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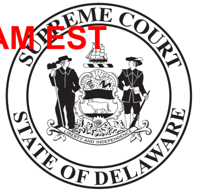

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AEARO TECHNOLOGIES LLC, *et al.*, Appellants/Plaintiffs Below, v. ACE AMERICAN INSURANCE COMPANY, *et al.*, Appellees/Defendants Below.	))))))))))	No. 381, 2024 On appeal from the Superior Court of the State of Delaware C.A. No. N23C-06-255-SKR CCLD

***AMICUS CURIAE* BRIEF OF UNITED POLICYHOLDERS**
IN SUPPORT OF APPELLANTS AND REVERSAL

Dated: December 10, 2024

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STATEMENT OF IDENTITY OF *AMICUS CURIAE* AND INTEREST IN THIS CASE

Amicus Curiae, United Policyholders ("UP"), is a non-profit 501(c)(3) organization that advocates and provides resources for individual and commercial insurance consumers throughout the United States, including Delaware. UP informs and assists purchasers of insurance when they are seeking a policy or pursuing a claim for loss. Grants, donations, and volunteers support UP's core work, which is divided into three program areas: Roadmap to Recovery™ (*i.e.*, disaster recovery and claim help), Roadmap to Preparedness (*i.e.*, insurance and financial literacy and disaster preparedness), and Advocacy and Action (*i.e.*, advancing pro-consumer laws and public policy). UP routinely works with regulators on matters related to insurance policy sales, claims and consumer rights and serves as a resource to public officials, regulators, and academics. For instance, UP's Executive Director has been an official consumer representative to the National Association of Insurance Commissioners since 2009. UP also serves on the Federal Advisory Committee on Insurance, which briefs the Federal Insurance Office and, in turn, the U.S. Treasury Department.

Since its founding in 1991, UP has filed *amicus curiae* briefs in federal and state appellate courts across 42 states and in over 500 cases. *Amicus* briefs filed by UP have been cited in the opinions of state supreme courts and the U.S. Supreme

Court. *E.g.*, *Humana Inc. v. Forsyth*, 525 U.S. 299, 314 (1999); *Sproull v. State Farm Fire & Cas. Co.*, 184 N.E.3d 203, 209 (Ill. 2021); *Julian v. Hartford Underwriters Ins. Co.*, 110 P.3d 903, 911 (Cal. 2005); *Cont'l Ins. Co. v. Honeywell Int'l, Inc.*, 188 A.3d 297, 322 (N.J. 2018); *Allstate Prop. & Cas. Ins. Co. v. Wolfe*, 105 A.3d 1181, 1185-86 (Pa. 2014).

Based on its experience and expertise, UP can effectively supplement the arguments presented to the Court by the parties in this action. Specifically, as UP explains, the Superior Court's refusal to credit 3M's payments of joint defense costs on behalf of Aearo, its wholly owned subsidiary, towards Aearo's Self-Insured Retention ("SIR") requirement is unmoored from the basic function of SIRs. The Superior Court's holding also insists on corporate formalities in a context where they have no practical purpose. And the decision below further ignores the familiar dynamics of joint defense litigation involving corporate parents and subsidiaries. Further, the Superior Court's holding contravenes a well-established canon of construction governing insurance contracts under Delaware law: that policy ambiguities be construed against the insurer. Should the Superior Court's holding be sustained, the ruling risks destabilizing the corporate insurance landscape, which is predicated on insurers' good faith fulfillment of their coverage obligations. The decision, if affirmed, also threatens to upend standard and well-accepted rules of insurance contract construction in Delaware and other jurisdictions.

INTRODUCTION

In this case, Twin City Fire Insurance Company ("Twin City" or "the insurer") seeks to evade its coverage obligations to policyholder Aearo LLC ("Aearo") based on a strained reading of its commercial general liability insurance policy. Specifically, Twin City asserts that Aearo never satisfied its "Self-Insured Retention" ("SIR") requirement. A SIR requirement is a common insurance tool that provides that the insured must pay a certain amount (here, $250,000) of its attorneys' fees and other defense costs before the insurer will cover the remainder of those fees and costs under the policy.

Aearo's parent company, 3M, paid $370 million on behalf of itself and its wholly owned subsidiary, Aearo,[1] pursuant to their joint defense in the underlying product litigation—far exceeding the $250,000 SIR requirement. But the insurer argued, and the Superior Court agreed, that payments made on Aearo's behalf by 3M did not count towards satisfaction of the SIR, and therefore, the insurer could deny coverage altogether. That ruling was wrong and requires reversal to prevent widespread uncertainty in the corporate insurance landscape.

