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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1975-15T4

STEVEN RUSSO,

Plaintiff-Appellant,

v.

STATE FARM INDEMNITY COMPANY,

Defendant-Respondent.

Argued September 7, 2017 – Decided December 14, 2017

Before Judges Rothstadt and Vernoia.

On appeal from Superior Court of New Jersey,
Law Division, Somerset County, Docket No. L-
1129-13.

Arthur J. Russo argued the cause for appellant
(Russo Law Offices, LLC, attorneys; Arthur J.
Russo, on the briefs).

Thomas W. Matthews argued the cause for
respondent (Soriano, Henkel, Biehl & Matthews,
attorneys; Thomas W. Matthews, on the brief).

PER CURIAM

Plaintiff Steven Russo appeals from orders granting defendant
State Farm Indemnity Company's summary judgment motion and denying

plaintiff's cross-motion for summary judgment in this insurance coverage dispute. We reverse.

The facts are not disputed. In July 2012, plaintiff was a passenger in a car that was involved in a single vehicle accident caused by the driver's negligence. Plaintiff suffered significant injuries requiring extensive medical treatment costing more than \$1,000,000. The driver's insurance carrier paid plaintiff the \$25,000 limit under the driver's automobile policy.

When the accident occurred, plaintiff owned a motor vehicle and was insured by defendant. His policy provided underinsured motorist coverage (UIM) with a \$100,000 limit. At the time of the accident, plaintiff resided with his parents, Mark and Mary Russo. They also had an automobile policy with defendant that provided UIM coverage with a \$250,000 limit.

Plaintiff sought UIM coverage from defendant under his policy and his parents' policy, and filed a declaratory judgment action seeking coverage under both policies. Defendant subsequently paid plaintiff the full amount due under his policy for UIM coverage,¹ but disputed plaintiff's claimed entitlement to UIM coverage under

¹ Defendant paid plaintiff \$75,000 for UIM coverage under plaintiff's policy after applying a credit against the \$100,000 UIM policy limit for the \$25,000 plaintiff received directly from the driver's insurance carrier.

his parents' policy.² Plaintiff thereafter prosecuted his claim that he was entitled to UIM coverage under his parents' policy.

Plaintiff's parents' 2012 insurance policy, which was in effect at the time of the accident, excludes from UIM coverage a resident relative, like defendant, who is a named insured under another insurance policy providing UIM coverage and who suffers bodily injury or property damage. Plaintiff does not dispute that the plain language of the exclusion otherwise bars his claim for UIM coverage under his parents' policy. Instead, he asserts the exclusion cannot be enforced because defendant added the exclusion in 1999 without providing adequate notice to his parents.

Plaintiff's parents have had an automobile policy with defendant since 1990.³ Prior to 1999, their policy extended UIM coverage to resident family members. That coverage changed upon the renewal of the policy in 1999.

The record shows that in June 1999, defendant sent plaintiff's parents documents related to the renewal of their automobile policy

² Although plaintiff's parents' policy had a \$250,000 UIM policy limit, plaintiff claims only \$150,000 in coverage because he recognizes defendant is entitled to credits against the policy limit for the \$25,000 he received under the driver's policy and \$75,000 he received under his own UIM policy with defendant.

³ For the first two years the policy, the insurer was State Farm Mutual Automobile Insurance Company. In 1993, defendant became the insurer under the policy.

and changes to the policy. The documents were unaccompanied by a letter from defendant describing or highlighting the policy changes or directing that plaintiff's parents review the materials provided to determine the changes to their policy. The documents consisted of forty-one pages, including a two-page double-sided "Auto Renewal Standard Policy" notice and premium invoice, a single page double-sided document entitled "Private Passenger Automobile Classification," an eleven-page pamphlet entitled "New Jersey Auto Insurance Buyer's Guide," a single page double-sided document entitled "News and Notes," three automobile insurance cards, and a nineteen-page pamphlet entitled "Important Notice About Changes to Your Car Policy."

