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Minn. R. Civ. App. P. 136.01, subd. 1(c)*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0656**

Jessie Stoltenberg,
Respondent,

vs.

American National Property and Casualty Company,
Appellant.

**Filed February 16, 2021
Affirmed
Halbrooks, Judge***

Hennepin County District Court
File No. 27-CV-18-19343

Jennifer E. Olson, James S. Ballentine, Schwebel, Goetz & Sieben, P.A., Minneapolis,
Minnesota (for respondent)

Klay C. (KC) Ahrens, Hellmuth & Johnson, Edina, Minnesota (for appellant)

Charles A. Bird, Grant M. Borgen, Bird, Stevens & Borgen, P.C., Rochester, Minnesota
(for amicus curiae Minnesota Association for Justice)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and
Halbrooks, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant-insurer challenges the district court's grant of summary judgment to respondent-insured on her declaratory-relief claim regarding the amount of underinsured-motorist coverage available to her under an insurance policy issued by appellant. The district court determined that a step-down provision in the policy limiting underinsured-motorist coverage for nonrelative insureds is void. Appellant argues that the district court erred by concluding that (1) the step-down provision substantially reduced coverage and (2) appellant did not provide adequate notice to the policyholder of the reduction in coverage. Because we conclude that the provision substantially reduced coverage and that appellant failed to provide adequate notice of the reduction, we affirm.

FACTS

The facts in this case are undisputed. In August 2016, respondent Jessie Stoltenberg was injured in a car accident while she was a passenger in a vehicle driven, owned, and insured by her long-term partner. The at-fault driver's insurance company paid its liability limits, but Stoltenberg asserted that the amount did not fully compensate her for her injuries. Thereafter, Stoltenberg made a claim for underinsured-motorist (UIM) benefits from her partner's insurer, appellant American National Property and Casualty Company (ANPAC). *See* Minn. Stat. § 65B.49, subd. 3a(5) (2018) (requiring an injured person to look to the policy covering the vehicle occupied at the time of the accident for primary underinsured-motorist benefits).

At the time of the accident, Stoltenberg's partner had been insured by ANPAC continuously since 1997. Among other coverage, the 2016 policy provided \$250,000 in UIM coverage to the named insured and persons related to the named insured by blood, marriage, or adoption. Although the policy had previously provided the same UIM coverage limits for other insureds, a "step-down" clause was added in 2005 that reduced UIM coverage for nonrelative insureds to "the minimum required liability limits of any financial responsibility law applicable to the accident." Under Minnesota law, the minimum amount of UIM coverage required is \$25,000. Minn. Stat. § 65B.49, subd. 3a(1) (2018). Because Stoltenberg is not related by blood, marriage, or adoption to the policyholder, ANPAC declined to cover Stoltenberg's injuries beyond \$25,000.

Stoltenberg sued ANPAC, seeking a declaratory judgment that the step-down provision was void because ANPAC had failed to provide adequate notice to the policyholder of the reduction in coverage.¹ The parties stipulated that the case involved a purely legal question and that the policy provided either \$25,000 or \$250,000 in UIM benefits. They brought cross-motions for summary judgment.

The district court granted Stoltenberg's summary-judgment motion. The district court concluded that the step-down clause substantially reduced coverage and that ANPAC was therefore required to provide, in writing, "[b]asic information to allow the insured to understand and quantify the reduction in coverage." The district court determined that

¹ Stoltenberg also brought a claim seeking damages for her personal injuries. The parties subsequently stipulated to dismiss that claim without prejudice, leaving Stoltenberg's declaratory-judgment claim as the only issue to be decided by the district court.

ANPAC's 2005 renewal packet failed to provide that information and the step-down clause was therefore void. Consequently, the district court determined that the policy provided \$250,000 in UIM benefits. ANPAC appeals.

DECISION

This court reviews a district court's summary judgment decision de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). Because the issues in this case involve only legal determinations, we must examine "whether the district court properly applied the law." *Id.*

The Minnesota Supreme Court's decision in *Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc.*, 258 N.W.2d 570 (Minn. 1977), controls this case. In *Canadian Universal*, the supreme court held that an insurer must provide written notice when it substantially reduces insurance coverage, and that the failure to provide such notice voids the reduction in coverage. *Id.* at 575. "Any question of an individual's insurance coverage shall then be determined in accordance with the terms of the original policy prior to the renewal or endorsement." *Id.*

Subsequent court of appeals cases have applied the *Canadian Universal* rule and further developed standards for determining whether written notice is adequate. *See, e.g., Benton v. Mut. of Omaha Ins. Co.*, 500 N.W.2d 158 (Minn. App. 1993), *review denied* (Minn. July 19, 1993); *Campbell v. Ins. Serv. Agency*, 424 N.W.2d 785 (Minn. App. 1988). Under *Canadian Universal* and subsequent cases, there are two primary inquiries: (1) did the insurer "substantially reduce" coverage under the policy and, if so, (2) did the insurer provide adequate notice to the policyholder?

On appeal, ANPAC argues that the district court erred because (1) the amendment did not substantially reduce coverage and (2) even if the reduction in coverage was substantial, ANPAC provided adequate notice of the reduction via the 2005 renewal packet. We address each of ANPAC’s arguments in turn.

I. The district court did not err by concluding that the step-down provision substantially reduced insurance coverage.

Minnesota caselaw does not provide a clear test for determining whether a reduction in insurance coverage is “substantial.” However, *Canadian Universal* and subsequent court of appeals decisions are instructive. In *Canadian Universal*, the policyholder sold, installed, and serviced fire protection equipment. 258 N.W.2d at 571. The original insurance policy covered losses arising from the negligent installation of a fire protection system, but a later amendment excluded that coverage. *Id.* at 574. The supreme court determined that the policy amendment substantially reduced coverage. *Id.* Following *Canadian Universal*, this court in *Campbell* held that an insurer substantially reduced coverage when it modified an “all-risk” home-insurance policy to exclude “mixed perils.” 424 N.W.2d at 790. And, in *Benton*, we concluded that the insurer substantially reduced coverage when it decreased the distribution period of disability benefits from 520 weeks to 104 weeks for disabilities occurring after age 63. 500 N.W.2d at 159-60.

In contrast, in *Samuelson v. Farm Bureau Mut. Ins. Co.*, we held that a modification to an automobile-insurance policy—which required that UIM claims must be settled through litigation rather than arbitration—was *not* a substantial reduction in coverage because the change “was a procedural change which did not result in any reduction of [the

insured's] basic insurance coverage.” 446 N.W.2d 428, 431 (Minn. App. 1986). We drew a distinction between purely procedural changes that have “no effect” on insurance coverage and substantive changes that actually reduce coverage. *Id.* at 432.

Here, the district court reasoned that the change was substantial regardless of “[w]hether the court considers the coverage changes as to unrelated insureds under all lines of insurance or only the changes as to the underinsured motorist coverage alone.” The district court emphasized that the step-down clause “dramatically reduces the maximum coverage limits from . . . \$250,000 to \$25,000,” and that, although the significance of the change may vary by policyholder, a reasonable policyholder, when deciding whether to renew an automobile insurance policy, would deem important a steep drop in coverage for nonrelative passengers.

We agree with the district court that the reduction in coverage was substantial. Unlike the amendment in *Samuelson*, the provision actually reduced coverage under the policy. And the change amounts to a 90% reduction in UIM coverage for nonrelative insureds, which here included the policyholder's household member.

ANPAC argues that the step-down provision did not substantially reduce coverage because *Canadian Universal* applies only to a reduction in coverage to the policyholder personally, not to nonrelative passengers. It bases this argument on the language of *Canadian Universal*, which states that the affirmative duty to notify applies “when an insurer . . . substantially reduces the prior insurance coverage provided the *insured*.” *Canadian Universal*, 258 N.W.2d at 575 (emphasis added).

We are not persuaded. First, nonrelative passengers are “insureds” under the policy. Second, the caselaw makes no distinction between insurance coverage that protects the policyholder individually versus other insureds. *Canadian Universal* is grounded in the consumer-protection principle that, because insurance contracts involve parties that are unequally situated, the insurer, as the dominant party, is obligated to inform the policyholder when it creates exceptions or limitations in coverage. *Id.* at 574-75. There is no basis in caselaw to apply this principle where a reduction affects the policyholder personally, but not where the reduction only directly affects the policyholder’s guests. The district court properly determined that the step-down provision substantially reduced coverage.

II. The district court did not err by concluding that the 2005 renewal packet failed to provide adequate notice of the reduction in coverage.

In *Canadian Universal*, the supreme court established that an insurer “has an obligation to inform the insured, by cover-letter or a conspicuous heading to the amendatory endorsement, or some similar means, that the endorsement contains significant changes in coverage, and offer to explain and discuss the significance of the changes to the insured upon request.” *Id.* at 575 (quoting *Allstate Inc. v. Reeves*, 136 Cal. Rptr. 159, 163 (1977)). This court has subsequently applied this standard in two cases. *See Benton*, 500 N.W.2d at 160-61 (concluding that notice was inadequate where the insurer advised the policyholder of a reduction in coverage in a letter that “fail[ed] to put the limits prominently before the insured” and contained “a heading and content which [did] little to apprise a reasonable recipient that primary benefits were being decreased significantly”); *Campbell*,

424 N.W.2d at 790 (concluding that notice was inadequate where the insurer sent the policyholder a copy of the renewal policy along with a document stating: “Your renewal policy contains better protection than ever. New and revised coverages have been added per the enclosed [amendatory endorsement]. Contact your agent if you have any questions.”).

Here, the 2005 renewal packet included eight documents. The fourth and seventh documents relate to the reduction at issue. The fourth document reads as follows:

Important Information Regarding Your Policy

ANPAC® continually strives to provide the best insurance coverage possible at an affordable rate to our policyholders. At times, it is necessary for changes to be made to our policy language in order to ensure this goal is achieved.

Previously, your ANPAC® policy provided liability coverage protection up to the limits shown on your policy Declaration for all insureds, including others who operate your insured vehicle with your permission. Your existing policy with ANPAC® continues to provide coverage for the named insured, your spouse, and your relatives up to the Limits of Liability as shown on your policy Declaration.

The definition of “**insured person**” in Part I – Liability, Additional Definitions Used in Part I Only, and the Limits of Liability Provision have been revised for others who operate your vehicle with your permission (referred to as permissive users). Other clarifications to the definition of an “**insured person**” have been made. The Limits of Liability provided to those permissive users of your insured vehicle has been limited to the minimum limits of liability insurance coverage as indicated in the state financial responsibility law. Please read your policy language for complete details.

Please note the reduced Limits of Liability for permissive users of your insured vehicle DO NOT apply to your liability protection coverage. THE LIABILITY PROTECTION PROVIDED TO YOU, YOUR SPOUSE

AND YOUR RELATIVES HAS NOT CHANGED. You, your spouse, and your relatives are insured for covered losses up to the Limits of Liability shown on your policy Declaration.

Also, if you have previously selected Uninsured Motorist Coverage (UM) and/or Underinsured Motorist Coverage (UIM), the minimum limits of liability insurance coverage as indicated in the state financial responsibility law for insureds other than you, your spouse and your relatives are now applicable. Please read your policy language for complete details. **The reduced limit of UM Coverage DOES NOT apply to the UM Coverage protection provided to you, your spouse and your relatives.**

Additionally, the definition of “**financial responsibility law**” has been added to the Definitions Used Throughout This Policy section in our automobile and motorcycle policies. Financial responsibility refers to the level of insurance coverage required to own and operate a vehicle in your state of residence, any other state the insured vehicle may be operated within, or Canada.

Please read the enclosed documents for complete details. These documents should be kept in a secure place along with your other policy information.

If you have questions about any of these changes or if you want to make any additions or changes to your policy, please contact your local American National agent.

[ANPAC Logo]

This notice contains only a general description of the changes in coverage and is not a statement of contract. All coverages are subject to the insuring agreements, exclusions and conditions of the policy, and applicable endorsements.

The seventh document, Amendatory Endorsement #SA-472, is five pages long and provides a variety of revisions to the insurance policy. It states the following, in relevant part:

**AMERICAN NATIONAL PROPERTY AND
CASUALTY COMPANY**

**AMERICAN NATIONAL GENERAL INSURANCE
COMPANY**

**MINNESOTA AUTOMOBILE AMENDATORY
ENDORSEMENT**

**THIS ENDORSEMENT CHANGES YOUR POLICY,
PLEASE READ IT CAREFULLY**

[. . .]

IV. In **PART III – UNINSURED MOTORIST AND
UNDERINSURED MOTORIST, ADDITIONAL
DEFINITIONS USED IN THIS PART ONLY** is
revised by deleting item (1) and replacing it with the
following:

(1) **“Insured person”** means:

- (a) **you** or a **relative**;
- (b) any other person **occupying your insured car**;
- (c) any person who is entitled to recover damages
because of **bodily injury to you, a relative**, or another
occupant of **your insured car**.

[. . .]

V. Under **PART III – UNINSURED MOTORIST AND
UNDERINSURED MOTORIST, LIMITS OF
LIABILITY**, the first paragraph is deleted and replaced
with the following:

LIMITS OF LIABILITY

A. For:

- (a) **you** or a **relative**; or
- (b) a person related to **you** by blood, marriage or
adoption,

the limits of liability shown in the Declarations apply subject to the following:

(1) The limit for “each person” is the maximum **we** will pay as damages for **bodily injury**, including damages for care and loss of services, to one person in one accident.

(2) Subject to the limit for “each person,” the limit for “each accident” is the maximum we will pay as damages for **bodily injury**, including damages for care and loss of services, to two or more persons in one accident. But, no person is entitled to receive duplicate payments for the same elements of loss.

B. For any other **insured person**, we will only provide up to the minimum required liability limits of any **financial responsibility law** applicable to the accident.

Under *Canadian Universal*, new limitations on coverage must be prominently placed and clearly phrased such that the policyholder is apprised that coverage is being significantly decreased. 258 N.W.2d at 575; *Benton*, 500 N.W.2d at 160. ANPAC did not provide a cover letter in the renewal packet explaining the reduction in coverage. And the heading of the amendatory endorsement—“This Endorsement Changes Your Policy. Please Read It Carefully”—fails to highlight a reduction in coverage. ANPAC contends that the heading satisfies the *Canadian Universal* rule simply because it is conspicuous. But, while the bolded, all-caps heading is conspicuous, it merely informs the policyholder that the endorsement “changes” the policy; the heading does nothing to alert the policyholder that coverage is being *reduced*. And the heading of the notice document—“Important Information Regarding Your Policy”—is, at best, vague.

Moreover, the contents of the notice document fail to prominently place and clearly phrase the reduction in coverage. The first paragraph informs the policyholder that “[a]t

times,” “changes” are necessary “to our policy language.” The next three paragraphs focus on “liability protection coverage,” “liability insurance coverage,” “liability protection coverage,” and permissive users—those who “operate” the vehicle with permission. Paragraph three specifically notes a revised definition of “insured person” in Part I—Liability coverage. These paragraphs emphasize that “liability protection coverage” has not changed for the policyholder or relatives.

The purported notice of reduction in coverage is provided in the fifth of nine paragraphs. Like the paragraphs before it, paragraph five references “liability insurance coverage” and specifically mentions a reduced limit of uninsured motorist (UM) coverage, but *not* UIM coverage. Paragraph five does not clearly state that UIM coverage for nonrelative insureds is reduced or limited:

Also, if you have previously selected Uninsured Motorist Coverage (UM) and/or Underinsured Motorist Coverage (UIM), the minimum limits of liability insurance coverage as indicated in the state financial responsibility law for insureds other than you, your spouse and your relatives are now applicable. Please read your policy language for complete details. **The reduced limit of UM Coverage DOES NOT apply to the UM Coverage protection provided to you, your spouse and your relatives.**

We conclude that the notice falls short of *Canadian Universal*’s requirement that substantial reductions in coverage be clearly phrased and prominently placed.

ANPAC emphasizes the content of the amendatory endorsement and contends that providing the policyholder with the new language was “all which is required” under *Canadian Universal*. But *Canadian Universal* requires more than simply placing the amendatory endorsement language in front of the policyholder—it requires the insurer to

clearly articulate, in a prominent location, that coverage is being reduced. ANPAC also argues that the step-down clause is valid because it has been upheld as unambiguous and permissible under public policy and the Minnesota No-Fault Automobile Insurance Act. And ANPAC relies on caselaw that provides that policyholders are obligated to read their insurance policy. These arguments are not persuasive. Regardless of the policyholder's duty to read the policy, and regardless of the fact that step-down provisions have been upheld as consistent with the law, an insurer still has a duty to provide adequate notice to the policyholder of a substantial reduction in coverage.

In sum, we conclude that the notice ANPAC provided regarding a substantial reduction in UIM coverage for nonrelative insureds was inadequate. We reach this conclusion because the 2005 renewal packet did not contain a cover letter or conspicuous heading highlighting the reduction, the notice was buried in the fifth paragraph of the fourth document, and the notice was not clearly phrased. We therefore conclude that the district court properly determined that the step-down provision is void and that the \$250,000 coverage limit applies to Stoltenberg's claim.

Affirmed.