The Superior Court's decision blinds itself not only to the realities of parent-subsidiary relationships, but also to the familiar dynamics of joint defense litigation,

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[1] *See* Press Release, 3M, *3M Completes Acquisition of Aearo Technologies Inc.* (Apr. 1, 2008), https://news.3m.com/2008-04-01-3M-Completes-Acquisition-of-Aearo-Technologies-Inc (Aearo is wholly owned subsidiary of 3M).

wherein corporate parent co-defendants typically pay the defense fees and costs for their subsidiaries. If allowed to stand, the Superior Court's ruling would have serious unintended consequences for insurance coverage across corporate America, causing chaos for the commercial insurance industry and the insured.

SIRs serve important purposes in the insurance market: ensuring that the insured has "skin in the game" and providing a "buffer" for the insurer of a certain amount of initial loss before coverage kicks in. Both purposes are fulfilled where, as here, a parent company makes payment on behalf of its wholly owned subsidiary pursuant to joint defense litigation, and both are frustrated by the Superior Court's contrary construction.

If all that weren't enough, the Superior Court's decision flouts a bedrock rule of insurance contract construction: that contractual ambiguities are construed against the insurer. By ignoring this blackletter rule, the Superior Court's decision threatens to upend the settled expectations of parties to commercial insurance contracts in Delaware and nationwide, beyond situations involving SIRs.

As UP well knows from its experience advising on issues common to insurance disputes, many insurers' default position is to deny contracted- and paid-for coverage for any or no reason at all, except to negotiate a settlement amount less than the claim value or, worse, to leave the insured with no coverage whatsoever. The Superior Court's decision will embolden this brazen practice, encouraging

insurers to attempt to deny coverage based on the technicality of whether the parent or subsidiary paid the SIR—a distinction that makes no difference as to the purposes of these provisions. This Court should therefore recognize important commercial insurance norms and corporate-structure realities, restore well-established canons of insurance contract construction, and reverse the Superior Court's decision.

ARGUMENT

I. The Superior Court's Holding Threatens To Destabilize Corporate Insurance.

The Superior Court's holding risks unsettling the corporate insurance environment in three important respects. First, the decision frustrates the essential purposes of SIRs: reducing moral hazard and insulating the insurer from a specified amount of initial loss. Second, the ruling imposes a rigid understanding of corporate form that ignores the realities of parent-subsidiary relationships, needlessly complicating their operations. Third, the decision hamstrings corporate entities' ability to jointly defend themselves in litigation by creating a rule that would allow insurers to deny liability insurance coverage based on whether the parent or subsidiary paid the lawyers' bills.[2] Each of these issues, standing alone, is sufficient to reverse; together, they show why reversal is necessary to protect stability in the corporate insurance industry.

A. The Superior Court's Holding Undermines The Intended Purposes Of Self-Insured Retention Requirements.

SIRs' functions—reducing moral hazard and providing a "buffer" for initial losses—are undermined by the Superior Court's ruling, which threatens to convert

[2] Aearo has also argued that its own wholly owned subsidiary, Aearo Technologies, LLC, paid $411,697 in joint defense costs. *See* Pls.' Opening Br. at 15. UP understands this fact may be in dispute; however, to the extent Aearo Technologies, LLC, contributed to joint defense payments, UP incorporates its arguments regarding 3M's payments as to Aearo Technologies, LLC's payments as well.

SIRs into yet another formalistic trip wire insurers will use to wriggle out of coverage obligations.

1. *Moral Hazard*.

First, SIR provisions mitigate the classic economics problem known as "moral hazard." "A moral hazard arises when insurance coverage encourages the insured to engage in risky behavior on the belief that the insurer will front the costs of the insured's recklessness." *Valent Pharms. Int'l, Inc. v. AIG Ins. Co. of Canada*, 625 F. Supp. 3d 309, 345 (D.N.J. 2022). SIRs reduce moral hazard by ensuring that the insured is not free to assume risk without any costs to it—that is, the insured has "skin in the game." *See* George William Van Cleve, *Bankruptcy and the Future of Insurance Risk-Sharing*, 21 Am. Bankr. Inst. L. Rev. 99, 101 (2013); *cf.* Adam Feibelman, *Defining the Social Insurance Function of Consumer Bankruptcy*, 13 Am. Bankr. Inst. L. Rev. 129, 135-37 (2005) (using examples to illustrate how insurers can protect against moral hazard).[3] SIRs promote "risk-sharing" and motivate insureds to further mitigate risk by requiring the insured to pay a certain amount of its own defense fees and costs before the insurer assumes responsibility.

