that there are, without question, arguments for and against exempting antique/classic vehicle insurance policies from the requirements of section 10-4-609. An argument can also be made that requiring UM/UIM coverage irrespective of the vehicle occupied by an insured at the time of injury may lead to unjust results under certain circumstances. We explicitly acknowledged as much in *DeHerrera*. 30 P.3d at 176 (observing that a family owning more than one vehicle could purchase insurance for only one vehicle and yet recover UM/UIM benefits when struck by an uninsured motorist while occupying one of its owned but uninsured vehicles).

¶78 Importantly, however, it is not for this court to limit the UM/UIM statute's reach or to carve out exceptions for certain kinds of vehicles. Those matters are best left to the General Assembly. To me, this is where the majority veers off course.

II. Conclusion

¶79 In sum, because Essentia's policy "limit[s] statutorily mandated coverage," its policy is invalid and unenforceable. *Terranova*, 800 P.2d at 60. For that reason, I would affirm the division's judgment.