SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2272-19

CRISTINA DELA VEGA,

Plaintiff-Respondent/
Cross-Appellant,

v.

THE TRAVELERS INSURANCE COMPANY, and ST. PAUL PROTECTIVE INSURANCE COMPANY, [1]

Defendants-Appellants/
Cross-Respondents,

and

MAY DILORENZO, SERGIO DELA VEGA, PATRICIA A. LAQUAGLIA and DEBRA A. LAQUAGLIA, jointly, severally and in the alternative,

Defendants.

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[1] St. Paul Protective Insurance Company improperly named as The Travelers Insurance Company.

Argued January 13, 2021 – Decided May 6, 2022

Before Judges Accurso, Vernoia and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-1875-17.

Timothy P. Smith argued the cause for appellants/ cross-respondents (Kinney Lisovicz Reilly & Wolff, PC, attorneys; Timothy P. Smith, of counsel and on the briefs).

Lewis Greenberg argued the cause for respondent/ cross-appellant (Fuchs Greenberg & Sapin, LLC, attorneys; Lewis Greenberg, of counsel and on the briefs).

The opinion of the court was delivered by

ACCURSO, J.A.D.

Defendant St. Paul Protective Insurance Company appeals from summary judgment denying the enforceability of the intra-family liability step-down exclusion in the St. Paul auto policy purchased by plaintiff Cristina Dela Vega. The trial judge deemed the exclusion ambiguous, "patently unfair," contrary to public policy and to "plaintiff's reasonable expectations." Plaintiff cross-appeals from summary judgment dismissing her claims for bad faith, violation of the Consumer Fraud Act, N.J.S.A. 56:8-1 to -20, and punitive damages. We affirm.

We don't find the wording of this intra-family step-down exclusion ambiguous. But the exclusion was not mentioned on the declarations sheet that advised plaintiff she had $100,000/$300,000 liability limits, and it was buried in the policy. Thus, we agree with the trial judge the intra-family step-down here was a hidden pitfall in plaintiff's auto policy contrary to her reasonable expectations as to coverage, rendering it unenforceable. Our disposition makes it unnecessary for us to consider whether the exclusion violates public policy as well.[2] The judge's dismissal of plaintiff's affirmative

[2] Although our conclusion that the intra-family liability step-down in this policy was a hidden trap, thwarting plaintiff's reasonable expectations as to the coverage afforded by her $100,000/$300,000 auto policy, makes it unnecessary for us to consider whether the exclusion is more broadly violative of public policy, we confess to finding the exclusion troubling. We think it fair to assume most purchasers of personal auto policies in this State would assume an injured family member passenger in an insured auto would have the benefit of the full policy limits purchased and would be surprised to learn otherwise. The absence of any indication of the reduced coverage on the declarations sheet where premiums are listed would also likely make it difficult for a member of the insurance-purchasing-public to fairly compare auto policies. The operation of this exclusion would mean a child severely injured in an accident caused by the parent-driver's negligence could recover only $15,000 in personal injury damages under a $100,000/$300,000 policy as here, whereas the child's friend sitting next to her and also severely injured in the accident could recover the $100,000 policy limits. This significant reduction in the liability protection the policyholder purchased — and the concomitant reduction in coverage available to an entire class of victims based solely on the injured victim's status as a named insured or resident family-member — is concerning. See Huggins v. Aquilar, 246 N.J. 75, 83 (2021) (noting

claims was sound; plaintiff's arguments to the contrary do not warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E).

The essential facts are undisputed. Plaintiff and her husband, defendant Sergio Dela Vega, are both retired pediatricians. She was sitting in the front seat of their late-model Mercedes when her husband pulled out of a parking lot into the path of a car driven by defendant Patricia A. Laquaglia and owned by Debra A. Laquaglia.[3] Plaintiff was severely injured in the accident, exhausting the entirety of the $250,000 personal injury protection (PIP) benefits available to her under the couple's St. Paul policy. Plaintiff did not purchase the policy through a broker, but contacted the company directly. She doesn't claim to have read anything other than the declarations sheet, but she testified at deposition that she consciously chose the $100,000 liability limits.

"[i]nsurance policy provisions that disclaim whole classes of drivers are problematic"). See also James v. N.J. Mfrs. Ins. Co., 216 N.J. 552 (2014) (discussing N.J.S.A. 17:28-1.1(f), which prohibits application of step-down provisions in business entities' auto insurance policies to limit the recovery of Uninsured and Underinsured Motorists benefits by employees based on public policy). Because we decide the case on other grounds, we do not consider the issue further.

[3] Plaintiff has settled her claims against the Laquaglias and all defendants but St. Paul.

Four months after the accident, a St. Paul claims adjuster offered plaintiff the $100,000 liability limit on the couple's $100,000/$300,000 policy. Plaintiff didn't immediately accept.[4] Four months later, the adjuster rescinded the offer, advising the company had "made an unfortunate mistake" and "[a]fter further review" determined the policy would only "afford a bodily injury liability benefit of up to $15,000, and not more."

The adjuster subsequently submitted a certification explaining she'd offered plaintiff what she "incorrectly assumed were the [$100,000] liability limits of the policy to settle this claim pre-suit" because the company had already paid $250,000 in PIP benefits for plaintiff's medical treatment and "liability seemed clear." The adjuster claimed, in making the offer, she'd relied on her "experience adjusting auto liability claims" and hadn't actually read plaintiff's policy. Because none of the policies the adjuster had previously reviewed contained the intra-family exclusion in plaintiff's policy — which reduced the liability coverage for bodily injury from the face amount

[4] St. Paul claims plaintiff rejected the offer. Plaintiff's counsel claims plaintiff never rejected the offer, she just didn't understand she could accept it and still pursue the driver who struck plaintiff's car, whom plaintiff's husband insisted was responsible for the accident. Plaintiff's claims against the claims adjuster were dismissed on summary judgment, a ruling plaintiff has not appealed. None of this has any relevance to the issues we decide.

of $100,000 to the $15,000 minimum required by New Jersey law — the adjuster simply offered plaintiff what appeared to be the $100,000 liability limits on a $100,000/$300,000 policy.

Plaintiff's auto policy consists of four pages of "Declarations," a two-page "personal auto policy quick reference," which serves as a table of contents, and a thirty-two-page standard personal auto policy. The documents are all double-sided, written in regular and bold type. The policy has two columns of type on each page.

The Declarations are divided into six sections delineated as follows: 1. Named Insured; 2. Premium; 3. Your Vehicles; 4. Coverages, Limits of Liability and Premiums; 5. Information Used to Rate Your Policy; and 6. Other Information**.** Plaintiff and her husband are both listed as named insureds. Under the "Coverages, Limits of Liability and Premiums" section, all four of their cars are listed with limits of liability for "Bodily Injury," and "Uninsured and Underinsured Motorists Bodily Injury" both listed as $100,000 each person, $300,000 each accident.

On the next-to-the-last page of the Declarations, under the final sixth section, "Other Information," there are four headings in bold type: "Your Insurer," "Lienholder/Loss Payees Information," "Policy Coverage Sections

and Endorsements That Form a Part of This Policy," and "For Your Information," (the last written in all capital letters). Under the heading, "Policy Coverage Sections and Endorsements That Form a Part of This Policy," the following appears:

> G01NJ00 (10-13) General Provisions Section
>
> L01NJ01 (08-15) Liability Coverage Section
>
> Q01NJ01 (08-15) Personal Injury Protection Coverage Section
>
> U01NJ01 (08-15) Uninsured and Underinsured Motorists Coverage Section
>
> P01NJ01 (08-15) Damage To Your Auto Coverage Section
>
> S01CW01 (10-13) Signature Page
>
> E1OCW02 (01-15) Glass Deductible.

Those seven sections comprise the entirety of the policy.

On the first page of the policy, under the bold heading "AGREEMENT," the policy states: "In return for payment of the premium and subject to all the terms of this policy, we will provide the coverages you have selected. These are shown by premium entries in the Declarations. The Declarations is a part of this policy."

