

United States Court of Appeals For the First Circuit

No. 24-1040

CYNTHIA A. ROBERGE,

Plaintiff, Appellant,

v.

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Hon. John J. McConnell, Jr., U.S. District Judge]

Before

Barron, Chief Judge,
Thompson and Gelpí, Circuit Judges.

James S. D'Ambra, with whom Wayne G. Resmini and Resmini Law LLC were on brief for appellant.

James S. D'Ambra, Rice Dolan & Kershaw, Wayne G. Resmini, and Resmini Law LLC were on supplemental brief, for appellant.

Jessica M. Savino, with whom John P. Graceffa and Morrison Mahoney LLP were on brief, for appellee.

Jessica M. Savino and Morrison Mahoney LLP were on supplemental brief, for appellee.

September 11, 2026

THOMPSON, Circuit Judge. Novel questions of state law are often best left to state courts. Cynthia Roberge's case against Travelers Property Casualty Company of America ("Travelers"), who insured the State of Rhode Island (Roberge's former employer), posed two such questions concerning her eligibility for uninsured/underinsured motorist ("UM/UIM") coverage to recover for injuries resulting from a car accident. So, we certified two unresolved insurance law questions to the Rhode Island Supreme Court. 112 F.4th 45 (1st Cir. 2024) ("Roberge I"). And that court recently answered those questions. 356 A.3d 293 (R.I. 2026) ("Roberge II"). We assume the reader's familiarity with these decisions. Now, the case is back to us to determine whether the Rhode Island Supreme Court's answers to our certified questions require that we affirm the district court's decision granting Travelers summary judgment. For the reasons we'll get into below, we conclude they do.

How We Got Here

As the reader may recall, in October 2018, Roberge was in a car accident with an underinsured driver. She was acting within the scope of her employment for the State at the time of the accident, but she was driving her personal car because no State car was available. Roberge was injured in the accident and hasn't been able to return to work.

But long before that, back in January 2004, Travelers issued an insurance policy (which we dub "the Policy") to the State. The "State of Rhode Island" was the named insured, and the Policy was continuously renewed and was in effect at the time of the accident. The Policy limits UM/UIM coverage to "[a]nyone 'occupying' a covered 'auto' or a temporary substitute for a covered 'auto.'"

After the accident, Roberge made a claim against Travelers for UM/UIM coverage. Travelers denied coverage in September 2019, and reasserted its denial in December 2019 and October 2020. In its denials, Travelers explained that Roberge was not owed UM/UIM coverage under the Policy because she was driving her own car at the time of the accident and, therefore, was not driving a "covered 'auto'" and was not considered an "[i]nsured."

Roberge doesn't dispute that this is correct under the text of the Policy, see Roberge I, 112 F.4th at 50, but she thinks that under Rhode Island law, she's entitled to UM/UIM coverage anyway. So she sued in Providence County Superior Court.

Her complaint raised the following claims:

- Count I: a breach of contract claim;
- Count II: a declaratory judgment that she was a named insured under the Policy;

- Count III: a declaratory judgment that the Policy offered her coverage up to \$1,000,000;
- Count IV: a declaratory judgment that Travelers' acts were malicious in its denial of coverage and entitled her to punitive damages; and
- Count V: a bad faith claim.

Travelers timely removed the case to federal court on the basis of diversity. Later, it moved for summary judgment on all counts, arguing that Roberge wasn't entitled to UM/UIM coverage under the Policy or under Rhode Island insurance law. Roberge filed a cross-motion for summary judgment on only Counts I-III. There, she argued that she was entitled to UM/UIM coverage, notwithstanding the Policy's language, based on the Rhode Island Supreme Court's decision in Martinelli v. Travelers Ins. Cos., 687 A.2d 443 (R.I. 1996),¹ or, alternatively, based on the Rhode Island Uninsured Motorist Statute, R.I. Gen. Laws § 27-7-2.1.² Not buying

¹ While we won't get into all the details here (for more on that, read our prior decision and the Rhode Island Supreme Court's answers to our certified questions), in Martinelli, the Rhode Island Supreme Court determined a plaintiff was not entitled to UM/UIM coverage, but noted that it was not "foreclos[ing] the possibility that in different circumstances this Court could conclude that an individual shareholder or employer might be eligible for uninsured-motorist coverage under a policy that listed the corporation as the named insured." 687 A.2d at 446.

² To put it simply, this statute requires that insurers provide UM/UIM coverage in an amount equal to the policy's liability coverage limits (unless the insured specifically selects a lesser amount). See R.I. Gen. Laws § 27-7-2.1. Here again, the

these arguments, the district court granted Travelers summary judgment (and denied Roberge the same).

For the reasons recorded in our prior opinion, we certified two questions to the Rhode Island Supreme Court:

(1) In light of Martinelli v. Travelers Ins. Cos., 687 A.2d 443 (R.I. 1996), and Rhode Island law, must an employee, who is operating her own personal vehicle while in the scope of her employment, be considered a named insured under her employer's auto insurance policy, despite policy language to the contrary?

(2) Does it violate the Rhode Island Uninsured Motorist Statute, R.I. Gen. Laws § 27-7-2.1, and Rhode Island public policy when an employer's auto insurance policy provides liability coverage to employees in the scope of their employment, but does not provide UM/UIM coverage to employees in the scope of their employment based upon the auto involved?

Roberge I, 112 F.4th at 60-61.

That court recently answered no to both questions (though it did so by a divided vote).³ On question (1), it held

reader can look back at our prior decision and the Rhode Island Supreme Court's answers to our certified questions for more detail.

³ The dissent isn't relevant for our purposes, but for those curious, Justice Robinson focused on the first certified question and argued that the majority rendered the Martinelli exception "far too narrow[]." Roberge II, 356 A.3d at 305 (Robinson, J.,

that "Roberge is not entitled to UM/UIM benefits as a 'named insured'" under the Policy. Roberge II, 356 A.3d at 301. It reasoned that the so-called Martinelli exception does not apply to all employees acting within the scope of their employment -- particularly where their employer is a government entity with over 17,000 employees (as is the case here). Id. at 299-300. Instead, "[t]he policy's text is . . . the cornerstone." Id. at 301. On question (2), it held that Roberge is not entitled to UM/UIM coverage under the Policy because the Rhode Island Uninsured Motorist Statute "requires an insurer to extend uninsured motorist coverage to the insured only when the issued policy provides primary coverage for the insured motor vehicle." Id. at 303.

After the Rhode Island Supreme Court weighed in, we ordered the parties to show cause why the district court's order granting Travelers' motion for summary judgment and denying Roberge's motion for partial summary judgment should not be summarily affirmed. Roberge argued that, despite the ruling, she's entitled to UM/UIM coverage. Unsurprisingly, Travelers disagreed.

dissenting); see id. at 304 n.1. He described it as "fundamentally unfair and contrary to the liberal spirit of Rhode Island's approach to UM/UIM coverage to deprive Ms. Roberge of such coverage simply because other employees had exhausted the availability of State cars on that particular day." Id. at 307.

And with supplementary briefing in hand, we are prepared to do our appellate work (again).

Standard of Review

As we previously explained, we review the grant of summary judgment de novo (i.e., without deference to the district court's views). MacRae v. Mattos, 106 F.4th 122, 132 (1st Cir. 2024). In doing so, "we assess the facts in the light most flattering to the nonmovant and draw all reasonable inferences on its behalf." R.I. Truck Ctr., LLC v. Daimler Trucks N. Am., LLC, 92 F.4th 330, 346 (1st Cir. 2024) (citation omitted). This lens and mode of analysis do not change where the parties file cross-motions for summary judgment (as is the case here). Rather, we simply review each motion "separately, drawing facts and inferences in favor of the non-moving party." Scottsdale Ins. Co. v. United Rentals (N. Am.), Inc., 977 F.3d 69, 72 (1st Cir. 2020).

The Issues

Roberge offers a few reasons why the Rhode Island Supreme Court's decision shouldn't control the outcome of her case. We'll discuss each in turn, but spoiler alert: none of her arguments are persuasive.

First, Roberge argues that Travelers waived its defense that she is not entitled to UM/UIM coverage because the Policy was not her "primary" policy by never raising it when it initially

denied coverage.⁴ Under Rhode Island law, an insurer must "promptly provide a reasonable and accurate explanation" for its denial of an insurance claim. R.I. Gen. Laws § 27-9.1-4(a)(12). And it's true that when an insurer denies a claim based on "a specific provision, condition, or exclusion" it must reference "such provision, condition, or exclusion" in its denial. Optical Works & Logistics, LLC v. Sentinel Ins. Co., 525 F. Supp. 3d 295, 301 (D.R.I. 2021) (citation omitted).⁵

But Travelers pushes back, arguing that it fulfilled its obligation with the appropriate specificity. Its letters declining coverage stated that Roberge was not entitled to coverage because she was "operating her own motor vehicle at the time of the loss, and not a vehicle owned by the State of Rhode Island," (the named insured) and she "is not the 'you' and 'your' as described [in] the policy" and cited the specific provisions of the Policy that were relevant. Travelers says this makes the basis

⁴ Instead, Travelers relied on its own policy provisions in its denial letters and did not explain why the Rhode Island UM/UIM statute did not apply.

⁵ Optical Works applied the "mend the hold" doctrine to Rhode Island insurance law. Id. at 301 n.7. This limits a contracting party's defenses for nonperformance to those based on explanations given at the time of the nonperformance. In other words, an insurance carrier, when pressing a summary judgment motion, cannot rely on later acquired information not presented in its denial of a claim. Id.

for the denial clear and thus is sufficient under Rhode Island law. We agree.

As Travelers highlights in a Fed. R. App. P. 28(j) letter, the Rhode Island Supreme Court recently considered and rejected a similar argument. Like us, it concluded an insurer (also, coincidentally, Travelers) did not waive a defense to an argument regarding expanded coverage where (1) it cited the specific policy provisions on which it based its denial and (2) it "did not rely on any 'later acquired information' in its motion for summary judgment that was not presented in its denial letters." Horsman v. Travelers Prop. Cas. Co. of Am., No. 2025-247-APPEAL., 2026 WL 2198531, at *3 (R.I. July 30, 2026).

Horsman's discussion of Skaling v. Aetna Ins. Co., 799 A.2d 997, 1011 (R.I. 2002), which Roberge relies on, is instructive. It explained that Skaling "established certain guidelines that insurers doing business in the State of Rhode Island must adhere to when denying an insured's claim." Horsman, 2026 WL 2198531, at *3. These include "an implied obligation to promptly and fully respond to their insured, to investigate a claim and to subject that claim to appropriate review" and "a responsibility to assemble all the facts necessary for a fair and comprehensive investigation before it refuses to pay a claim and [to] not base a defense to bad faith on later acquired information." Id. (quoting Skaling, 799 A.2d at 1010). Moreover,

the decision of the insurer "to deny a claim . . . must be judged by what was before it at the time the decision was made." Id. (quoting Skaling, 799 A.2d at 1011). With this guidance in mind, we cannot conclude, based on the circumstances here, that Travelers breached its obligations as set forth in Skaling. In denying Roberge's claim for UM/UIM coverage, it focused like a laser on the policy language itself and explained, in three separate detailed communications, why Travelers' interpretation of the policy excluded Roberge as a covered person.

Roberge's further contention that she should prevail because Travelers' denial of coverage letters failed to cite its defense to her personal interpretation of Rhode Island's UM/UIM statute is not reasonably supported by law. See id. ("[T]he appropriate inquiry is whether there is sufficient evidence from which reasonable minds could conclude that in the investigation, evaluation, and processing of the claim, the insurer acted unreasonably and either knew or was conscious of the fact that its conduct was unreasonable." (alteration in original) (quoting Skaling, 799 A.2d at 1009)). Roberge develops no argument that her interpretation of the UM/UIM statute might reasonably be viewed as so obvious as to put Travelers on notice of it, meaning Travelers acted "unreasonably" and must have been "conscious of the fact that its conduct was unreasonable." See id. Accordingly, to find in Roberge's favor would impose upon insurers, when

evaluating a claim and communicating a policy coverage position, an obligation to anticipate and address every argument a litigant might conjure up. Again, we do not view Rhode Island law as imposing such a burden.

And Roberge's reliance on this Court's decision in Briere v. National Union Fire Ins. Co. of Pittsburgh, 116 F.4th 32, 35 (1st Cir. 2024), does not persuade to the contrary. In that case, we found that an insurer had waived a defense that § 27-7-2.1(a) did not apply because the policy at issue had not been "delivered or issued for delivery" in Rhode Island. Id. at 33-34. The insurer's denial of the claim there was a single sentence and didn't cite to specific provisions of the policy or explain its factual basis for denying the claim. Id. at 34-35. By contrast, and to repeat, the denials here cite the specific provisions on which they are based and identify Travelers' reason for denying coverage -- the same reason Travelers offered to the court: Roberge wasn't "insured" under the unambiguous language of the Policy.⁶

Travelers' defense isn't waived.⁷

⁶ We additionally note that, unlike the plaintiff in Briere, Roberge does not suggest that she made her statutory argument for expanded coverage under the UM/UIM statute in her pre-suit demand letters (in fact, her demand letters aren't part of the record on appeal). Id. at 35. So we don't address whether Travelers would have needed to respond to such an argument in its denial letters, if noticed.

⁷ Because Travelers hasn't waived its defense, we won't get

Second, Roberge argues that by limiting UM/UIM coverage to State-owned autos, Travelers unlawfully denied coverage, voiding the Policy and requiring it to be reformed to the \$1,000,000 liability limit. Travelers says this sounds like the argument the Rhode Island Supreme Court already rejected in its answer to our second certified question. It's right. Roberge II, 356 A.3d at 302. ("Roberge contends that even if this Court determines that she was not occupying a 'covered auto' under the Travelers Policy, she should nonetheless be entitled to UM/UIM coverage pursuant to § 27-7-2.1 because the Policy would have provided her liability coverage if she were the cause of the subject accident. . . . We disagree.")

Roberge isn't convinced. Here's what she thinks: under R.I. Gen. Laws § 27-7-2.1(b), the named insured can reject UM/UIM coverage in writing. Roberge says that because Travelers never obtained a signed rejection form from the State indicating UM/UIM coverage was rejected for all vehicles other than State-owned autos, it never actually rejected coverage for these vehicles.

The key problem with her argument, in our view, is that it's illogical to require a signed rejection form to disclaim coverage that the insured has already rejected -- requiring as much would effectively nullify the Rhode Island Supreme Court's

into the thornier question of whether waiver can expand coverage under the Policy.

decision that UM/UIM coverage isn't mandated in this instance. As it explained, "[s]ection 27-7-2.1 acts as a safeguard for persons who are entitled to coverage under a policy as 'insureds.' It does not, however, serve to circumvent clear policy language and extend coverage to those, like Roberge, who have explicitly been restricted from . . . coverage based on the auto involved." Roberge II, 356 A.3d at 303. In short, Roberge asks us to require coverage despite clear policy language to the contrary and despite the Rhode Island Supreme Court's instruction that we do not. Mindful that our role is to settle a dispute about Rhode Island law the way the Rhode Island Supreme Court would settle it, we decline that invitation.⁸

Third, Roberge makes two additional separate but related arguments which we'll tackle together. She urges that Travelers violated R.I. Gen. Laws § 27-7-2.1(d) and 230 R.I.C.R. 20-05-1.5(C). Each of those requires an insurance company to notify the named insured of the availability of UM/UIM coverage "in an amount

⁸ Roberge says that requiring coverage in the absence of a signed rejection form is in line with other jurisdictions' decisions. See Slupski v. Nationwide Mut. Ins. Co., 801 F. App'x. 850 (3rd Cir. 2020); Vasseur v. St. Paul Mut. Ins. Co., 473 S.E. 2d. 15 (N.C. App. 1996). As Travelers observes, while these could be persuasive if the Rhode Island Supreme Court hadn't weighed in on the meaning of the statute, now that it has, we can't ignore its guidance just because other states do it differently. If anything, Slupski and Vasseur suggest that signed rejection forms are necessary to opt out of state mandated coverage -- not to opt out of coverage that isn't mandated in the first instance. See Slupski, 801 F. App'x at 853-54, Vasseur, 473 S.E. 2d at 16-18.

equal to the insured's bodily injury liability limits" any time the policy is "renew[ed], reinstate[d], substitute[d], amended, altered, modified, transfer[red] or replace[d]." Ferreira v. Integron Nat. Ins. Co., 809 A.2d 1098, 1100-01 (R.I. 2002) (quoting R.I. Gen. Laws § 27-7-2.1(d)); see 230 R.I.C.R. 20-05-1.5(C). Roberge says Travelers violated this requirement several times: by renewing the Policy on February 1, 2008, and by modifying the Policy through change endorsements on three different days in 2018 -- March 6, April 25, and May 15 -- all without notifying the State of the availability of UM/UIM coverage.

The problem, as Travelers explains, is that she doesn't cite any evidence to support this claim.⁹ Rule 56 requires a party moving for summary judgment or opposing another party's motion for summary judgment to cite specific facts in the record to support her assertions; it also permits a court to grant summary judgment in the absence of such evidence. Fed. R. Civ. P. 56(c), (e). We've said many times that, at summary judgment, parties have "evidentiary obligations" to "put up or shut up." United States

⁹ The only evidence we do have is Travelers' managing director's affidavit stating that Travelers notified the State of the option to purchase UM/UIM coverage at each renewal of the Policy following the November 9, 2016 modification. This isn't quite on point since it doesn't tell us whether Travelers notified the State at the time of the change endorsements or the 2008 renewal. Ultimately, however, it doesn't matter: without any evidence suggesting the State wasn't notified, Roberge can't win at summary judgment.

ex rel. Omni Healthcare Inc. v. MD Spine Sols. LLC, 160 F.4th 248, 265 (1st Cir. 2025). Here, Roberge's conclusory allegations simply aren't enough of a "put up" and thus don't provide a basis to disturb the district court's decision.¹⁰

Conclusion

For the reasons above, we **affirm** the district court's decision granting Travelers' motion for summary judgment as to all counts and denying Roberge's motion for partial summary judgment.¹¹

So ordered.

¹⁰ Roberge notes that an insurer is obligated to comply with the notification requirement "irrespective of the insured's intent as to whether or not it wants greater coverage" (Emphasis omitted); see Fama v. Prudential Prop. & Cas. Ins. Co., 694 A.2d 741, 742 (R.I. 1997) (per curiam). We don't disagree, but we again note that Roberge hasn't established breach of the notification requirement.

¹¹ In this appeal, Roberge doesn't delineate her arguments with respect to the specific counts. She also offers no reason to disturb the district court's holdings as to Count IV (punitive damages) and Count V (bad faith). For the reasons articulated in this opinion, and in the Rhode Island Supreme Court's answers to our certified questions, Roberge hasn't provided any persuasive reason to reverse the district court's conclusions as to any of the five counts.