The nineteen-page "Important Notice About Changes to Your Car Policy" pamphlet described the changes to coverage over five pages, including four numbered paragraphs explaining the changes to the "UNINSURED AND UNDERINSURED MOTORIST COVERAGE." The third paragraph stated in pertinent part that:

Coverage will . . . not apply to any person other than [the named insured] if that person is a named insured or relative of a named insured under another policy providing Uninsured and Underinsured Motorist Coverage.

The pamphlet also stated that the changes in the policy were set forth in two attached endorsements. One of the endorsements detailed the UIM coverage under the policy and identified changes

to the exclusions to UIM coverage that were being added to the policy. More particularly, the endorsement explained a change to the policy adding the following exclusion to UIM coverage:

THERE IS NO COVERAGE FOR ANY RELATIVE IF THAT RELATIVE IS A NAMED INSURED UNDER ANOTHER POLICY PROVIDING UNINSURED AND UNDERINSURED MOTORIST COVERAGE.

The "Important Notice About Changes to Your Car Policy" pamphlet also directed the insured to the four-page "Auto Renewal Standard Policy" notice, which detailed the premiums charged for various coverages under the policy and served as the renewal bill for the policy. The pamphlet begins with the statement that "[t]he enclosed renewal bill reflects premium savings as well as coverage changes as a result of" the enactment of the Automobile Insurance Cost Reduction Act of 1998 (AICRA), N.J.S.A. 39:6A-1.1 to -35. (Emphasis added). However, the "Auto Renewal Standard Policy" notice did not identify any changes to plaintiffs' parents' UIM coverage. To the contrary, the notice included a section entitled "Additional Policy Information" listing three endorsements to the policy, but the endorsements pertained to personal injury protection under the policy. The notice did not list the endorsement, included in the "Important Notice About Changes to Your Car Policy" pamphlet, pertaining to the change in UIM coverage.

Following plaintiff's parents' receipt of the June 1999 documents and their payment of the premium, in July 1999 defendant sent them an automobile insurance standard policy booklet, which included the insurance policy, and additional auto declarations pages. The declarations pages for the 1999 renewal policy, and the declarations pages issued for subsequent annual policy renewals prior to the 2012 accident, did not highlight or identify the 1999 change in UIM coverage excluding resident family members who had personal automobile policies. The 1999 renewal policy, and each succeeding annual renewal policy issued to plaintiff's parents prior to the 2012 accident, included an exclusion from UIM coverage for resident family members who had personal automobile policies with UIM coverage.

Defendant moved for summary judgment arguing that plaintiff was excluded from UIM coverage under his parent's policy because he was a resident family member with his own automobile policy with UIM coverage. Plaintiff opposed the motion and cross-moved for summary judgment asserting the exclusion could not be enforced because his parents had not been properly notified of the change in UIM coverage in 1999 and thereafter.

The motion court granted defendant's motion and denied plaintiff's cross-motion. The judge rejected plaintiff's reliance on Skeete v. Dorvius, 184 N.J. 5, 9 (2005), where the Court

determined that an insurance carrier's notice of a change in UIM coverage "was insufficient because of its presentation as part of an essentially undifferentiated passel of two hundred documents." The judge found Skeete required that a carrier "fairly" notify an insured of coverage changes, and determined that defendant's delivery of the "Important Notice About Changes To Your Car Policy" pamphlet, which described the change to the UIM coverage and explained the exclusion, provided fair notice of the 1999 change in UIM coverage. The judge found the package of documents defendant delivered in June 1999 was "incomparable to the package in Skeete both in terms of quantity and clarity," and concluded plaintiff's parents received the fair notice of the policy change that Skeete requires. See id. at 8-9.

The court entered an order granting defendant's summary judgment motion, dismissing the complaint and denying plaintiff's cross-motion. This appeal followed.

We conduct a de novo review of a trial court's grant of summary judgment, and apply the same standard as the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017). The movant is entitled to summary judgment if the record shows "there is no genuine issue as to any material fact and 'the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co.

of Pittsburgh, 224 N.J. 189, 199 (2016)); see also R. 4:46-2(c). Interpretation of an insurance policy presents a legal question, which we review de novo. Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med. & Physical Therapy, 210 N.J. 597, 605 (2012).

Plaintiff first argues the facts here are identical to those in Skeete and the judge erred in finding the June 1999 documents fairly notified plaintiff's parents of the addition of the UIM exclusion for resident family members who have automobile policies with UIM coverage. Plaintiff further argues defendant failed to provide fair notice of the change in coverage because the declarations pages in 1999 did not detail or provide notice of the coverage reduction resulting from the exclusion. Plaintiff also asserts that defendant provided contradictory information about the exclusion in 1999 because although the "Important Notice About Changes To Your Car Policy" pamphlet referred to the endorsement incorporating the exclusion, the "Auto Renewal Standard Policy" notice did not list the UIM endorsement as applying to plaintiff's parents' renewal policy.

In Skeete, the insured received two packages of information concerning changes to his automobile policy. Skeete, supra, 184 N.J. at 7. The first package consisted of eighty-three pages concerning changes required under AICRA. Ibid. The two packages

included a cover letter outlining the changes and advising the insureds to review the changes, a New Standard Policy Booklet, a renewal declarations page, insurance cards, three endorsements, personal injury protection pre-certification requirements, a guide, and a Rating Information Form. Ibid. The insureds were subsequently sent a third package consisting of an additional seventy-eight pages of documents, including New Standard Automobile Policy booklets, an amended declarations page, and an "Important Notice to New Jersey Policyholders, highlighting policy changes." Id. at 8.

In Skeete, we determined that because the insurance carrier "inundate[ed] [the insured] with almost 200 pages of documents in a two-week period, burying the changes in a few unremarkable paragraphs, and failing to note the change on the declaration page," the manner in which the carrier attempted to provide notice to the coverage change "was inadequate for the average policyholder to determine that the [UIM] coverage was amended and how the amendment would affect the policy holder." Skeete v. Dorvius, 368 N.J. Super. 311, 317 (App. Div. 2004), aff'd, 184 N.J. 5 (2005). We found the information concerning the change in UIM coverage was "buried in the materials" supplied by the carrier, it was "neither unreasonable nor cost-prohibitive for an insurance carrier to highlight specific changes in coverage . . . on the declaration

page," and that "[i]t is insufficient . . . to simply state in a cover letter that policy changes are enclosed without specifically highlighting those changes on the declaration page." Id. at 318. We held "that unless specific changes in the limits of coverage are noted on the declaration page, the carrier's notice of changes in coverage is inadequate." Id. at 319.

We further concluded that notice of the coverage change was inadequate because the insured was required "to wade through almost 200 pages of material" and compare the previous policy with the new policy to discover the change in coverage. Id. at 319-20. We determined it was "unlikely the average policyholder would have identified" the coverage change "without extensive detective work" and, for that reason, the notice of the coverage change was inadequate. Id. at 320.

Our Supreme Court agreed that notice of the coverage change was insufficient "because of its presentation as part of an easily undifferentiated passel of two hundred documents." Skeete, supra, 184 N.J. at 9. The Court, however, added the "caveat" that not "every single policy change must be reflected on the declarations sheet" because it "may not be practical in every situation," for example, where there is a "large scale statutory overhaul." Ibid. The Court observed that the result may have been different if the carrier had sent a "cover letter with the three page notice

outlining the changes separately, thus giving the insured a chance to digest the changes before drowning . . . in a sea of paper." Ibid. The Court held that "policy changes must be conveyed fairly to the policyholder, although in no particular form" Ibid.

Based on our review of the record, we are convinced the undisputed facts here are sufficiently similar to those presented in Skeete to require the same result. In Skeete, the insurer sent a cover letter with the materials "advising the insured to read the notices of the changes and a three-page notice outlining the changes." Id. at 7. Nevertheless, the Court determined the materials sent were undifferentiated and failed to provide sufficient notice to the insured. Id. at 9. Here, defendant did not separately send a cover letter, or include a cover letter with the documents advising plaintiff's parents of changes to the policy, including the addition of an exclusion from UIM coverage for resident family members who had personal automobile policies with UIM coverage. See ibid. Further, although it is unnecessary to identify every change in coverage in the declaration sheet, ibid., the declarations sheets in 1999 never identified any change in UIM coverage for resident family members.⁴

⁴ Although the 1999 declarations sheets are not available, the parties stipulated that they did not show any change in the UIM coverage.

Moreover, although the passel of documents here consists of less pages than those in Skeete, defendant sent numerous documents comprising the first package's forty-one pages and an additional fifty-seven pages of documents comprising the second package delivered in July 1999.⁵ The documents bore labels similar to the documents distributed in Skeete, and they suffered from the same lack of differentiation. Again, defendant simply delivered the documents without any cover letter mentioning or highlighting the policy changes, or directing plaintiff's parents as to the manner in which they should navigate the sea of paperwork related to the policy renewal.

We reject the motion court's conclusion that the documents here "are incomparable to the package in Skeete . . . in terms of . . . clarity." The documents delivered by defendant in 1999 included a deficiency that was not present in Skeete. In Skeete, the sole issue presented was the "placement of the notice" of the change in the UIM coverage. Ibid. The "specificity" of the notice was not an issue. Ibid. That is, the Court was required to

⁵ In July 1999, plaintiff's parents were sent declaration sheets and an automobile insurance standard policy booklet. The declaration sheets for the 1999 documents are unavailable. However, there was testimony that the declaration sheets sent more recently are similar to those that would have been sent in 1999. Thus, the record reflects that the declarations sheets and policy booklet consisted of approximately fifty-seven pages.

consider only whether the insurer's placement of the notice of the coverage change was sufficient to fairly advise the insured about the change. Ibid. The Court was not required to determine if the notice of coverage change, when found amongst the passel of documents, clearly communicated the coverage change. Ibid.; see id. at 15 (LaVecchia, J., dissenting) ("[T]here is no suggestion in this record that the notice description of the changes in [UIM] coverage, which [the insurer] provided in its supplemental material, was inadequate in any way.").

Here, the inadequacy of the notice is not limited to its placement amongst the documents. It is also a product of the inconsistent information provided in the June 1999 document package. The nineteen-page "Important Notice About Changes to Your Car Policy" pamphlet included an endorsement containing the UIM exclusion for resident family members with personal automobile policies, but also advised that the renewal bill "reflects . . . coverage changes." The renewal bill, however, does not include any mention of any change to UIM coverage. Instead, it expressly lists endorsements to the policy, but fails to include any reference to the endorsement described in the "Important Notice About Changes to Your Car Policy" pamphlet for the changes in UIM coverage. Thus, unlike in Skeete, the myriad of documents defendant delivered to plaintiff's parents in 1999 included notice

there was an endorsement that changed UIM coverage to exclude resident family members with personal automobile policies but also reflected that the endorsement was not included as part of plaintiff's parents' policy. To understand the conflicting information buried within the almost 100 pages of documents, plaintiff's parents were therefore required to undertake the type of detective work the Court in Skeete found rendered the notice of change in coverage inadequate. See id. at 8.

Under all of the circumstances presented, we are not convinced the documents supplied by defendant in June and July 1999 "fairly conveyed to" plaintiff's parents that there was a change in the UIM coverage excluding resident family members who had their own automobile policies with UIM coverage. See id. at 9. The placement of the notice of the change amongst the almost 100 pages of documents, and the conflicting information provided about the change in UIM coverage, did not provide fair notice of the UIM coverage exclusion relied upon by defendant here. The motion court erred in concluding otherwise. We therefore reverse the court's orders granting defendant's motion for summary judgment and denying plaintiff's summary judgment motion.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION