SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2755-15T1

PATRICIA ENGRASSIA, Administratrix
Ad Prosequendum of the Estate
of Jason Marles, Deceased,

Plaintiff-Appellant/
Cross-Respondent,

v.

ERICK UZCATEGUI,

Defendant,

and

HUNTERDON MOTORS, INC.,
d/b/a HUNTERDON BMW,

Defendant-Respondent,

and

FEDERATED MUTUAL INSURANCE COMPANY,

Defendant-Respondent/
Cross-Appellant,

and

JOHN SADDY, SADDY FAMILY, LLC,
LASV, INC., and BAMBOO BAR LLC,

Defendants/Third-Party
Plaintiffs,

v.

INDRE DOSINAITE, SARITA M. HINES,
FRANK A. TALARICO, and JAMES S.
TORSIELLO, III,

Third-Party Defendants,

and

NEW JERSEY MANUFACTURERS
INSURANCE COMPANY,

Intervenor-Respondent.

Argued October 31, 2017 – Decided January 11, 2018

Before Judges Yannotti, Carroll and Mawla.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-3948-11.

Scott W. Kenneally argued the cause for appellant/cross-respondent (Starkey, Kelly, Kenneally, Cunningham & Turnbach, attorneys; Scott W. Kenneally and Kevin N. Starkey, on the briefs).

Michael F. Aylward, of the Massachusetts bar, admitted pro hac vice, argued the cause for respondent/cross-appellant Federated Mutual Insurance Company (Morrison Mahoney LLP, and Michael F. Aylward, attorneys; Christopher E. Martin, of counsel and on the briefs; Lina P. Corriston, on the briefs).

Laurence T. Bennett argued the cause for respondent Hunterdon Motors (Weber Gallagher Simpson Stapleton Fires & Newby LLP,

attorneys; Laurence T. Bennett and Ryan J. Mowll, on the brief).

Stephen J. Foley, Jr., argued the cause for respondent New Jersey Manufacturers Insurance Company (Campbell, Foley, Delano & Admas, LLC, attorneys; Stephen J. Foley, Jr., on the brief).

PER CURIAM

Plaintiff appeals from orders entered by the Law Division on June 8, 2015, which granted in part and denied in part a motion by Federated Mutual Insurance Company (Federated) for summary judgment; granted a motion for summary judgment by Hunterdon Motors, Inc. d/b/a Hunterdon BMW (Hunterdon BMW); and denied plaintiff's motion for summary judgment. Federated cross-appeals from the trial court's June 8, 2015 order on its motion. For the reasons that follow, we affirm on the appeal and reverse on the cross-appeal.

I.

This appeal arises from the following facts. On November 24, 2010, Erick Uzcategui brought his personal vehicle to Hunterdon BMW for service. Hunterdon BMW provided Uzcategui a BMW X3 as a loaner car, and required that he return the vehicle within twenty-four hours.

Hunterdon BMW required Uzcategui to execute a "BMW Rental Agreement for a Temporary Substitute Vehicle" (the BMW Rental

Agreement), which provided in pertinent part that he was responsible for all damage or loss to others arising from his use of the vehicle. The agreement stated in part:

> You agree to provide auto liability, collision and comprehensive insurance covering You, Us and the Vehicle. Your insurance is primary. If you have no auto liability insurance in effect on the date of a loss, or if We are required by law to provide liability insurance, We will provide auto liability insurance (the "Policy") that is secondary to any other valid and collectible insurance whether primary, secondary, excess or contingent. The Policy provides bodily injury and property damage liability coverage with limits no higher than minimum levels prescribed by the state whose laws apply to the loss. You and We reject PIP [Personal Injury Protection] medical payments, no-fault and uninsured and under-insured motorist coverage, where permitted by law. The Policy is void if You violate the terms of this Agreement or if You fail to cooperate in a loss investigation conducted by Us or Our insurer. Giving the vehicle to an unauthorized driver terminates policy coverage.

In the agreement, Uzcategui also agreed to indemnify, defend, and hold Hunterdon BMW harmless from all claims, liability, costs, attorney's fees that Hunterdon BMW could incur, resulting from or arising out of the agreement or Uzcategui's use of the vehicle.

In the relevant period, Hunterdon BMW was insured by Federated under a commercial garage policy (the garage policy), which had coverage limits of $500,000. The policy states

> a. The following are "insureds" for covered "autos":
>
> (1) You [Hunterdon BMW] for any covered "auto".
>
> (2) Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
>
> . . . .
>
> (d) Your customers. However, if a customer of yours:
>
> (i) Has no other available insurance (whether primary, excess or contingent), [the customer is] an "insured" but only up to the compulsory or financial responsibility law limits where the covered "auto" is principally garaged.
>
> (ii) Has other available insurance (whether primary, excess or contingent) less than the compulsory or financial responsibility law limits where the covered "auto" is principally garaged, [the customer is] an "insured" only for the amount by which the compulsory or financial responsibility law limits exceed the limit of [the customer's] other insurance.

Hunterdon BMW also had a commercial umbrella liability policy with Federated (the umbrella policy), with coverage limits of $10,000,000. The umbrella policy covered certain damages that are in excess of the amount of the available primary insurance. The umbrella policy states:

> With respect to A. EXCESS LIABILITY COVERAGES, refer to the applicable "underlying insurance" to determine who is an insured. However:

> 1. with respect to the ownership, maintenance, use, loading or unloading of an auto . . . the following are not insureds even if covered by the "underlying insurance":
> . . .
>
> b. Any customer of yours [Hunterdon BMW], or any other person using an auto . . . you [Hunterdon BMW] entrusted to a customer.

Uzcategui had auto liability insurance coverage through GEICO Indemnity Company (GEICO). His policy provided coverage of $100,000 per person and $300,000 per accident. In addition, Marles had automobile liability insurance through New Jersey Manufacturers Insurance Company (NJM), which included uninsured/underinsured coverage of $300,000.

On the evening of November 24, 2010, Uzcategui drove the loaner car while intoxicated and collided with another vehicle, causing the death of its driver, Jason Marles. Uzcategui was thereafter convicted of vehicular manslaughter and sentenced to a term of imprisonment.

In December 2011, plaintiff, as representative of Marles' estate, filed a complaint seeking damages arising from Marles' death, including claims of conscious pain and suffering and wrongful death. Plaintiff named Uzcategui, Hunterdon BMW, and Federated as defendants. Plaintiff also asserted claims under the New Jersey Licensed Alcoholic Beverage Server Fair Liability Act

(the Server Liability Act), N.J.S.A. 2A:22A-1 to -7, against John Saddy, Saddy Family LLC, LASV, Inc., and/or Bamboo Bar LLC.

In this matter, plaintiff sought a declaration that Federated was required to provide coverage of $500,000 under the garage policy, and $10,000,000 under the umbrella policy for the claims asserted against Uzcategui. Federated denied liability. LASV, which does business under the name of Bamboo Bar, and John Saddy later filed a third-party complaint against Indre Dosinaite, Sarita M. Hines, Frank A. Talarico, and James S. Torsiello, III.[1]

GEICO provided Uzcategui a defense in the action and deposited its full policy limits with the court. NJM intervened and also sought a declaration that Uzcategui was entitled to coverage under the garage policy that Federated issued to Hunterdon BMW. After discovery was completed, plaintiff, Federated, and Hunterdon BMW filed motions for summary judgment.

On June 8, 2015, the Law Division judge determined that the provision of Federated's garage policy pertaining to Hunterdon BMW's customers was not an illegal "escape clause." The judge found, however, that the policy would be reformed and Federated ordered to provide Uzcategui coverage in the amount of $15,000, the minimum level of liability coverage required by New Jersey

[1] The record does not indicate whether LASV pursued its claims against Dosinaite and Hines and, if so, how they were resolved.

law, concurrent with the coverage provided under the GEICO policy.

The judge also determined that Federated had no obligation to provide Uzcategui coverage under the umbrella policy. In addition, the judge rejected plaintiff's contention that Hunterdon BMW should be held liable and deemed to be self-insured for the claims asserted by plaintiff.

The judge entered orders dated June 8, 2015, which granted in part and denied in part Federated's motion for summary judgment; granted summary judgment in favor of Hunterdon BMW; and denied plaintiff's motion for summary judgment. Thereafter, plaintiff filed a motion for reconsideration of the June 8, 2015 orders. The judge denied the motion. Plaintiff then filed a motion in this court for leave to appeal from the June 8, 2015 orders. We denied the motion.

In January 2016, plaintiff and Uzcategui settled plaintiff's claims for $9,500,000, plus interest of $934,722, for a total of $10,434,722. Plaintiff agreed, however, that she would not collect the judgment against Uzcategui. The trial court entered a consent judgment dated January 19, 2016, which memorialized the settlement.

Thereafter, plaintiff's claims under the Server Liability Act and the third-party claims against Talarico and Torsiello were tried before a jury. At trial, the judge dismissed the claims

against Saddy, Saddy Family LLC, Talarico, and Torsiello. Plaintiff's claims against LASV were submitted to the jury, which returned a verdict finding that plaintiff had not proven by a preponderance of the evidence that LASV had served Uzcategui alcoholic beverages while he was visibly intoxicated.

The jury also found that Uzcategui was one-hundred percent responsible for the accident and awarded plaintiff damages of $10,082,735. The court entered a final judgment for plaintiff in accordance with the jury's verdict. Plaintiff's appeal and Federated's cross-appeal followed.

II.

We turn first to plaintiff's contention that Federated is required to provide Uzcategui coverage under the garage policy. Plaintiff argues that the provision of the policy pertaining to coverage of Hunterdon BMW's customers is an illegal "escape clause." Plaintiff contends the clause unlawfully excludes permissive users of the dealership's vehicles if those persons have their own auto insurance in amounts that exceed the minimum coverages required by law. Plaintiff argues that if the illegal "escape clause" is not enforced, Federated is obligated to provide Uzcategui with coverage up to $500,000, the full policy limits.

We note initially that when reviewing an order granting summary judgment, we apply the same standard that the trial court

applies when ruling on a summary judgment motion. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014); Gormley v. Wood-El, 218 N.J. 72, 86 (2014) (quoting Murray v. Plainfield Rescue Squad, 210 N.J. 581, 584 (2012)). Summary judgment may be granted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Here, there is no dispute as to the material facts, and the coverage issues involve questions of law, on which this court exercises de novo review. Templo Fuente De Vida Corp. v. Nat. Union Fire Ins. Co. of Pittsburgh, P.A., 224 N.J. 189, 199 (2016). In exercising such de novo review, we owe no deference to the trial court's decision on an issue of law. Ibid. (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Here, plaintiff argues that the applicable provision of Federated's garage policy constitutes an illegal "escape clause" because it fails to provide the coverage required by N.J.S.A. 39:6B-1, which states that:

> Every owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain motor vehicle liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the

> ownership, maintenance, operation or use of a motor vehicle . . . .

Plaintiff contends that N.J.S.A. 39:6B-1 requires the owner of registered vehicles principally garaged in New Jersey to provide insurance coverage to all permissive users of the vehicle. Plaintiff asserts that because the Federated garage policy excludes coverage for permissive users of the dealership's autos who have their own auto liability insurance that exceeds the minimum coverage required by N.J.S.A. 39:6B-1(a), the clause is invalid. We disagree. The relevant provision of the policy is not an illegal "escape clause," but rather a valid "step-down" clause.

The Court's decision in Aubrey v. Harleysville Insurance Cos., 140 N.J. 397 (1995), supports our conclusion. In Aubrey, an automobile was insured under a policy that Harleysville issued to an auto dealership. Id. at 399—400. The dealership loaned the vehicle to Aubrey, who was one of the dealership's customers, and Aubrey sustained personal injuries in a three-car accident while driving the car. Ibid.

Aubrey was insured under an automobile insurance policy that provided underinsured motorist (UIM) coverage of $15,000 per person and $30,000 per accident. Id. at 400. Aubrey settled her claims against the other drivers involved in the accident for $40,000, which exceeded the UIM limits under her policy. Id. at

400. Since Aubrey's damages exceeded $40,000, she sought UIM coverage under the Harleysville policy, which provided liability and UIM coverage. Ibid.

The liability section of the dealership's policy stated in part that the dealership's customers are insured, but coverage was limited to the minimum required by law. Id. at 400–01. The Court noted that N.J.S.A. 17:28-1.1(e) provides that

> [a] motor vehicle is underinsured when the sum of the limits of liability under all bodily injury and property damage liability bonds and insurance policies available to a person against whom recovery is sought for bodily injury or property damage is, at the time of the accident, less than the applicable limits for underinsured motorist coverage afforded under the motor vehicle insurance policy held by the person seeking that recovery.
>
> [Id. at 403.]

The Court held that Aubrey was only entitled to UIM coverage of $15,000. Id. at 404. The Court observed that under N.J.S.A. 17:28-1.1(b), the right to recover UIM benefits depends on the UIM coverage that the insured has chosen. Id. at 405. "Under the clear terms of the statute, [Aubrey's] UIM coverage cannot exceed her liability coverage." Id. at 406.

The Court pointed out that Aubrey had purchased UIM coverage of $15,000, and this was the amount of UIM coverage that she "held" under her motor vehicle insurance policy. Id. at 404. The Court

stated that Aubrey could not reasonably expect that she would be entitled to receive coverage under the UIM endorsements in the dealership's policy. Ibid.

The Court also addressed the liability section of the dealership's policy, which limited coverage for the dealership's customers "to the statutory minimum, $15,000." Id. at 406. The Court noted that Aubrey's own policy satisfied the statutory minimum because it provided $15,000 of liability coverage. Ibid. The Court held that because the statutory minimum was not greater than the liability limits under the dealership's policy, Aubrey was not covered by the liability section of that policy. Ibid.

Here, the relevant provision of the Federated garage policy is the same as the provision addressed in Aubrey. As in Aubrey, liability coverage is provided in the minimum amounts required by law, if the dealership's customer has no other available insurance, or the customer has other available insurance that provides coverage less than the statutory minimum.

Under the policy, Federated is not obligated to provide coverage when the customer has insurance with coverage that exceeds the minimum required by law. This is not, however, an invalid "escape clause" under Aubrey because the customer is insured to the extent required by law, under its own policy. Thus, under

Aubrey, the relevant provision of the Federated policy is a valid "step-down" clause or limitation on coverage.

Plaintiff concedes that the relevant provision of the Federated policy is the same as the policy provision addressed in Aubrey, but maintains that Aubrey is distinguishable because it deals with the amount of UIM coverage available. As the decision in Aubrey makes clear, however, the amount of UIM coverage available to Aubrey was dependent upon the amount of liability coverage that Aubrey had under her policy. Aubrey, 140 N.J. at 404.

In deciding that Aubrey was only entitled to UIM coverage of $15,000, the Court enforced the provisions of the dealership's policy, which contained a "step-down" clause that provided coverage to customers, but only if the customer did not have insurance or insurance in the amounts required by law. Id. at 406. The Court noted that the plaintiff had her own insurance, which provided coverage that exceeded the statutory minimum. Ibid. The Court therefore held that Aubrey was not covered by the liability section of the dealership's policy. Ibid.

The same conclusion applies in this case. The Federated policy provides a limitation on coverage, rather than an illegal "escape clause." Because Uzcategui had auto liability insurance that

exceeds the minimum required by law, Federated was not obligated to provide him with coverage under the garage policy.

Plaintiff further argues that Uzcategui is entitled to the full benefit of the Federated garage policy based on his "reasonable expectations." We disagree.

Here, the BMW Rental Agreement required Uzcategui to obtain auto liability, collision, and comprehensive coverage insuring himself, the dealership, and the vehicle. The agreement expressly states that any insurance coverage the dealership provided would be at "limits no higher than minimum levels prescribed by the state whose laws apply to the loss."

Thus, the BMW Rental Agreement does not state the customer will be given insurance coverage. Moreover, the agreement states that "any" coverage provided will be no higher than the minimum required by law. In light of the clear and unambiguous provisions of the BMW Rental Agreement, Uzcategui could not have any expectation he would be covered by the garage policy, or if covered, that such coverage would be up to the full $500,000 limits of the policy.

III.

Next, plaintiff argues that Uzcategui is entitled to full coverage under the umbrella policy because Federated was required

to cover Uzcategui as a permissible user of the Hunterdon BMW vehicle under that policy. Again, we disagree.

Umbrella polices are "fundamentally different from a primary liability policy," and are "intended to guard against a much less frequent catastrophic loss for which a lower premium is charged because of the lesser risk." Stiefel v. Bayly, Martin & Fay of Conn., Inc., 242 N.J. Super. 643, 653 (App. Div. 1990). Generally, owners of motor vehicles are not required to maintain umbrella policies; therefore, such policies are defined by their "plain language, unencumbered by the statutory requirements for automobile insurance." Weitz v. Allstate Ins. Co., 273 N.J. Super. 548, 551–52 (App. Div. 1994).

As we have explained, the Federated umbrella policy clearly and unequivocally states that it does not provide coverage to customers to whom Hunterdon BMW has entrusted its automobiles. Therefore, the motion judge correctly found that Uzcategui was not entitled to coverage under that policy.

Plaintiff argues, however, that Martusus v. Tartamosa, 150 N.J. 148 (1997), requires Federated to provide full coverage to Uzcategui under the umbrella policy. Plaintiff's reliance upon Martusus is misplaced.

In Martusus, the motor vehicle was insured under a primary policy with coverage of $300,000 and an umbrella policy with limits

of $1,000,000. Id. at 151. The owner's son was a permissive user of the car, and the owner's son permitted a friend to drive the vehicle. Ibid. The son's friend was involved in an accident resulting in serious personal injuries. Ibid.

The friend was covered by the owner's primary insurance policy as a permissive user, but the insurer argued he was not a permissive user under the umbrella policy. Id. at 152. The umbrella policy limited coverage to persons who the named insured allowed to drive the car, and the insurer argued that the friend was not insured because the named insured had not given him permission to drive the car. Id. at 153.

The Court found coverage for the driver under the umbrella policy. Id. at 160. The Court determined that the primary policy's definition of a "permissive user" should be broadly defined, and absent a statute or policy language providing otherwise, the same principle should apply to defining the term "permissive user" under the umbrella policy. Id. at 158–59. The Court held that, "Unless umbrella policies clearly and unambiguously state that permission to use the covered vehicle can only come from a named insured and that there is no coverage for any other user, a named insured's reasonable expectation may be otherwise." Ibid.

Here, Federated's policy unambiguously excludes customers to whom Hunterdon BMW has entrusted its automobiles. Uzcategui could

not have any expectation of coverage under that policy. Therefore, Martusus does not support plaintiff's argument that Uzcategui was entitled to full coverage under the umbrella policy.

IV.

Plaintiff argues that as a licensed motor vehicle dealer, Hunterdon BMW is subject to an administrative regulation that requires it to maintain auto insurance coverage for permissive users of its vehicles in specified amounts. Based on that regulation, plaintiff contends Hunterdon BMW's customers have a reasonable expectation of coverage under the Federated garage and umbrella policies.

The New Jersey Motor Vehicle Commission (NJMVC) has adopted a regulation, which states that persons or entities seeking a license to operate as a motor vehicle dealer must submit

> a certificate of insurance demonstrating liability insurance covering all vehicles owned or operated by the applicant, at his or her request or with his or her consent. This insurance shall be in the amount of $100,000 per person per incident up to $250,000 per incident for bodily injury or death, $25,000 per incident for property damage, and $250,000 combined personal injury and property damage per incident. This insurance shall be renewed as necessary to ensure that it remains valid for the entire prospective license term.
>
> [N.J.A.C. 13:21-15.2(l).]

Plaintiff notes that Federated filed a certificate of insurance with the NJMVC, which states that Hunterdon BMW had insurance covering its vehicles with policy limits of $500,000 under its primary policy and $10,000,000 under its umbrella policy. According to plaintiff, Federated filed that certificate with the NJMVC so that the agency would grant Hunterdon BMW a motor vehicle dealership license. Plaintiff therefore contends Federated is bound to the full coverage limits set forth in the certificate of insurance and should be required to provide Uzcategui full coverage under both the garage and umbrella policies. We disagree.

The regulation does not address the question of exclusions or limitations on coverage of the sort included in the Federated policies. Indeed, the regulation does not expressly bar an insurer from excluding certain users from coverage or limiting coverage in certain circumstances.

Moreover, the certificate of insurance that Federated provided to the NJMVC states that it was issued for informational purposes only, and it does not amend, extend, or alter the coverage provided by its policies. The "COVERAGES" section of the certificate states:

> THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER

> DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Thus, the certificate of insurance that Federated provided to the NJMVC made clear that although the dealership's primary policy had coverage of $500,000, and umbrella policy had coverage of $10,000,000, both policies were subject to all the terms of the policies, and any exclusions or conditions set forth therein. The NJMVC apparently accepted the certificate as meeting the requirements of N.J.A.C. 13:21-15.2, and issued the dealership license to Hunterdon BMW.

Therefore, we reject plaintiff's contention that based on Federated's certificate of insurance, Hunterdon BMW's customers had a reasonable expectation of full coverage under the garage and umbrella policies. Hunterdon BMW's customers like Uzcategui did not have a reasonable expectation that they would have coverage beyond that provided under the Federated policies.

V.

Plaintiff further argues that Hunterdon BMW had a reasonable expectation it would have the insurance coverage required by N.J.A.C. 13:21-15.2, without any exclusion or limitations. In

support of this contention, plaintiff relies upon the deposition testimony of Gailon W. McGowen, Jr., the owner of Hunterdon BMW.

At his deposition, Mr. McGowen testified that Federated did not advise him he would not have insurance coverage for the drivers of the dealership's loaner car. He further testified that he discussed the State's licensing requirements with Federated. He stated that he would have advised Federated he needed whatever insurance coverage the State required.

We note that Mr. McGowen's understanding and expectation is irrelevant to whether Uzcategui had a reasonable expectation of coverage in any particular amounts under the Federated policies. In any event, the record does not support plaintiff's claim that Hunterdon BMW had a reasonable expectation it would have coverage under the Federated policies in the amounts specified in N.J.A.C. 13:21-5.2 without any exclusions or limitations. There is no evidence that Federated misrepresented any material fact regarding the coverage it was providing to Hunterdon BMW.

Furthermore, Mr. McGowen testified at his deposition that based on reading the Federated policies, he did not have any understanding of the coverage the dealership had with regard to its loaner cars. Therefore, Hunterdon BMW could not have any reasonable expectation that Federated's policies would cover all

persons leasing the dealership's cars, in the amounts specified in N.J.A.C. 13:21-15.2, without any exclusion or limitations.

VI.

In addition, plaintiff contends Federated should be estopped from asserting that Uzcategui was not covered by the umbrella policy because that exclusion was not specifically asserted in the letters denying coverage or during discovery in this case. Plaintiff asserts that initially, Federated denied coverage under the garage policy but did not expressly deny coverage under the umbrella policy. Plaintiff asserts that Federated did not state that Uzcategui was not covered under the umbrella policy until the summary judgment stage of this case. Plaintiff therefore argues that Federated should be estopped from denying coverage under the umbrella policy. Again, we disagree.

An insurer has a duty to advise its insured of a possible disclaimer of coverage. Griggs v. Bertram, 88 N.J. 347, 357 (1982). Plaintiff was not, however, an insured under the Federated policies, and Federated had no duty to inform plaintiff of all the possible reasons it might have to deny coverage to Uzcategui. Moreover, the record shows that Federated made clear before and after the litigation commenced that it was not obligated to provide coverage to Uzcategui. Thus, plaintiff's claim that Federated is

estopped from denying coverage under the umbrella policy is meritless.

Plaintiff also argues for the first time on appeal that Federated should be precluded from denying coverage based on a theory of "regulatory estoppel." Because this issue was not raised in the trial court, we will not consider it. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

VII.

In addition, plaintiff argues that if Hunterdon BMW failed to maintain auto liability insurance for Uzcategui, it violated its legal obligation as a licensed motor vehicle dealer and should be deemed self-insured and liable for the judgment against Uzcategui.

In support of this argument, plaintiff relies upon Ryder/P.I.E. Nationwide, Inc. v. Harbor Bay Corp. 119 N.J. 402 (1990). In that case, a company had decided to self-insure and the Court determined that the company's liability was not limited to its indemnity bond or the minimum amounts of compulsory insurance mandated by statute. Id. at 414. The case is inapplicable to this dispute because it involved the financial obligations of an entity that elected to self-insure, not a company like Hunterdon BMW that purchased insurance.

Plaintiff also relies upon Robinson v. Janay, 105 N.J. Super. 585 (App. Div. 1969). There, a property lease required the tenant to maintain liability insurance coverage for the tenant and the landlord, but the tenant only obtained coverage for himself. Id. at 588. A business invitee was injured on the premises, the landlord was held liable, and the landlord sued the tenant to recover the damages it had to pay as a result of the tenant's failure to procure the proper insurance. Id. at 589. We held the landlord was entitled to recover for his loss, which was the amount that the landlord would have received under the policy if the tenant had obtained the policy as required. Id. at 591, 593.

Robinson is distinguishable, however, because Hunterdon BMW did not have an agreement with plaintiff that required Hunterdon BMW to obtain insurance coverage for lessees of its vehicles. Therefore, Hunterdon BMW did not owe plaintiff a contractual duty. Furthermore, Hunterdon BMW did not owe a contractual duty to Uzcategui to provide liability insurance beyond that specified in the BMW Rental Agreement and the Federated policies.

We therefore conclude the motion judge correctly determined that there was no legal basis to deem Hunterdon BMW self-insured and liable for the judgments against Uzcategui.

VIII.

In its cross-appeal, Federated argues that although the trial court correctly determined that the provision of its garage policy is not an illegal "escape clause," the court erred by holding that it was required to provide coverage in the statutory minimum liability coverage of $15,000 to Uzcategui under that policy, concurrent with Uzcategui's coverage under the GEICO policy. Federated contends the "step-down" clause in the garage policy is valid and should be enforced according to its terms. We agree.

In ordering Federated to provide $15,000 in coverage, the judge relied upon Rao v. Universal Underwriters Insurance Co., 228 N.J. Super. 396 (App. Div. 1988). In Rao, Universal Underwriters issued a policy to an automobile leasing company, which contained a limit of coverage of $300,000 per occurrence, but stated with respect to lessees that, "the portion of the limit applicable to persons or organizations required by law to be an INSURED is only the amount (or amount in excess of any other insurance available to them) needed to comply with the minimum limits provision of such law in the jurisdiction where the OCCURRENCE takes place." Id. at 399.

Rao rented a car from the leasing company and as required by the lease, purchased an insurance policy with limits of $100,000/ $300,000. Id. at 398. Rao's wife drove the car and struck a

pedestrian, and Universal argued that it was not obligated to provide coverage because Rao had his own insurance, which provided the minimum coverage required in this State. Id. at 399.

The court held that the relevant provision of the Universal policy violated N.J.S.A. 45:21-1, which required persons engaged in the business of renting or leasing motor vehicles to obtain insurance coverage for lessees of the business' vehicles. Id. at 400. The court observed that the relevant statutes are intended to ensure that a lessor will provide the minimum coverage "irrespective of whether a lessee does so." Id. at 402.

The court stated that Universal's endorsement attempted to preclude coverage entirely because the lessee had obtained coverage, which exceeded the minimum required by N.J.S.A. 45:21-3. Id. at 404. The court held that despite this "abortive escape attempt" to limit coverage, Universal would not be required to provide the full policy limits, but be obligated to provide the statutory minimum coverage. Ibid.

In our view, the motion judge's reliance upon Rao was misplaced. The judge characterized the relevant provision of the Federated policy as an attempt to limit coverage, similar to that in Rao. However, Aubrey was decided after Rao, and in Aubrey, the Court enforced a policy provision that is identical to the clause at issue in this case. The Aubrey Court did not view the "step-

down" clause as an illegal attempt to limit coverage, and it did not reform the policy to provide additional coverage in the minimum amount provided by law.

Here, it is undisputed that Uzcategui had liability coverage that exceeded that statutory minimum, and for that reason, he was not covered under the Federated garage policy. There was no need to reform the Federated policy to ensure that Uzcategui was insured in the minimum amounts by law. We therefore conclude that the motion judge erred by failing to enforce the relevant provision of the Federated policy and by reforming the policy to require Federated to provide liability coverage to Uzcategui under the garage policy in the amount of $15,000.

In its cross-appeal, Federated also argues that because Uzcategui violated the BMW Rental Agreement by driving the vehicle while intoxicated, he is not entitled to insurance under its policies. Because we have determined that Federated is not required to provide coverage to Uzcategui for the claims asserted by plaintiff, we need not address this issue.

Accordingly, we affirm in part and reverse in part the trial court's order granting summary judgment to Federated; affirm the order granting summary judgment to Hunterdon BMW; and affirm the denial of plaintiff's motion for summary judgment.

Affirmed on the appeal, and reversed on the cross-appeal.

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

CLERK OF THE APPELLATE DIVISION