[3] For example, insurers may charge risk-based premiums, which adjust the incentives of the insured by making premiums sensitive to their particular risk profile. *Id.* Similarly, a deductible allocates a portion of losses to the insured by making the insured responsible for all losses up to a certain amount before coverage is available. *Id.*

See Van Cleve, *Bankruptcy and the Future of Insurance Risk-Sharing*, 21 Am. Bankr. Inst. L. Rev. at 101 & n.8.[4]

The moral-hazard problem is entirely absent, on the other hand, from a situation in which a corporate parent or other close corporate affiliate pays the SIR on behalf of the insured. In fact, from the perspective of internalizing the costs of risk, payments by a parent corporation on behalf of its wholly owned subsidiary are materially *identical* to payments made directly by the subsidiary. A wholly owned subsidiary is funded entirely by its parent, meaning that costs to the parent corporation's bottom-line (*e.g.*, SIR payouts) directly impact the subsidiary and vice versa. *See* John H. Matheson, *The Modern Law of Corporate Groups: An Empirical Study of Piercing the Corporate Veil in the Parent-Subsidiary Context*, 87 N.C. L. Rev. 1091, 1093-94 (2009). Put otherwise, costs borne by the parent are in effect borne by the subsidiary—that is, the costs of conduct that triggers insurance coverage are fully internalized and accounted for on the balance sheet.[5]

Given the identity of interests between a wholly owned subsidiary and its

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[4] To further reduce moral hazard, some SIRs specifically preclude the insured from using *another* insurance policy or an indemnity agreement to satisfy the SIR. *See, e.g.*, *Vons Cos. v. U.S. Fire Ins. Co.*, 78 Cal. App. 4th 52, 60 (Cal. Ct. App. 2000).

[5] Parents and their wholly owned subsidiaries often prepare consolidated financial statements reflecting the assets, liabilities, income, revenue, expenses, and cash flows of the parent and subsidiary as one financial entity. *See* Pls.' Opening Br. at 2. That is true for Aearo and 3M here. *See, e.g.*, 3M, Annual Reports & Proxy Statements, https://investors.3m.com/financials/annual-reports-proxy-statements.

parent corporation, it is pure fiction to distinguish the two entities' decision-making when it comes to risk. *See* Derek Flint, *Incentives, Employers, and the Corporate Veil: Should Domestic Corporations Be More Accountable for the Actions of Their Overseas Subsidiaries?*, 48 Ariz. St. L.J. 833, 841-42 (2016). As the Supreme Court has put it: "A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousnesses, but one. They are not unlike a multiple team of horses drawing a vehicle under the control of a single driver." *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 771 (1984). On the other side of the coin, a wholly owned subsidiary owes fiduciary duties to its parent, meaning the subsidiaries' directors are legally obligated to mitigate risk on the parent corporation's behalf. *See Anadarko Petroleum Corp. v. Panhandle E. Corp.*, 545 A.2d 1171, 1174 (Del. 1988) ("[I]n a parent and wholly-owned subsidiary context, the directors of the subsidiary are obligated ... to manage the affairs of the subsidiary in the best interests of the parent[.]"). This further eliminates any moral hazard concern that the subsidiary would be disinterested in costs paid by the parent corporation.

As these dynamics illustrate, there is no relevant difference between a parent corporation's disbursing payment on behalf of its wholly owned subsidiary and the subsidiary's paying from its own account. There is no principled reason to draw this

distinction in interpreting SIR provisions.

2. *"Buffer" Layer*.

The Superior Court's holding that 3M's payment of defense fees and costs incurred by Aearo do not count towards satisfaction of Aearo's SIR is also at odds with the second basic function of SIRs, which the Superior Court did not even acknowledge: to provide a "buffer layer" to the insurer when insurable losses occur. Like a deductible, a SIR guarantees that the insurer does not provide coverage unless and until the loss exceeds a specified amount borne by the insured (while the insured, in turn, benefits in the form of lower premiums).[6] The SIR thus serves as a cushion for more frequent, less severe losses that are retained by the insured and not transferred to the insurer.

The facts here plainly satisfy this purpose. As noted, after 3M acquired Aearo in 2008, 3M paid over $370 million in joint defense fees and costs as a result of yearslong multidistrict litigation concerning products manufactured by Aearo.[7] The SIR was $250,000—less than 0.1 percent of the $370 million paid in joint defense

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[6] *See* Nicholas A. Bonaminio & Matthew A. Chiricosta, *Satisfying Policy Retentions or Deductibles With Other People's Money*, Calfee (Feb. 16, 2022), https://www.calfee.com/blog/policy-retentions-deductibles-insurance-claim (explaining that "insurers tend to charge lower premiums if the insured is willing to retain more dollar risk for itself through retentions").

[7] A00854-A00857.

fees and costs.[8] Even though the amount incurred and paid vastly exceeded the "buffer" established by the SIR, the Superior Court held that because the $370 million in defense fees and costs were paid from 3M's account, the SIR was not satisfied. That holding misapprehends the point of the SIR entirely. Regardless of whether the initial $250,000 was paid from the account of 3M or Aearo, the insurer did not have to pay that amount prior to initiating coverage.

Again, by undermining the basic function of SIRs, the Superior Court's decision threatens to remake SIRs from a practical insurance tool into a formalistic box-checking exercise, divorced from any genuine policy rationale other than to allow insurers to deny coverage.

B. The Superior Court's Holding Ignores Modern Corporate Structures.

The Superior Court held that, based on the "plain language" of the SIR, 3M and Aearo were required to—but did not—transfer funds from 3M's account to Aearo's account, to then pay out in satisfaction of invoices for attorneys' fees and other defense costs from Aearo's account. Op. at 14-15. This rule is unworkable in the modern corporate landscape where parent-subsidiary relationships predominate. *See* Matheson, *The Modern Law of Corporate Groups*, 87 N.C. L. Rev. at 1093-94 (explaining that "a parent corporation [acting] as the sole shareholder of multiple,

[8] *See* Pls.' Opening Br. at 15.

separately incorporated operating subsidiaries" has become the "standard organizational structure" for large corporations).

Should the Superior Court's rule stand, Delaware corporations will be required to parse extensive minutiae about which of their subsidiaries' insurance policies require payments from which accounts—all for the sole purpose of satisfying an incorrect interpretation of SIRs to access insurance coverage for which substantial premiums were paid. *Cf.* Andrew Cordonnier & Jeff Borghino, *Parent's Payment on Behalf of Subsidiary*, The Tax Adviser (Jan. 31, 2010), https://www.thetaxadviser.com/issues/2010/feb/parent-spaymentonbehalfofsubsidiary.html (explaining it is "customary" for a parent to pay expenses on behalf of its subsidiary for administrative convenience). And where, as here, the subsidiary is a holding entity with no account of its own from which to make payments, the parent corporation will need to open a new account altogether—again, for the sole purpose of SIR satisfaction. *See* A00922; Pls.' Opening Br. at 37-38. That degree of formalism accomplishes nothing as to the functions of SIRs.

Yet the resulting inefficiencies could be staggering. Some corporations have hundreds of wholly owned subsidiaries. *See* Glenn Barklie, *Where Do the World's Top Companies Have Subsidiaries?*, Investment Monitor (Mar. 14, 2022), https://www.investmentmonitor.ai/features/where-do-the-worlds-top-companies-have-subsidiaries/?cf-view (finding that the world's leading 6,186 companies have 370,320

subsidiaries—more than one-fourth of which are located in the U.S.). Even for smaller corporations, it is not uncommon for multiple insurance policies to be issued to multiple subsidiaries. And under the Superior Court's rule, *all* corporations engaged in mergers or acquisitions would have to discern whether the relevant policy language could be interpreted such that they might later be required to transfer payments intended to satisfy a SIR to a particular subsidiary account (and perhaps open a new account for that subsidiary).

The danger of the Superior Court's ruling is clear. Should a corporation disburse payment from the "wrong" account—whether due to accounting error or because it did not read an insurance policy in the same manner that the Superior Court did here—the company could be denied coverage *entirely*. Those coverage denials could carry devastating repercussions for corporations that undertook significant litigation expenses with the expectation of reimbursement from their insurers. The insurers, for their part, would get a windfall.[9]

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[9] The Superior Court's interpretation also incentivizes insurers' bad faith by allowing them to pick and choose when to apply policy requirements to the parent or to the subsidiary depending on which would allow the insurer to avoid coverage obligations. For example, insurers could accept premium payments or notice from a parent, then deny coverage on the basis that SIR payments were made from the parent. That is what happened here: Twin City engaged directly with 3M throughout its dealing, then claimed, without warning, that 3M could not satisfy the SIR.

C. The Superior Court's Holding Is Inconsistent With Joint Defense Litigation.

The Superior Court's ruling also ignores the familiar dynamics of joint defense litigation. Where SIR funds are incurred and paid as part of a joint defense in litigation against a wholly owned subsidiary (*i.e.*, Aearo) and its parent (*i.e.*, 3M), the entwinement of parent and subsidiary and their interests in the bottom line are at their apex. That dynamic makes this case especially far removed from the kind of third-party payor scenario that SIRs are designed to prohibit.

The facts prove why the Superior Court's holding would create a pointless legal regime from the perspective of SIRs' core uses. Here, Aearo and 3M mounted a collective and coordinated defense in the underlying litigation. Both Aearo and 3M were named as defendants. *See* Pls.' Opening Br. at 12. The same defense counsel jointly represented Aearo and 3M. *Id.* And the majority of the work undertaken by counsel was undertaken for both Aearo and 3M's benefit.

Such an arrangement is common. A parent company often pays "joint defense costs"—meaning they are covering legal fees and other defense costs related to a lawsuit where multiple subsidiaries or related entities are involved. That allows related companies to share not only the cost of defending against a common claim, but also information about common defenses. *See Hugo Boss Fashions, Inc. v. Fed. Ins. Co.*, 252 F.3d 608, 623 n.15 (2d Cir. 2001) ("[T]he fact that the parent company, rather than the subsidiary, paid the costs" of defending the insured in underlying

litigation "is of no moment.").

Again, the Superior Court did not even acknowledge that 3M's payment of defense fees and costs on Aearo's behalf were made pursuant to a joint defense arrangement. Yet these circumstances render this case vastly different from those where a distant, unaffiliated third party contributes to a SIR.

II. The Superior Court Ignored An Accepted Canon Of Insurance Contract Construction That Requires Construing Ambiguities In Aearo's Favor.

The Superior Court's decision further threatens to rewrite a fundamental canon of insurance contract construction under Delaware law (and in many other jurisdictions). As a result, the decision could upset the settled expectations of parties to commercial insurance contracts across the country and across contexts, beyond even SIR provisions.

The applicable canon, called *contra proferentum*, requires that ambiguous policy language be construed "strongly against" the insurer as drafter and in favor of coverage for the insured. *Monzo v. Nationwide Prop. & Cas. Ins. Co.*, 249 A.3d 106, 118 (Del. 2021). This and other rules of insurance contract construction are critical to protecting the rights and reasonable expectations of the insureds in the context of policies that are functionally contracts of adhesion offered predominantly as-drafted by the insurer, without meaningful opportunity for the insured to negotiate terms and conditions.

As Appellants argue and the above points about the purpose of SIRs show, the relevant policy language unambiguously allows 3M's payment of defense fees and costs incurred by Aearo to satisfy the SIR. *See* Pls.' Opening Br. at 17-33. However, in the alternative, if the SIR's language were ambiguous, the Superior Court was required—but failed—to construe the language of the policy "most strongly against the insurance company that drafted it." *Monzo*, 249 A.3d at 118.

Applied here, the relevant language must be interpreted to allow payments from the account of Aearo's parent corporation, made on Aearo's behalf for defense fees and costs incurred by Aearo, to satisfy the SIR.

Delaware courts have long applied the rule of *contra proferentum* to resolve ambiguities in insurance contracts in favor of the insured. *See Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 926 (Del. 1982) ("As a general rule[] … an insurance contract is construed strongly against the insurer, and in favor of the insured …."); *State Farm Mut. Auto. Ins. Co. v. Johnson*, 320 A.2d 345, 347 (Del. 1974) (first adopting rule). "The policy behind this principle," as this Court has stated, "is that the insurer … is the entity in control of the process of articulating the terms. The other party … has very little say about those terms except to take them or leave them or to select from limited options offered by the insurer or issuer. Therefore, it is incumbent upon the dominant party to make terms clear. Convoluted or confusing terms are the problem of the insurer or issuer-not the insured or investor." *Ginsberg v. Harleysville Worcester Ins. Co.*, __ A.3d __, 2024 WL 4599219, at *5 (Del. Oct. 29, 2024) (quotation marks omitted); *see also Johnson*, 320 A.2d at 347 (observing an insurance contract is "an adhesion contract, not a truly consensual agreement"). As such, an insurance contract should be read to accord with the "reasonable expectations" of the insured so far as its language will permit. *Wilhelm v. Nationwide Gen. Ins. Co.*, 2011 WL 4448061, at *3-4 (Del. Super. Ct.

May 11, 2011), *aff'd*, 29 A.3d 246 (Del. 2011) (unpublished table decision). If the contract terms "are ambiguous or conflicting, or if the policy contains a hidden trap or pitfall, or if the fine print takes away that which has been given by the large print," the insured's reasonable expectations control. *Hallowell*, 443 A.2d at 926-27 (collecting cases).

Here, Aearo reasonably expected that payments made by its 100% corporate parent on its behalf, of attorney's fees and other defense costs incurred by Aearo pursuant to a joint defense arrangement, would count towards satisfaction of the SIR. Again, it is standard business practice for a parent company to pay its wholly owned subsidiary's defense fees and costs and other liabilities. *See supra* 14-15; *Hugo Boss Fashions, Inc.*, 252 F.3d at 623 n.15. And Aearo is a holding entity with no account of its own from which to make payments—meaning any payments would necessarily need to come from its parent corporation's account (3M) or its wholly owned subsidiary's account (Aearo Technologies LLC). *See supra* 12 (citing Pls.' Opening Br. at 37-38; A00922). Thus, the most reasonable—or at minimum, *a* reasonable—interpretation of the definition contained in Twin City's policy that "self-insured retention means the amount *you* or *any insured* must pay as damages and claim expenses" includes payments from Aearo's parent corporation's account. Op. at 13 n.61 (quoting Twin City Policy at 24 (emphasis added) (cleaned up)); *cf. Nationwide Mut. Ins. Co. v. Certain Underwriters at Lloyd's, London*, 2016 WL 3648610, at *4

(N.D. Cal. July 7, 2016) (near-identical language "f[ell] short of stating a clear and unambiguous requirement for the [insured] to pay the SIR directly from its own coffers, as opposed to indirectly, through other means.").

The same goes for the remaining Twin City policy language, which states that "[y]our obligation to pay the 'self-insured retention' ... shall not be reduced by: ... any payment made on your behalf by another, including any payment from any other applicable insurance," Op. at 13 nn.61 & 62 (quoting Twin City Policy at 24). Aearo reasonably interpreted this language to mean that it was precluded from using payment from an unaffiliated party (for instance, under another insurance policy or an indemnity contract) to satisfy the SIR, not that payment could not be made from the account of Aearo's parent corporation.

In contrast, some insurance contracts *do* explicitly require that the SIR be paid from the insured's "own account," which courts have interpreted to mean that the insured must "personally pay the retained amount." *Travelers Indem. Co. v. Arena Grp. 2000, L.P.*, 2007 WL 935611, at *5 (S.D. Cal. Mar. 8, 2007) (policy which stated "The Retained Amount is the responsibility of the Insured and is to be paid from the Insured's own account" could not be satisfied through third-party payments from other insurers); *Intervest Constr. of Jax, Inc. v. Gen. Fid. Ins. Co.*, 133 So. 3d 494, 503 (Fla. 2014) (third-party payments could satisfy the retention when policy "states that the retained limit must be paid by the insured, but does not specify where

those funds must originate"; contrasting policies that require "payment to be made from the insured's 'own account'"); *Am. Econ. Ins. Co. v. Scottsdale Ins. Co.*, 2015 WL 12764955, at *15 (S.D. Tex. Oct. 29, 2015) (similar). Here, the insurer could have, but did not, expressly require that the SIR be paid from Aearo's "own account." Alternatively, the insurer could have specified that Aearo could not satisfy its SIR through affiliate payments. But the insurer did neither of these things—and it must bear the consequences.

This Court must reverse the Superior Court's ruling to safeguard this traditional rule of insurance contract construction.

CONCLUSION

For these reasons, *Amicus Curiae* United Policyholders respectfully requests that this Court reverse the judgment of the Superior Court.

Respectfully submitted,

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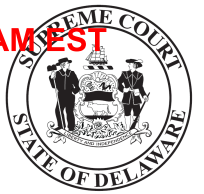

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AEARO TECHNOLOGIES LLC, *et al.*,	)	
	)	No. 381, 2024
Appellants/Plaintiffs Below,	)	
	)	On appeal from the Superior Court of the State of Delaware
v.	)	
	)	
ACE AMERICAN INSURANCE COMPANY, *et al.*,	)	C.A. No. N23C-06-255-SKR CCLD
	)	
Appellees/Defendants Below.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

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