Under the Liability Coverage Section, "Insuring Agreement," the policy states:

> We will pay damages for "bodily injury" or property damage for which any "insured" becomes legally responsible because of an auto accident.
>
> We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability has been exhausted by payment of judgments or settlements.
>
> We have no duty to defend any suit or settle any claim for "bodily injury"[5] or "property damage" not covered under this policy.

The policy proceeds to define "'insured' as used in this Coverage Section" and to list what "insured" does not include. It then addresses "Supplementary Payments." Following that, is a list of "Exclusions" divided into categories "A" and "B," with the former directed at any "insured" and the latter directed at vehicles or "your covered auto." At the end of the list of the category "A" exclusions for which "Liability Coverage" is not provided "for any 'insured,'" which list includes such things as liability coverage for an

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[5] "Bodily injury" is a defined term meaning "bodily harm, sickness or disease, including death that results. This definition does not apply under the Personal Injury Protection Coverage Section."

insured who intentionally causes bodily injury, and bodily injury for which the insured is also "an insured under any type of nuclear energy liability policy," is the intra-family step-down exclusion, which states:

> 11. For "bodily injury" to you, a "resident relative" or an "insured." This Exclusion (A.11.) does not apply to the portion of the damages that is less than or equal to minimum limits required by New Jersey law.

Six pages before Exclusion A.11, the General Definition section of the policy states:

> "Minimum limits" refers to the following limits of liability as required by New Jersey law, to be provided under a standard policy of automobile liability insurance:
>
> 1. $15,000 for each person, subject to $30,000 for each accident with respect to "bodily injury", and $5,000 for each accident with respect to "property damage" when a split limit is applicable; or
>
> 2. $35,000 for each accident with respect to both "bodily injury" and "property damage" when a combined single limit is applicable.

Nothing, however, alerted plaintiff to refer back to the definitional section of the policy for an explanation of the meaning of "minimum limits" as the phrase is not set off with quotation marks as a defined term in Exclusion A.11.

The trial judge found the intra-family liability step-down ambiguous based on the exception to the exclusion, which states the exclusion "does not

apply to the portion of the damages that is less than or equal to minimum limits required by New Jersey law." The judge accepted plaintiff's argument that the phrase "minimum limits," which had once clearly referenced the $15,000/$30,000 minimum compulsory limits of the standard auto liability insurance policy required by the omnibus statute, N.J.S.A. 39:6B-1(a), was made ambiguous by the advent of the legislatively sanctioned basic and special policies, neither of which mandate any liability coverage, although the basic policy permits $10,000 in optional coverage. See N.J.S.A.39:6A-3.1(c); N.J.S.A. 39:6A-3.3(c).

Alternatively, the judge found the exclusion unenforceable because it violates public policy. See Zuckerman v. Nat'l Union Fire Ins. Co., 100 N.J. 304, 320 (1985) ("A condition to the enforcement of insurance contracts is that they not violate public policy."). She noted the State's long-standing commitment to compensate the innocent victims of auto accidents, quoting the "settled doctrine" that insurance contracts "be liberally construed for the protection, not only of the named insured and those within its omnibus clause, but also the innocent plaintiff who was injured by the negligent operation of the insured automobile along a public highway." Eggerding v. Bicknell, 20 N.J. 106, 113 (1955). The judge distinguished homeowners insurance policies,

in which intra-family exclusions are the norm, from auto policies, where plaintiff asserts they have not previously existed to limit coverage to the named insureds, because every owner of a car registered or principally garaged in New Jersey is required to buy car insurance by the State's compulsory insurance law, N.J.S.A. 39:6B-1 to -3. The judge further distinguished cases on which defendant relies upholding step-down clauses in an auto context, because none endorsed a step-down of the liability coverage and benefits of the named insureds, as here.

The judge also rejected defendant's claim that our Supreme Court had endorsed intra-family exclusions in insurance contracts as not against public policy in Zacarias v. Allstate Ins. Co., 168 N.J. 590 (2001). The judge noted the intra-family exclusion the Court upheld in Zacarias was in a boatowner's policy not a compulsory auto policy. The Zacarias Court marked the distinction itself, noting "in the automobile insurance context, courts have held intra-family exclusions void, not on the ground of ambiguity, but because the Legislature's automobile insurance scheme has rendered such provisions violative of public policy." Id. at 599 (citing Kish v. Motor Club of Am. Ins. Co., 108 N.J. Super. 405 (App. Div. 1970)).

The judge found the "step-down/exclusionary clause" in this auto policy "to be patently unfair and against public policy," noting "[p]laintiff was under the impression she had purchased a $100,000 policy," only to have it "be diminished to 'the minimum amounts recognized by New Jersey law'" because she was injured as a passenger in an insured car driven by her husband. Because "[p]laintiff did not expect that a step-down clause would lower her coverage to $15,000, merely for being in the car with her husband," the judge found the exclusion "contrary to plaintiff's reasonable expectations" of coverage.

Turning to plaintiff's causes of action, the judge rejected plaintiff's claims of bad faith, consumer fraud and punitive damages as unsupported in either the facts or the law. She found plaintiff had failed to proffer any evidence of bad faith on St. Paul's part, including the withdrawal of its settlement offer based on the intra-family step-down in plaintiff's policy. The judge rejected plaintiff's consumer fraud claim, finding the carrier's refusal to pay a disputed policy benefit was not an unconscionable commercial practice. See Myska v. N.J. Mfrs. Ins. Co., 440 N.J. Super. 458, 485 (App. Div. 2015) (noting that while the Consumer Fraud Act applies to the sale of insurance policies, "it was not intended as a vehicle to recover damages for an insurance

company's refusal to pay benefits"). Finally, the judge found plaintiff had not shown that any of St. Paul's acts was actuated by actual malice or accompanied by "a wanton and willful disregard" of her rights. See N.J.S.A. 2A:15-5.12(a).

We review decisions granting or denying summary judgment de novo, applying the same standard as the trial court, Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021), without deference to interpretive conclusions of statutes or the common law we believe mistaken, Nicholas v. Mynster, 213 N.J. 463, 478 (2013), Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Because interpreting the language of an insurance policy presents a question of law, our review of the policy terms is likewise plenary. Abboud v. Nat'l Union Fire Ins. Co., 450 N.J. Super. 400, 406 (App. Div. 2017).

We begin our analysis by noting we do not find the wording of the intra-family step-down exclusion in plaintiff's St. Paul policy ambiguous. Although the policy states generally that "[i]n return for payment of the premium," the carrier "will provide the coverages you have selected," and more specifically "will pay damages for 'bodily injury' . . . for which any 'insured' becomes legally responsible because of an auto accident," the exclusion states plainly it does "not provide Liability Coverage for any 'insured' . . . for 'bodily injury' to

you, a 'resident relative' or an 'insured.'" Thus, the policy provides no liability coverage to Sergio Dela Vega, an "insured," for "bodily injury" to plaintiff, who qualifies as "you," a "resident relative" and an "insured" under the policy.

The exclusion has an exception, however, to make plaintiff's policy compliant with the omnibus statute, N.J.S.A. 39:6B-1(a). It "does not apply to the portion of the damages that is less than or equal to minimum limits required by New Jersey law." Although the trial court found the reference to "minimum limits" ambiguous, our Supreme Court rejected any ambiguity in the concept in Felix v. Richards, 241 N.J. 169, 185-86 (2020), a case involving a dispute over the "deemer" statute, N.J.S.A. 17:28-1.4, decided after the trial judge rendered her decision in this case.

In Felix, the Court unequivocally rejected the argument plaintiff made to the trial court here — that the advent of the legislatively sanctioned basic and special policies, neither of which mandate any liability coverage for bodily injury, made it unclear as to whether minimum coverage referred to the $15,000/$30,000 minimum compulsory limits of the standard auto liability insurance policy required by the omnibus statute, N.J.S.A. 39:6B-1(a), or the zero bodily injury coverage permitted in the basic and special policies. 241 N.J. at 173-74, 185-86. The Court in Felix held "that the Legislature now

permits New Jersey insureds to accept something less in [bodily injury] coverage — namely, zero [bodily injury] coverage — does not alter what remains the compulsory minimum [bodily injury] liability coverage amounts that insurers writing in New Jersey must provide," i.e., $15,000/$30,000. Id. at 186.

The St. Paul policy at issue here states that "minimum limits" refers to the limits of liability New Jersey requires provided under the standard policy for bodily injury, $15,000 for each person, subject to $30,000 for each accident. Although we acknowledge "an insurance policy unambiguous to a sophisticated reader may be technically undecipherable to an average insured," Morton Int'l v. Gen. Accident Ins. Co., 134 N.J. 1, 77 (1993), Felix compels rejection of plaintiff's claim that the wording of the intra-family step-down exclusion in her policy is ambiguous, even though the failure to place the phrase "minimum limits" in quotation marks meant plaintiff was not directed to the definition section of the policy where the phrase was explained.

Nevertheless, we reject defendant's argument that its unambiguous Exclusion A.11 is fatal to plaintiff's claim that her reasonable expectations as to coverage were thwarted by its inclusion in the policy. A clearly worded exclusion can still function as a hidden trap if the remainder of the policy, and

particularly the declarations sheet, would lead a reasonable policyholder to expect different coverage. See Lehrhoff v. Aetna Cas. & Sur. Co., 271 N.J. Super. 340, 346 (App. Div. 1994) (noting the "signal importance" of "the declaration page of an insurance policy in terms of the construction of the policy as a whole and in terms of its capacity to define the insured's reasonable expectations of coverage").

In that regard, it's worth reviewing the special rules our courts employ in interpreting insurance contracts. While insurance policies are contracts, of course, they are not ordinary ones but "'contracts of adhesion' between parties [who are] not equally situated." Sparks v. St. Paul Ins. Co., 100 N.J. 325, 337 (1985) (quoting Allen v. Metro. Life Ins. Co., 44 N.J. 294, 305 (1965)). We give them special scrutiny "because of the stark imbalance between insurance companies and insureds in their respective understanding of the terms and conditions" of the company's policies. Zacarias, 168 N.J. at 594; Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 270 (2008) (noting our courts' "particularly vigilant role" arises "[b]ecause of the substantial disparity in the sophistication of the parties, and . . . the highly technical nature of insurance policies"). That asymmetrical relationship causes the policyholder to "justifiably place[] heavy reliance on the knowledge and good faith of the company and its

representatives," who, "in turn, are under correspondingly heavy responsibility to him." Allen, 44 N.J. at 305. Because our Supreme Court has held the insured's "reasonable expectations in the transaction may not justly be frustrated," reviewing courts have "molded [our] governing interpretative principles with that uppermost in mind." Ibid.

Thus, the "fundamental" interpretive rule the Court has laid down, Zacarias, 168 N.J. at 595, is that members of the public purchasing "policies of insurance . . . are entitled to the broad measure of protection necessary to fulfill their reasonable expectations." Kievit v. Loyal Protective Life Ins. Co., 34 N.J. 475, 482 (1961). The Court has made clear insureds "should not be subjected to technical encumbrances or to hidden pitfalls and their policies should be construed liberally in their favor to the end that coverage is afforded 'to the full extent that any fair interpretation will allow.'" Ibid. (quoting Danek v. Hommer, 28 N.J. Super. 68, 76 (App. Div. 1953), aff'd 15 N.J. 573 (1954)).

Simply put, the "goal in construing an accident insurance policy is to effectuate the reasonable expectations of the average member of the public who buys it." Id. at 488. As the Court reiterated in Zacarias, a policyholder can "hardly be expected to draw any subtle or legalistic distinctions based on the presence or absence of the exclusionary clause for he pays premiums in the

strong belief that if he sustains accidental injury which results . . . in his disability he will be indemnified and not left empty-handed." 168 N.J. at 596 (quoting Kievit, 34 N.J. at 488-89).

Of course, "[a]pplication of canons of construction dictating interpretation against a drafter 'should be sensible and in conformity with the expressed intent of the parties.'" Werner Indus., Inc. v. First State Ins. Co., 112 N.J. 30, 38-39 (1988) (quoting Broadway Maintenance Corp. v. Rutgers, 90 N.J. 253, 271 (1982)). "[T]he words of an insurance policy should be given their ordinary meaning, and in the absence of an ambiguity, a court should not engage in a strained construction to support the imposition of liability." Longobardi v. Chubb Ins. Co., 121 N.J. 530, 537 (1990). Critical in that regard is that it is the "objectively reasonable interpretation of the average policyholder" that will control, "so far as the language of the insurance contract in question will permit." Di Orio v. N.J. Mfrs. Ins. Co., 79 N.J. 257, 269 (1979). Subjective or far-fetched interpretations of policy exclusions will not be "sufficient to create an ambiguity requiring coverage." Stafford v. T.H.E. Ins. Co., 309 N.J. Super. 97, 105 (App. Div. 1998). "In the last analysis, a 'policy that fulfills the [objectively] reasonable expectations of the

insured with respect to the scope of coverage' is valid and enforceable." Werner Indus., 112 N.J. at 37 (quoting Zuckerman,100 N.J. at 324).

In our view, an average policyholder in plaintiff's position would reasonably believe she had, for this accident, the $100,000/$300,000 in bodily injury liability benefits she selected — based on the language of the declarations sheet and the policy's clear statement that St. Paul "will provide the coverages you have selected" in return for payment of the premium "subject to all the terms of this policy." One need look no further than the claims adjuster's offer of the $100,000 limits four months after the accident to know plaintiff's expectation of that coverage was objectively reasonable.

The claims adjuster, like the typical policyholder, didn't read the policy. See Doto v. Russo, 140 N.J. 544, 555 (1995) (noting "insurance contracts are not typically read or reviewed by the insured, whose understanding is often impeded by the complex terminology used in the standardized forms"). She based her offer on what she quite understandably believed were the policy limits listed on the declarations sheet, "the one page most likely to be read and understood by the insured." Pizzullo, 196 N.J. at 272. If the $100,000 limit of liability is what an experienced claims adjuster in defendant's employ understood the $100,000/$300,000 bodily injury coverage of the policy

guaranteed plaintiff, a named insured, why should plaintiff be reasonably charged with understanding the fine print of Exclusion A.11 in the boilerplate reduced that coverage to $15,000?

Here, the declarations sheet plainly stated plaintiff was provided $100,000/$300,000 in bodily injury and UM/UIM bodily injury coverage. Nothing there referred her by cross-reference or otherwise to the list of "Exclusions" from "Coverage A — Bodily Injury" in the "Liability Coverage Section" of the policy, or anywhere warned that the policy limits in the declaration pages were "contradicted by the policy's boilerplate." Lehrhoff, 271 N.J. Super. at 347.

While the Court in Zacarias made clear insurers are not required to list specific exclusions on the declarations sheet, and it has eschewed any rule of construction that would force the carriers "to avoid all cross-referencing in policies," it did so out of concern the "proliferation of fine print would itself demand strenuous study and run the risk of making insurance policies more difficult for the average insured to understand." 168 N.J. at 603. The Court did not disavow Lehrhoff's emphasis on the importance of the declaration sheet to the insured's reasonable expectations. Id. at 603-04. Indeed, the Court endorsed it, merely finding the declarations sheet it considered, which

contained a clear statement alerting the insured that coverage was subject to exclusions in the policy, coupled with a plainly worded exclusion, did not create the ambiguity between expectations reasonably raised by the declarations sheet and an exclusion contradicting them we denounced in Lehrhoff. Zacharias, 168 N.J. at 602-04.

It is plain to us that the wording of St. Paul's declaration sheet is determinative here as it was in Lehrhoff. Unlike in Zacarias, the declaration sheet here didn't even "alert[] the insured that the coverages and limits of liability [we]re subject to the provisions of the policy." 168 N.J. at 602-603. On the next-to-last of the four declarations pages, under the heading "Other Information," plaintiff was advised of "Policy Coverage Sections and Endorsements That Form a Part of This Policy," but it merely lists each section of the policy, including the "Signature Page" and the "Glass Deductible." It in no way informed plaintiff the policy was subject to any exclusions under which an insured would not be covered in the full amount listed on the declarations pages. Consequently, there was simply no reason for plaintiff to understand the "Other Information" section was providing her with any information other than a list of the "Sections . . . That Form a Part of Th[e]

Policy," which entitled her to Bodily Injury and UM/UIM Coverages of "$100,000 each person" and "$300,000 each accident."

It has long since been settled that "'[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.'" Zacarias, 168 N.J. at 595 (quoting Sparks, 100 N.J. at 338-39). Here, there is a clear and complete disconnect between the coverages promised on the declarations sheet and that provided by the intra-family step-down in Exclusion A.11.

We acknowledge that painstaking study by a sophisticated student of insurance policies might have led that reader to the exclusion that advised the policy did not provide the $100,000 in liability coverage stated on the declarations sheet "for any 'insured[,]'" here, plaintiff's husband, in the case of bodily injury to her, leaving her instead with only $15,000 in benefits. But even a sophisticated reader would have puzzled over the meaning of a clause that purported to so severely drop down coverage of a named insured without notice or explanation elsewhere in the policy or on the declarations sheet. The step-down in coverage and benefits is so contrary to the reasonable expectations of the typical auto policyholder in light of the declarations sheet

that we will not enforce it. See Lehrhoff, 271 N.J. Super. at 347 (holding the "reasonable expectations of coverage raised by the declaration page cannot be contradicted by the policy's boilerplate unless the declaration page itself clearly so warns the insured"); see also Werner Indus., 112 N.J. at 35-36 (1988) (noting "[a]t times, even an unambiguous contract has been interpreted contrary to its plain meaning so as to fulfill the reasonable expectations of the insured").

Like the trial judge, we reject defendant's reliance on other cases upholding intra-family step-down exclusions in other contexts. "In New Jersey, intra-family exclusions are not per se void as against public policy in all instances." Khandelwal v. Zurich Ins. Co., 427 N.J. Super. 577, 586 (App. Div. 2012). We've upheld them in homeowners policies for decades, for example. See Knoblock v. Prudential Property & Casualty Insurance Co., 260 N.J. Super. 127 (App. Div. 1992); Foley v. Foley, 173 N.J. Super. 256 (App. Div. 1980).

And in Zacarias, the Supreme Court upheld an intra-family exclusion in a boatowner's policy, albeit noting that "in the automobile insurance context, courts have held intra-family exclusions void . . . because the Legislature's automobile insurance scheme has rendered such provisions violative of public

policy." 168 N.J. at 599 (citing Kish, 108 N.J. Super. at 405). In Kish, we deemed an intra-family exclusion in liability coverage and benefits afforded the named insureds in an auto policy invalid as an attempt to limit the omnibus coverage required by statute and refused the carrier's request to reform the policy to the minimum limits, finding no justification for relieving the carrier of the monetary limits of coverage stipulated in its policy. 108 N.J. Super. at 411; see also Craig and Pomeroy, New Jersey Auto Insurance Law, § 2:3-4 (noting "[e]xclusions of claimants due to their family relationship to the insured driver are not permitted in New Jersey").

Defendant is correct to note that while intra-family exclusions have been declared invalid, step-down provisions, so long as they don't step down coverage to less than allowed by the omnibus statute, N.J.S.A. 39:6B-1, have been upheld in the auto context in Aubrey v. Harleysville Ins. Companies, 140 N.J. 397 (1995) (upholding step-down in dealership's garage policy limiting customer's first-party UIM recovery), Hanco v. Sisoukraj, 364 N.J. Super. 41 (App. Div. 2003) (reforming policy of auto lessor excluding coverage to lessees and their permissive users in violation of N.J.S.A. 45:21-3 to step-down coverage of $15,000/$ 30,000) and Rao v. Universal Underwriters Ins. Co., 228 N.J. Super. 396 (App. Div. 1988) (reforming illegal escape clause

providing liability coverage to lessees only when they failed to secure their own coverage to statutory minimums). But see Skeete v. Dorvius, 184 N.J. 5 (2005) (deeming new UM/UIM step-down for additional insureds invalid because of inadequate notice of reduction in coverage to policyholder).

But those cases are of no avail to defendant in this case, which turns on plaintiff's reasonable expectations of coverage based on the declarations sheet of her own personal auto policy, because none limited coverage and benefits to the purchaser of the policy — as this one does.[6] The plaintiffs in those cases could not have any reasonable expectations as to the coverage afforded by the policies under which they made claims because they weren't their personal auto policies. See Hand v. Phila. Ins. Co., 408 N.J. Super. 124, 144 (App. Div.

[6] Although the case is distinguishable because it involved UIM coverage and a motorcycle owned by the named insured but not covered by the policy, the majority in Katchen v. Gov't Emps. Ins. Co., 457 N.J. Super. 600 (App. Div. 2019), upheld a step-down in UIM coverage to the named insured to which he "was not alerted by any language whatsoever on the declarations page." Craig & Pomeroy, New Jersey Auto Insurance Law § 2:3-2. Our dissenting colleague objected, contending the step-down was contrary to the policyholder's reasonable expectations of coverage. 457 N.J. Super. at 615 (Suter, J.A.D., dissenting) ("This is not a question of which UIM policy is primary or excess . . . it is a matter of coverage. The question is whether the insured would understand from the Declarations page and policy provisions that UIM coverage was limited."). The Supreme Court did not resolve the split as the case was settled while it was pending in the Court on appeal as of right. Katchen v. Gov't Emps. Ins. Co., 241 N.J. 354 (2020).

2009) (rejecting the plaintiff's argument of reasonable expectations of coverage in her employer's auto policy). That the policy didn't step down coverage below the $15,000/$30,000 minimum limits for compulsory liability insurance saves it from invalidity under the omnibus statute but is hardly meaningful to plaintiff in the face of the declarations sheet advising her family had $100,000/$300,000 in bodily injury coverage with no hint of the intra-family step-down.[7]

We also reject defendant's claim that the trial court erred in failing to defer to the Commissioner of the Department of Banking and Insurance, who approved the policy form of plaintiff's policy. Leaving aside that the documents in the appendix referencing the approval do not include the explanatory memo presumably submitted to the Department when the exclusion was inserted into the policy, we are not bound by the

[7] St. Paul's argument that plaintiff received the $250,000 in PIP benefits provided by the policy adds nothing to this discussion. The policy entitled plaintiff to $250,000 in PIP benefits; she paid a premium for that coverage. Without the step-down, plaintiff would be entitled to both PIP benefits and to recover personal injury damages for pain and suffering against the tort-feasor, here her husband, a named insured under the policy. St. Paul's argument also ignores the obvious fact that PIP benefits did not make plaintiff whole here — as convincingly demonstrated by St. Paul's offer to her of the $100,000 bodily injury limits of the policy before belatedly discovering the hidden step-down of Exclusion A.11.

Commissioner's approval of a policy form. See Hanco, 364 N.J. Super. at 46 n.2 (affirming reformation of a policy approved by the Commissioner notwithstanding "the clear line of long-standing authority invalidating automobile lessor policies failing to provide unqualified statutory minimum coverage for lessees and their permissive users").

More important here, however, is that declarations sheets are not submitted to the Commissioner for approval. See Craig & Pomeroy, New Jersey Auto Insurance Law § 2:3-2. As our invalidation of the intra-family liability step-down exclusion in plaintiff's policy is premised entirely on the ambiguity created by her reasonable expectation of $100,000/$300,000 in bodily injury coverage as stated on the declarations sheet, defendant's reliance on the Commissioner's approval of the policy form is misplaced.

In sum, we agree with the trial judge the intra-family step-down here was a hidden trap in plaintiff's auto policy contrary to her reasonable expectations as to coverage, rendering it unenforceable. We thus affirm the order declaring the maximum liability coverage available to plaintiff is the $100,000 policy limit. We further affirm summary judgment dismissing plaintiff's claims for bad faith, violation of the Consumer Fraud Act and

punitive damages for the reasons expressed by the trial judge in her written opinion of February 21, 2019.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION