III. REDUCTIONS OF COVERAGE

A. IN GENERAL

"(d) Limits of Liability.

(1)The limit of the insurer's liability may not be less than the applicable limits for bodily injury liability specified in subsection (a) of Section 14-112 of the General Statutes, except that *the policy may provide for the reduction of limits* to the extent that *damages* have been

(A) Paid by or on behalf of any person responsible for the injury,

(B) Paid or are payable under any workmen's compensation law, or

(C) Paid under the policy in settlement of a liability claim.

(2) The policy may also provide that any direct indemnity for medical expense paid or payable under the policy will reduce the damages which the insured may recover under this coverage

(3) Any payment under these coverages shall reduce the company's obligation under the bodily injury liability coverage to the extent of the payment.

(4) This subsection shall not apply to underinsured motorist conversion coverage except that no payment under a policy providing underinsured motorist conversion coverage shall duplicate payment from any other source."
Regs. Conn. State Agencies §38a-334-6(d)

An insurer may reduce its liability under an uninsured motorist provision only as permitted by Regs. Conn. State Agencies §38a-334-6(d).[1] For the insurer to take the applicable reduction, its *policy* must contain language incorporating the reductions permitted by the regulation.

When the policy fails to take advantage of the reductions provided by the regulation, the insurer is barred from reducing its coverage.[2] The reductions have been held to reduce the **limits** of coverage, and where the **damages** awarded are less than the adjusted limits, the reductions reduce the **damages** which may be recovered under the policy.[3]

In the case of a self insurer, unless the notice of self insurance or written document creating the same, contains the permitted regulatory reductions, coverage cannot be reduced. [4]

B. REDUCTION FOR DAMAGES PAID BY OR ON BEHALF OF ANY PERSON RESPONSIBLE FOR THE INJURY

> ***". . . the policy may provide for the reduction of limits*** **to the extent that damages have been**
>
> > **(A) Paid by or on behalf of any person responsible for the injury . . ." (Emphasis added.)**

Regs. Conn. State Agencies Section 38a-334-6(d)(1)(A)

1. Reduction for damages paid because of *the* bodily injury.

The regulation allows the insurer to reduce the policy limits for damages paid to the insured by the person responsible for the injury. This would include all sums paid under the liability portion of the policy. [5]

Policy language allowing an insurer to reduce the underinsured motorist coverage by "all sums paid because of **the bodily injury**" corresponds to the use of the word "damages" in the regulation. [6]

Policy language allowing the insurer to reduce its coverage by "all sums paid because of *the* bodily injury by or on behalf of persons or organizations who may be legally responsible" restricts the insurer to deducting payments made only to the claimant, not payments made to other persons.[7] The reason for this is that the policy language is expressly limited singularly to "the bodily injury"--that is, to the claimant's bodily injury and not to the bodily injury of any other person.[8]

When the specific terms of the underinsured motorist policy allow a reduction only for that amount paid by the tortfeasor to individual claimants, the total amount received by **multiple** claimants from the tortfeasor and the underinsured motorist insurer can exceed the underinsured motorist insurer's policy limit. [9]

An insurer that utilizes policy language that allows a claimant to recover more than they would have recovered had the tortfeasor maintained a liability insurance policy equal in amount to the underinsured motorist coverage of the claimant is allowing a contractual expansion of the public policy underlying underinsured motorist coverage. It permits the claimant to recover actual damages and does not represent a double recovery.[10] As always, an insurer may contractually expand the scope of statutorily mandated underinsured motorist coverage, but it is powerless to restrict it.[11]

Therefore, the fact finder should make a finding as to the full value of compensable damages to which the claimant is entitled, since an insured may be able to recover total damages that exceed the underinsured-motorist policy limit.[12]

2. Reduction for damages paid *to other claimants*.

The question of whether the statute or regulation would permit an insurer to take credit for payments made to other claimants was resolved in *Allstate Insurance Co. v. Lenda*, 34

Conn. App. 444 (1994).

The policy language at issue in Lenda provided as follows:

"The limits of this coverage will be reduced by: (1) all amounts paid by the owner or operator of the uninsured auto or anyone else responsible . . ."

The court found that under the terms of the policy, Allstate was entitled to reduce the amount of uninsured motorist benefits payable to the claimant by **all amounts paid by the tortfeasor to all injured parties, including amounts paid for personal injury and property damage.** The court then compared the policy language at issue to the regulation that authorizes the reduction and found that the regulation authorized this type of policy provision.[13]

In situations involving multiple claimants, who together exhaust the per occurrence limit of the tortfeasor's liability policy and whose uim policy provided for a reduction for all amounts paid by the tortfeasor to all injured parties, the courts are split as to whether an insurer can reduce the per person uim limits by the total amount recovered by the claimants from the tortfeasor's liability coverage, or whether the total amount recovered by the claimants should reduce the per occurrence portion of the uim policy. [14]

It is therefore crucial to review the policy language at issue in each case to determine whether the insurer is limited to taking a reduction **only for those payments made to the claimant**[15] or whether the insurer is entitled to reduce its coverage **by all amounts paid by or on behalf of the tortfeasor to the claimant as well as to others, for both bodily injury and property damage.**

A claimant insured under multiple polices, one containing an arbitration clause and the other containing a suit clause, may not defer a portion of the reduction for use in the later civil suit.[16] If the insurer in the arbitration proceeding is entitled to an immediate deduction against an underinsured motorist arbitration award for all the payments made to the claimant by the tortfeasor, a portion may not be reserved by the claimant for later use in a subsequent civil action seeking underinsured motorist benefits under a different policy.[17]

3. Reduction for amounts paid by or on behalf of any tortfeasor for bodily injury and property damage after October 1, 2015

For policies issued or renewed after October 1, 2015, an insurer may not reduce their underinsured motorist coverage by amounts paid to other claimants. The statute has been amended to state:

"**In no event shall there be any reduction of uninsured or underinsured motorist coverage limits or benefits payable (2) with respect to an automobile liability insurance policy issued or renewed on or after October 1, 2015, (A) for amounts paid by or on behalf of any tortfeasor for bodily injury to anyone other than individuals insured under the policy against which the claim is made, or (B) for amounts paid by or on behalf of any tortfeasor for property damage."** C. G. S. Section 38a-336(b).

The statute prohibits the insurer from reducing coverage for amounts paid to other claimants or for property damage paid by the tortfeasor, if the policy is issued or renewed after October 1, 2015. The statute would legislatively overrule the decision in Lenda, and also render policy provisions allowing the insurer to deduct amounts paid to other claimants invalid.

4. Reduction in the Context of Multiple Tortfeasor Situations

In the context of a **multiple tortfeasor** case, the claimant may make claim against their underinsured motorist insurer even though they have settled with **one tortfeasor** for an amount which is greater than the uninsured motorist coverage.[18] An action against an identified tortfeasor may be consolidated with an action against the uninsured motorist insurer based upon the negligence of the driver of an unidentified vehicle.[19] Similarly a claim a claim for underinsured motorist benefits may be joined with an insured's personal injury against the tortfeasor, even thought the tortfeasor's liability coverage has not yet been exhausted.[20]

Under C. G. S. Section 52-572h(n), each tortfeasor is liable to the claimant only for their proportionate share of the claimant's damages. In a multi-car collision, where the claimant has filed suit against the alleged tortfeasor and the claimant's underinsured motorist insurer alleging the negligence of a phantom vehicle, the underinsured motorist insurer is allowed to seek apportionment of liability under Conn. Gen. Stat. §52-572h from the tortfeasor against whom the claimant settled with before trial.[21] The fact finder is required to apportion damages and any setoff applies to the percentage of damages applicable to each party's negligence. [22]

In such a situation, if the claimant settles with a potential tortfeasor, the claimant is allowed to retain the amount of the settlement, but the award against the remaining tortfeasor is diminished by the percentage of negligence attributable to the settling tortfeasor.[23] So, if a claimant settles with one tortfeasor in an amount greater than the underinsured motorist policy and the fact finder finds that the percentage of negligence attributable to the settling defendant is an amount less than the underinsured motorist insurer's policy limit, the insurer is liable for the balance of the claimant's damages.[24] In such a situation the uninsured motorist insurer is not entitled to a dollar for dollar reduction of the settlement payment against the jury's determination of the claimant's total damages, but rather the claimant's total damages are reduced by the percentage of negligence attributed by the jury to the insured tortfeasor. [25]

5. Miscellaneous Reductions

a. Tortfeasor's Personal Payment/Settlements.

Not only may an underinsured motorist carrier limit its liability by taking credit for payments made by the tortfeasor's liability insurer, it may also reduce its liability by taking credit for a tortfeasor's personal payment to the insured.[26]

Additionally, where a party who may not be construed as a tortfeasor makes a **settlement payment** to obtain a release, the regulation allows an insurer to deduct that settlement payment from the damages owed to its insured to prevent a windfall to the insured.[27]

The carrier's right to the reduction is not limited to recoveries from parties judicially determined to be responsible.[28] The reduction includes amounts recovered pursuant to a settlement agreement where the parties stipulate that neither was legally responsible.[29] The meaning of the word "responsible", in the regulation includes persons who assume responsibility by making voluntary payments.[30] This invokes the "time-honored rule that an injured party is entitled to full recovery only once for the harm suffered."[31]

In a multi-tortfeasor situation, underinsured motorist coverage is reduced by the total sum of the settlement payments, without any relationship to the tortfeasor's proportionate fault in causing the collision. [32] So when the total settlement from all tortfeasors exceed the underinsured motorist policy limit, there is no underinsured motorist claim. [33]

b. Legal Malpractice Claims; Punitive Damages; Umbrella Coverage; Dram Shop Payments; Bad Faith Claims; Property Damage Claims.

A payment made in settlement of a **legal malpractice** claim based upon the failure to file suit within the applicable statute of limitations for damages sustained by the claimant in a motor vehicle collision may be used to reduce the underinsured motorist limits under this regulatory reduction. [34]

Such a payment constitutes damages paid by or on behalf the any person responsible for the injury within the meaning of the regulation since the legal malpractice settlement was a substitute for the payment that the tortfeasor would have made, but for the attorney's negligence in failing to file suit within the applicable statute of limitations. [35]

Policy language permitting the insurer to reduce its underinsured motorist liability by ***"all sums"*** paid by the person responsible for the injury allows an insurer to offset its coverage by any **common law punitive damages** paid by a tortfeasor.[36]

Payments made under a **dram shop policy** are not made "by or on behalf of a person responsible for the injury" as the regulation requires to invoke the reduction.[37] Such a payment "is made on behalf of a liquor establishment which serves alcohol to an intoxicated person who thereafter causes injury to a third party."[38]

The statutorily authorized deduction is not limited to amounts received under the tortfeasor's automobile liability coverage, but also includes payments made under the tortfeasor's **umbrella** policy. [39]

The underinsured motorist insurer is not entitled to a credit for payments made by a liability insurer in settlement of a **bad-faith** claim against it arising out of its handling of a third-party claim against its insured, since these acts of misconduct cannot be held to be an injury…caused by an accident arising out of the ownership, maintenance or use of an uninsured auto, and the damages are not paid by or on behalf of the person responsible for the injury, but rather by the insurer.[40]

The language of the regulation does not limit the type of damages for which there may be a reduction. Since the regulation does not limit reductions to damages paid for bodily injury, damages paid for **property damage (including rental vehicles**), as well as those paid for bodily injury, may be deducted for the purpose of reducing limits of coverage, if the policy language is as broad as the regulation.[41]

When the policy language is not as broad as the regulation, however, payments made

by the tortfeasor's liability insurer for **property damages** to the vehicle may not be deducted from the uninsured motorist coverage, since such payments are not paid for the bodily injuries suffered by the claimant.[42] A claimant may not recover double damages for the same item of loss.[43]

Certain policy language may allow a single claimant's award to be reduced by more than that claimant actually received from the tortfeasor. To allow a separate reduction against each policy, however, would penalize the claimant unfairly.[44]

A claimant who obtains a verdict against an uninsured motorist insurer for an amount which is less than that recovered from the tortfeasor's liability insurer is not a prevailing party and not entitled to recover costs from the underinsured motorist insurer.[45]

C. REDUCTION FOR WORKER'S COMPENSATION

> **". . . *the policy may provide for the reduction of limits* to the extent that damages have been . . . (B) Paid or are payable under any workmen's compensation law." (Emphasis added.)** *Regs. Conn. State Agencies Section 38a-334-6(d)(1)(B)*

An employee injured in the course of his or her employment is not barred by the exclusivity provision of the workers' compensation statute from claiming uninsured motorist benefits from a self-insured employer, the employer's insurer or from his or her own uninsured motorist policy.[46]

Depending upon the language of the particular policy, the uninsured motorist benefits may be reduced by the application of Regs. Conn. State Agencies Section 38a-334-6(d)(1)(B).[47]

Since C.G.S. Section 38a-336 does not specifically prohibit the adoption of a regulation allowing a reduction for worker's compensation, and since C.G.S. Section 38a-334 authorizes the insurance commissioner to adopt regulations pertaining to "the insuring agreements, exclusions, conditions and other terms applicable to uninsured motorist coverages," there is no tension between these provisions, and the regulations allowing the reduction in coverage for worker's compensation benefits are valid.[48]

The deduction includes worker's compensation benefits already ***paid***, as well as those ***payable*** to the claimant.[49] To allow otherwise would enable claimants to postpone collecting worker's compensation benefits in favor of first pursuing a claim for uninsured motorist benefits, then arguing that they had not been paid any worker's compensation benefits and that the insurer therefore was not entitled to a deduction-in effect making a double recovery.[50] Further, the fact that uninsured motorist benefits may include damages for pain, suffering, disability and loss of earning capacity, none of which is recoverable under the worker's compensation laws does not invalidate the regulatory reduction.[51] However, the regulation does not allow a reduction for projected, but not currently ascertainable future benefits. [52] In order for the insurer to claim a reduction for benefits payable in the future, there must be a rational basis upon which to base such a calculation.[53] It is not necessary to quantify the kind of damages "before a valid reduction in uninsured motorist benefits may occur by reason of any payments made pursuant to the worker's compensation law."[54]

Subsistence allowances received by any injured employee from the workers

rehabilitation fund are not worker's compensation payments within the meaning of C.G.S. Section 31-382b(a) and therefore are not entitled to be deducted by the uninsured motorist insurer under the regulation.[55] The phrase "amounts paid or payable to or for the insured under worker's compensation law" in a policy includes **dependent** benefits paid to a dependent of a worker killed in a motor vehicle accident which occurred in the course of employment and reduces the coverage available to the employee's estate.[56]

Similarly, benefits paid to a state employee, pursuant to C. G. S. Section 5-192p, are not worker's compensation or disability benefits, but retirement benefits and as such are not deductible from an award of uninsured motorist benefits. [57]

To properly review a claim relating to the propriety of the deduction of future workers' compensation benefits, the reviewing court must have an adequate record. If the appellant fails to provide such a record, the court will decline to review the claim.[58]

1. Employer's Claim for Reimbursement under C. G. S. Section 31-293(a).

When the claimant has reimbursed the worker's compensation insurer from the proceeds of a recovery from the tortfeasor's liability insurer, the underinsured motorist insurer is not entitled to a deduction for the amounts repaid.[59] To allow the worker's compensation carrier to be reimbursed and the underinsured motorist carrier a deduction for worker's compensation benefits would constitute a double deduction and would be inequitable to the claimant.[60]

C.G.S. Section 31-293(a) which allows employers who have made worker compensation payments to employees injured by a third party to bring suit to recover those payments from the third party or to intervene in the employee's action against such third party, does not allow an employer to make such a claim against any recovery that the employee may be entitled to under the employee's own uninsured motorist provisions of their automobile insurance policy.[61] The same result would obtain where the underinsured motorist coverage is provided by the employer as a self insurer or through a commercial insurer.[62]

The rationale for such a result is that an uninsured or underinsured motorist insurer makes payments under its uninsured or underinsured motorist coverage "on behalf of the insured, not the uninsured motorist".[63] Since the uninsured or underinsured motorist insurer is making payments "on behalf of the insured," not the responsible third party, the employer has no claim for reimbursement under C.G.S. Section 31-293.[64]

D. REDUCTION FOR DAMAGES PAID OR PAYABLE UNDER DISABILITY BENEFITS LAW

The regulation previously provided:

> **"(d)(1)(B) . . . the policy may provide for the reduction of limits to the extent that damages have been (2) paid or are payable under any . . . disability benefits law."**
> *Regs. Conn. State Agencies Section 38a-334-6(d)(1)(B)*

This allowed an uninsured motorist insurer to reduce the limits of liability for uninsured/underinsured motorist coverage by an amount equal to the sum of social security disability benefits paid or payable to the insured.[65]

In *Vitti,*[66] decided on stipulated facts, the stipulation did not expressly state that the disability for which the plaintiff was receiving social security disability benefits was attributable solely to the accident, however, the parties did not dispute this fact and the court assumed it to be true.[67] The court stated that the receipt of social security disability benefits for a disability that is unrelated to the accident for which the plaintiff is claiming uninsured or underinsured motorist coverage could not be allowed as a limitation for that coverage.[68]

The statute was then amended to prevent an insurer from reducing the uninsured motorist coverage for social security disability benefits. It now reads as follows:

"In no event shall there be any reduction of uninsured or underinsured motorist coverage limits or benefits payable (1) for amounts received by the insured for Social Security disability benefits paid or payable pursuant to the Social Security Act, 42 USC Section 301, et seq.," C. G. S. Section 38a-336(b)

The regulation has been amended to incorporate the statute and delete any reference to a reduction for Social Security Benefits. [69] The amendment has been held to be retroactive. [70] Private disability insurance benefits are also excluded from the reduction of uninsured motorist benefits. [71]

E. REDUCTION FOR DAMAGES PAID UNDER THE POLICY IN SETTLEMENT OF A LIABILITY CLAIM

". . . *[t]he policy may provide for the reduction of limits* to the extent that damages have been . . . (C) Paid under the policy in settlement of a liability claim." (Emphasis added.)
Regs. Conn. State Agencies Section 38a-334-6(d)(1)(C).

In multiple car accidents involving both insured and uninsured drivers, and in some single car collisions[72], occupants may be entitled to recover under both the liability portion of the policy as well as the uninsured portion of the same policy. In that instance, the uninsured motorist insurer is entitled to reduce their uninsured motorist limits by amounts paid under the liability portion of the policy.[73]

The *regulation* does not address whether the reduction of limits for payments made in settlement of a liability claim extends to the total amounts paid to all claimants, or only to the amount paid to each individual claimant.[74] Policy language that reduces uninsured motorist limits by payments made on behalf of the tortfeasor, including "all sums" paid under the liability portion of the policy", refers to payments made to all liability claimants.[75] It is interesting to note that this reduction was allowed to be taken when the insured was a joint tortfeasor and their insurer made payment under the liability portion of the policy and that same insurer was able to reduce the underinsured motorist coverage under the same policy when such policy did not contain express language allowing the deduction for damages paid

under the policy in settlement of a liability claim. [76] Since the insured was a tortfeasor, the reduction was allowed under the policy language set forth in Regs. Conn. State Agencies Section 38a-334-6(d)(1)(A) even though the policy at issue did not contain the language permitted under Section 38a-334-6(d)(1)(C).[77]

An insurer cannot claim a reduction for the total amounts paid to all claimants unless such payments are made under the liability portion of that insurer's policy.[78] Any attempt to claim a reduction based upon payments made to the third parties involved in the same accident by a different insurer would not qualify as damages "[p]aid under *the* policy in settlement of a liability claim."[79]

Lower courts have recognized that "[t]he *Gould* decision turned on the policy language of the tortfeasor's insurance policy as a claim was being made under the underinsured provisions of that policy."[80] (Emphasis added.)

F. REDUCTION FOR DIRECT INDEMNITY FOR MEDICAL EXPENSE AND FOR BASIC REPARATIONS BENEFITS

The regulations provide that:

> **". . . the policy may also provide that any direct indemnity for medical expense paid or payable *under the policy* will reduce the *damages* which the insured may recover under this coverage . . ." (Emphasis added.)**
> *Regs. Conn. State Agencies Section 38a-334-6(d)(2)*

A policy which does not contain the permitted regulatory reduction prohibits the insurer from reducing their uninsured motorist coverage for medical expenses paid under the policy.[81]

The regulation allows only those insurers that have paid medical benefits *under their policies* to take the reduction and only if the policy so provides. While the regulations authorize the reduction, they do not require that benefits be reduced by medical benefits received by a claimant under the policy and the failure to include the regulatory language in the policy prevents the insurer from utilizing it.[82] It would seem axiomatic that an uninsured motorist insurer that has not paid the claimant no-fault benefits should not be entitled to take the reduction for no-fault benefits paid by another insurer.

The insurer need not pursue its right of subrogation against the uninsured tortfeasor before taking the permitted reduction.[83] Even if the insurer has not pursued the reduction at the arbitration proceeding, it has been allowed to take the reduction upon the claimant's application to confirm the arbitration award.[84]

The statutory provisions relating to the state's no-fault motor vehicle insurance scheme were repealed by Public Act 93-297, effective January 1, 1994. Under the statutory no-fault scheme, basic reparations benefits were defined as benefits reimbursing persons suffering economic loss through injury arising out of the ownership, maintenance or use of a private passenger motor vehicle.[85] Economic loss included payment for both medical expenses and lost wages.[86]

Although the no-fault statutes were repealed by P.A. 93-297, some carriers continue to offer "basic reparations benefits" coverage under their automobile liability policies, which

provides coverage for both medical benefits and lost wages.

For accidents occurring after the effective date of P.A. 93-297, that is, January 1, 1994, the effective date of the act repealing no-fault, an insurer is no longer entitled to reduce uninsured motorist benefits by payments under a basic reparations rider for that component constituting lost wages.[87]

Medical benefits payments paid under the policy qualify as a collateral source reduction under C.G.S. §52-225a. Therefore, in an underinsured case, the regulation would seem to allow a further reduction for the same benefits against the underinsured motorist coverage. Such a double reduction is inequitable and it would seem that if the liability carrier had already taken advantage of such payments as a collateral source reduction, the underinsured carrier should not be entitled to reduce their coverage under the regulation.[88]

G. COLLATERAL SOURCE REDUCTION

The Collateral Source Statute provides as follows:

"Sec. 52-225a. Reduction in economic damages in personal injury and wrongful death actions for collateral source payments. (a) In any civil action, whether in tort or in contract, wherein the claimant seeks to recover damages resulting from (1) personal injury or wrongful death occurring on or after October 1, 1987, or (2) personal injury or wrongful death, arising out of the rendition of professional services by a health care provider, occurring on or after October 1, 1985, and prior to October 1, 1986, if the action was filed on or after October 1, 1987, and wherein liability is admitted or is determined by the trier of fact and damages are awarded to compensate the claimant, the court shall reduce the amount of such award which represents economic damages, as defined in subdivision (1) of subsection (a) of section 52-572h, by an amount equal to the total of amounts determined to have been paid under subsection (b) of this section less the total of amounts determined to have been paid, contributed or forfeited under subsection (c) of this section, except that there shall be no reduction for (A) a collateral source for which a right of subrogation exists, and (B) the amount of collateral sources equal to the reduction in the claimant's economic damages attributable to the claimant's percentage of negligence pursuant to section 52-572h." C.G. S. Section 52-225a.

1. Reduction of Damages, Not Coverage.

Coverage under an uninsured motorist policy may be reduced only as authorized by statute or regulation[89] The uninsured motorist statute and regulations enacted thereunder do not expressly provide for collateral sources to be deducted from uninsured motorist *coverage*.[90]

The statutory language of C.G.S. Section 52-225a does not directly extend to reduce uninsured motorist coverage by the amount of collateral sources received by a claimant.[91]

The rationale behind this reasoning is that a claim for insurance coverage does not result in an award of damages while the statutory reduction applies only to reduce awards for damages resulting from personal injury or wrongful death.[92] As a result, the statutory language of C.G.S. Section 52-225a does not extend to reduce uninsured motorist *coverage*.

However, although the collateral source statute is not an authorized reduction of uninsured motorist ***coverage*****,** it applies to reduce the amount of the claimant's recoverable ***damages*****.**[93] The reasoning supporting such a result is based on three considerations: (1) That if the claimant received economic damages from an insured tortfeasor, the claimant's recovery would be subject to reduction for collateral sources; (2) That the public policy underlying the uninsured motorist statutes is to place the claimant in the same position they would have been in if the uninsured tortfeasor had maintained liability coverage; (3) Uninsured motorist coverage is not intended to provide the claimant with greater protection than they would have been entitled to from the uninsured tortfeasor.[94]

As a result, although the statutory collateral source reduction may not reduce the amounts of available uninsured motorist ***coverage***, it may apply to limit the amount of ***damages*** that a claimant may recover from his or her uninsured motorist coverage.[95]

The application of the statute to reductions of ***damages***, not ***coverage*** results in the following rules:

(1) "A claimant is entitled to the full amount of his or her underinsured motorist coverage if, after the claimant's recovery from the tortfeasor has been reduced by collateral source payments in accordance with Section 52-225a, the claimant's uncompensated personal and economic damages exceed the amount of the insurance coverage";[96]

(2) "A claimant's recourse to his or her underinsured motorist coverage is, however, limited in amount to less than his or her full coverage if the amount of the award against the tortfeasor for personal and economic damages, reduced in accordance with Secton 52-225a, results in uncompensated damages that are less than the full amount of underinsured insurance coverage."[97]

Therefore, the fact-finder must make a finding as to the full value of the claimant's compensable damages so that the collateral sources may be applied correctly.[98]

Uninsured motorist benefits paid to a party by its own uninsured motorist insurer are not collateral source payments within the meaning of C.G.S. Section 52-225b and so may not be used to reduce the damages awarded against a tortfeasor.[99] Social Security disability benefits are also not collateral source payments under the statute and therefore not deductible from the recipient's recovery. [100]

The reduction in damages for collateral source payments received by a claimant under a health insurance policy should be adjusted pursuant to C.G.S. Section 52-225a(c) to reflect a credit for the annual premiums paid for the insurance during all years in which such benefits were received, not merely for the monthly premiums paid for the months that benefits were received.[101] Premiums paid either by the claimant or by their employer can be used to offset the reduction.[102] A claimant whose medical expenses are paid under the med pay provisions of an automobile policy is entitled to a credit for only the full annual premium for the med pay coverage and not for premiums for the entire liability policy.[103] There is no deduction for medicare benefits since federal law provides for a right of recovery.[104]

Self-funded health insurance plans governed by the Employment Retirement Income and Security Act of 1974, 29 U.S.C. Section 101, et seq. (ERISA) are not prohibited by

C.G.S. Section 52-522c from enforcing its right to subrogation and seeking reimbursement for the medical care benefits it pays out on behalf of their insured's. ERISA exempts self-funded ERISA plans from state laws that prohibit subrogation of personal injury claims. Therefore, health insurance benefits paid under self-funded ERISA plans do not constitute a collateral source reduction against economic damages because there is a federal right of reimbursement or subrogation.[105]

Pursuant to C.G.S. Section 52-225a, there is no collateral-source reduction for the amount of collateral sources equal or attributable to the plaintiff's comparative negligence.[106] The collateral-source statute does not impose any time limitation on the period for which a plaintiff is due a credit for contributions to secure the collateral-source benefit.[107]

The courts are split as to whether payments received under a disability income insurance policy as a result of the injuries sustained in the collision are collateral source payments deductible under C.G.S. Section 52-225b from the claimant's damages under an underinsured motorist policy.[108]

Additionally, since basic reparations benefits paid subsequent to January 1, 1994 are not subject to reimbursement by the insured to their insurer,[109] then such basic reparation benefits are a collateral source which may be deducted from the Plaintiff's recovery of damages, less the premiums paid by the Plaintiff.[110] If the fact finder does not award economic damages, but awards non-economic damages only, the collateral source statute does not mandate a deduction.[111]

The courts were split as to whether a health care provider's acceptance of a lesser amount than the full bill is included in the calculation of the collateral source deduction. [112] That issue was settled when the statute, C. G. S. Section 52-225a(b) was amended to allow a reduction only for the amounts of medical bills actually paid.

Worker's compensation benefits are not a collateral source, even if the employer has failed to exercise its subrogation rights against the claimant's recovery. [113]

2. Reduction only for Collateral Sources Included in Verdict

The statute allows only payments specifically corresponding with the items of damages included in the jury's verdict to be deducted as collateral sources from the economic damages award. [114]

The burden is on the defendant, as the party seeking to reduce the amount of economic damages, to prove that the verdict includes items of damage for which the plaintiff has received a collateral source benefit. [115] In order to sustain this burden, the defendant must submit interrogatories to the jury concerning the specific items of damages included in the verdict. [116] However, where a jury awards all economic damages sought and there is no doubt what the jury's away was on the issue of economic damages, there is no need for jury interrogatories. [117]

H. PROHIBITION AGAINST DOUBLE RECOVERY

C.G.S. Section 38a-335(c) provides in part that "in no event shall any person be entitled to receive duplicate payments for the same element of loss." The statutory prohibition

against double recovery is a reflection of the common law public policy against double compensation for the same loss.[118]

A claimant may not recover double damages for the same item of loss.[119] When an injured party recovers just damages for injuries arising out of a motor vehicle collision with an uninsured motorist from their uninsured motorist insurer, the common law rule barring double recovery of damages precludes them from pursuing a medical malpractice claim against the physicians who treated the claimant for those injuries.[120] Similarly, in an action for underinsured motorist benefits, where the jury returned a verdict in an amount less than the amount that the Plaintiff had recovered from the tortfeasor, the trial court properly rendered judgment for the underinsured motorist insurer.[121]

I. PLEADING ISSUES OF POLICY LIMITATION

1. Pleading Policy Limits

An insurer must, after Aug. 16, 1994, raise issues of policy limitation, even when undisputed, by special defense. When a jury determination of the facts raised by special defense is not necessary, it will not be submitted to the jury but will be resolved by the court prior to the rendering of judgment.[122]

The requirement of pleading policy limits as a special defense was imposed by the Supreme Court pursuant to its supervisory authority over the administration of justice. It would therefore seem that noncompliance with this pleading requirement would subject the insurer to the result obtained in *Bennett v. Automobile Insurance Co. of Hartford,* 32 Conn. App. 617 (1993), prior to its being overruled by the Supreme Court in *Bennett*, 230 Conn. 795.

In *Bennett*[123], the complaint failed to reference the policy limit of the uninsured motorist coverage, and the defendant insurer did not plead the policy limit as a special defense. The Appellate Court held that the insurer's failure to plead the policy limit as a special defense precluded it from claiming the benefit of the policy limits post trial.[124]

Therefore, in such a situation, a verdict in excess of the policy limit could occur, and the insurer would be liable for that award.[125] As a result of this, carriers would be well advised to heed the Appellate Court's warning in *Bennett*.

2. Pleading Collateral Sources

Practice Book 1998 Section 10-78 states: "No pleading shall contain any allegation regarding receipt by a party of collateral source payments described in General Statutes Sections 52-225a and 52-225b."

The lower courts have split as to whether the Practice Book rule applies to an action to recover under an underinsured motorist policy. One line of cases permits the insurer to plead issues of reduction or reimbursement because without such an allegation the defendant insurer would be precluded from presenting evidence of a contractual right to a deduction for payments received from other sources.[126] However, if the special defense does not make reference to the contract of insurance containing the permissible reductions, it may be subject to a motion to strike.[127] Another line of cases holds that pleading such special defense of

collateral source payments is improper since it is an issue of reduction or reimbursement covered by Practice Book Section 10-78.[128]

Uninsured motorist benefits paid to a party by his or her own uninsured motorist insurer are not collateral source payments within the meaning of C.G.S. Section 52-225b and so may not be used to reduce the damages awarded against a tortfeasor.[129]

A necessary allegation for an underinsured motorist claim is that the tortfeasor's liability coverage is less than the plaintiff's underinsured motorist coverage. Without such an allegation, the tortfeasor cannot be considered an underinsured motorist under C.G.S. Section 38a-336(d).[130] In a case where the plaintiff initiates suit against the alleged tortfeasor and the underinsured motorist insurer jointly, prior to the plaintiff exhausting the liability coverage of the alleged tortfeasor, the plaintiff need not plead that it has either exhausted the tortfeasor's policy, or that the tortfeasor's insurance is inadequate.[131] However, the plaintiff will not be able to go to judgment against its underinsured motorist insurer prior to the exhaustion of the tortfeasor's policy.[132]

A special defense alleging a pro-rata reduction of limits with other applicable policies does not raise an issue of policy limitation under *Bennett* and is therefore improper.[133]

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1 *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 156 (1992); *Streitweiser v. Middlesex MutualAssurance Co.*, 219 Conn. 371, 377 (1991); *Chmielewski v. Aetna Casualty and Surety Co.*, 218 Conn. 646, 674 (1991); *Cohn v. Aetna Insurance Co.*, 213 Conn. 525, 529 (1990); *Nicolletta v. Nationwide Insurance Co.*, 211 Conn. 640, 645-46, 647-48 (1989); *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 198 (1987); *Allstate Insurance Co. v. Ferrante*, 201 Conn. 478, 483 (1986); *Nationwide Insurance Co. v. Gode*, 187 Conn. 386, 398-400 (1982), overruled in part *Covenant Insurance Co. v. Coon*, 220 Conn. 30 (1991); *Safeco Insurance Co. v. Vetre*, 174 Conn. 329, 332-33 (1978); *Pecker v. Aetna Casualty and Surety Co.*, 171 Conn. 443, 449 (1976).

2 *Chmielewski v. Aetna Casualty and Surety Co.*, 218 Conn. 646, 673-75 (1991); *Norfolk & Dedham Mutual Fire ins. Co. v. Wysocki*, 44 Conn. Sup. 144 (1997); affd 243 Conn. 239 (1997).

3 *Favey v. Safeco Ins. Co. of America, 49 Conn. App. 306 (1998); See also Perillo v. Jacobs, 47 Conn. L. Rptr. No. 20, 767 (2009).*

4 *Piersa v. Phoenix Ins. Co.*, 269 Conn. 916 (2005); *Garcia v. City of Bridgeport*, 47 Conn. L. Rptr. No. 1, 7 (2009).

[5] *Jacuruso v. Lebski*, 118 Conn. App. 216 (2009*); Guarino v. Allstate Prop. And Cas. Ins. Co.*, 142 Conn. App. 603 (2013); aff'd 315 Conn. 249 (2015).

[6] *Anastasia v. General Cas. Co.*, 307 Conn. 706 (2013); *Guarino v. Allstate Prop. And Cas. Ins. Co.*, 142 Conn. App. 603 (2013); aff'd 315 Conn. 249 (2015).

[7] *Buell v. American Universal Insurance Co.*, 224 Conn. 766 (1993); *Stephan v. Pennsylvania General Insurance Co.*, 224 Conn. 758 (1993); *Guertin v. Holyoke Mutual Insurance Co.*, 6 Conn. L. Rptr. No. 5, 127 (1992); *United States Fidelity & Guaranty Co. v. Pitruzzello*, 35 Conn. App. 638 (1994); *Guarino v. Allstate Prop. And Cas. Ins. Co.*, 142 Conn. App. 603 (2013).

[8] *Buell v. American Universal Insurance Co.*, 224 Conn. 766, 770-71 (1993); *Stephan v. Pennsylvania General Insurance Co.*, 224 Conn. 758, 764 (1993); *Guertin v. Holyoke Mutual Insurance Co.*, 6 Conn. L. Rptr. No. 5, 127 (1992); *United States Fidelity & Guaranty Co. v. Pitruzzello*, 35 Conn. App. 638 (1994); *Guarino v. Allstate Prop. And Cas. Ins. Co.*, 142 Conn. App. 603 (2013).

[9] In *United States Fidelity & Guaranty Co. v. Pitruzzello*, 35 Conn. App. 638 (1994), multiple claimants exhausted the tortfeasor's liability policy and collectively received the policy limit of the underinsured-motorist policy. The insurer contended that the claimants collectively should not be entitled to collect more than that to which they would have been entitled had they been injured by a motorist carrying a policy limit equal to the insurer's underinsured policy limit; that is, the underinsured-policy carrier should not be liable for more than the difference between the underinsured policy limit and the liability limit of the tortfeasor. The Appellate Court reviewed the underinsured-motorist provisions of the insurer's policy and concluded that the language was identical to that interpreted in *Stephan*[9] and *Buell*,[9] and held that such language prohibited the insurer from reducing the damages owed to a claimant under an underinsured motorist policy by taking a credit for payments made by the tortfeasor to other claimants. The court also noted that the specific policy language at issue was not contrary to the public policy behind underinsured motorist coverage: "to assure that every insured recovers damages he or she would have been able to recover if the uninsured [or underinsured] motorist had maintained a policy of liability insurance.

[10] *United States Fidelity & Guaranty Co. v. Pitruzzello*, 35 Conn. App. 638 (1994).

[11] See *Rosnick v. Aetna Casualty & Surety Co.*, 172 Conn. 416 (1977), overruled on other grounds, *Streitweiser v. Middlesex Mutual Assurance Co.*, 219 Conn. 371 (1991).

[12] See, however, *Aetna Life & Casualty v. Wicke*, 10 Conn. L. Rptr. No. 9, 263 (1993).

[13] *Allstate Ins. Co. v. Lenda*, 34 Conn. App. 444 (1994); *Brouker v. Metropolitan Property & Casualty*, 22 Conn. L. Rptr. No. 5, 157 (1998).

[14] See *Renaldi v. Geico Ins. Co.*, 51 Conn. L. Rptr. No. 24, 902 (2011) and *Galvin v. Metropolitan Prop. & Cas. Ins. Co.*, 54 Conn. L. Rptr. No. 18, 669 (2012) applying the reduction against the per occurrence uim limit while *Casseus v. Nationwide Prop. & Cas. Ins. Co.*, 51 Conn. L. Rptr. 429 (2011) applies the reduction against the per person uim limit.

[15] *Buell v. American Universal Insurance Co.*, 224 Conn. 766 (1993); *Stephen v. Pennsylvania General Insurance Co.*, 224 Conn. 758 (1993)

[16] *Aetna Life & Casualty v. Wicke*, 10 Conn. L. Rptr. No. 9, 263 (1993).

[17] *Aetna Life & Casualty v. Wicke*, 10 Conn. L. Rptr. No. 9, 263 (1993).

[18] *Garcia v. ITT Hartford Ins. Co.*, 72 Conn. App. 588 (2002.

[19] *Bieler v. Continental Ins. Co*., 36 Conn. L. Rptr. No. 7, 248 (2004).

[20] *Bogen v. Bonanno*, 41 Conn L. Rptr. 219 (2006); *Palumbo v. Heffel*, 53 Conn. L. Rptr. No 23, 860 (2012).

[21] *Collins v. Colonial Penn Ins. Co.*, 257 Conn. 718 (2001).

[22] *Collins v. Colonial Penn Ins. Co.*, 257 Conn. 718 (2001).

[23] *Collins v. Colonial Penn Ins. Co.*, 257 Conn. 718 (2001).

[24] See *Collins v. Colonial Penn Ins. Co.*, 257 Conn. 718 (2001) and *Garcia v. ITT Hartford Ins. Co.*, 72 Conn. App. 588 (2002).

[25] *Espinel v. AIU Ins. Co.*, 55 Conn. L. Rptr. No. 14, 517 (2013).

[26] *Lumbermens Mutual Casualty Co. v. Huntley*, 223 Conn. 22 (1992); *New Hampshire Insurance Co. v. Leniado-Chira*, 17 CLT No. 44 (1991); *Kilby v. Safeco Insurance Co. of America*, 5 CLT No. 17 (1979).

[27] *Buell v. American Universal Insurance Co.*, 224 Conn. 766 (1993); *Guarino v. Allstate Prop. And Cas. Ins. Co.*, 142 Conn. App. 603 (2013); aff'd 315 Conn. 249 (2015).

[28] *Buell v. American Universal Insurance Co.*, 224 Conn. 766 (1993);); *Guarino v. Allstate Prop. And Cas. Ins. Co.*, 142 Conn. App. 603 (2013); aff'd 315 Conn. 249 (2015)

[29] *Rhone v. Allstate Ins. Co.*, 22 Conn. L. Rptr. No. 18, 615 (1998); *Hanz v. Dragone Ent.*, 27 Conn L. Rptr. No. 15, 547 (2000).); *Guarino v. Allstate Prop. And Cas. Ins. Co.*, 142 Conn. App. 603 (2013); aff'd 315 Conn. 249 (2015).

[30] *Buell v. American Universal Insurance Co.*, 224 Conn. 766 (1993);); *Guarino v. Allstate Prop. And Cas. Ins. Co.*, 142 Conn. App. 603 (2013); aff'd 315 Conn. 249 (2015)

[31] *Buell v. American Universal Insurance Co.*, 224 Conn. 766, 775 (1993); *Peck v. Jacquemin*, 196 Conn. 53, 70 (1985); *Pecker v. Aetna Casualty and Surety Co.*, 171 Conn. 443, 452-53 (1976); *Guarino v. Allstate Prop. And Cas. Ins. Co.*, 142 Conn. App. 603 (2013); aff'd 315 Conn. 249 (2015).

[32] *Guarino v. Allstate Property and Casaulty Ins. Co.*, 315 Conn. 249 (2015).

[33] *Guarino v. Allstate Property and Casaulty Ins. Co.*, 315 Conn. 249 (2015).

[34] *Hartford Cas. Ins. Co. v. Farrish-LeDuc*, 275 Conn. 748 (2005).

[35] *Hartford Cas. Ins. Co. v. Farrish-LeDuc*, 275 Conn. 748 (2005).

[36] *Anastasia v. General Cas. Co.*, 307 Conn. 706 (2013).

[37] *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 199 (1987).

[38] *American Universal Insurance Co. v. Delgreco*, 205 Conn. 178, 199 (1987).

[39] *Schilling, Adm'x et al v. Safeco Ins. Co. of Illinois et al*, 31 Conn. L. Rptr. No. 14, 513 (2002)

[40] *Mazziotti v. Allstate Ins. Co.*, 240 Conn. 799 (1997).

[41] See *Allstate Insurance Co. v. Lenda*, 34 Conn. App. 444, 456 (1994); *Damon v. Adams*, 58 Conn. L. Rptr. No. 9, 354 (2014).

[42] *Monsees v. Cigna Property and Casualty Insurance Co.*, 8 Conn. L. Rptr. No. 17, 525, 529-30 (1993)

[43] *Haynes v. Yale New Haven Hospital*, 243 Conn. 17 (1997).

[44] *Allstate Insurance Co. v. Link*, 35 Conn. App. 338 (1994).

[45] *Wilkens v. Allstate Ins. Co.*, 19 Conn. L. Rptr. No. 4, 121 (1997); *Doran v. Allstate Ins.Co.*, 15 Conn. L. Rptr. 498 (1995).

[46] *Reliance v. American Casualty Co. of Reading, Pennsylvania*, 238 Conn. 285 (1996); *Conzo v. Aetna Ins. Co.*, 243 Conn. 677 (1998); *Connecticut Union Ins. Co. v. Reis*, 243 Conn. 687 (1998); *Schroeder v. Triangulum Associates*, 259 Conn. 325 (2002).

[47] *Rydingsword v. Liberty Mutual Insurance Co.*, 224 Conn. 8 (1992); *Wilson v. Security Insurance Co.*, 213 Conn. 532, 538-39 (1990); *Englehardt v. New Hampshire Insurance Group*, 36 Conn. Sup. 256 (1979).

[48] *Wilson v. Security Insurance Co.*, 213 Conn. 532, 538-39 (1990).

[49] *Rydingsword v. Liberty Mutual Insurance Co.*, 224 Conn. 8, 13-21 (1992); See also *D'Addio v. Connecticut Insurance Guaranty Association*, 30 Conn. App. 729 (1993).

[50] *Rydingsword v. Liberty Mutual Insurance Co.*, 224 Conn. 8, 20 (1992); See also *D'Addio v. Connecticut Insurance Guaranty Association*, 30 Conn. App. 729 (1993).

[51] *Wilson v. Security Insurance Co.*, 213 Conn. 532, 537 (1986).

[52] *Dillon v. Providence Washington Ins. Co.*, 33 Conn. L. Rptr. No. 12, 419 (2003).

[53] See Rydingsword v. Liberty Mut. Ins. Co., 224 Conn. 8 (1992).

[54] *Wilson v. Security Insurance Co.*, 213 Conn. 532, 538 (1986).

[55] *Monsees v. Cigna Property and Casualty Insurance Co.*, 8 Conn. L. Rptr. No. 17, 525, 530-31 (1993).

[56] *Deprey, Admx. v. Continental Casualty et al.*, 39 Conn. L. Rptr. No. 6, 231 (2005).

[57] *Travelers Ins. Co. v. Pondi-Salik*, 262 Conn. 746 (2003).

[58] *Allstate Insurance Co. v. Link*, 35 Conn. App. 338, 344 (1994).

[59] *Monsees v. Cigna Property and Casualty Insurance Co.*, 8 Conn. L. Rptr., No. 17, 525, 531 (1993); *Aviles v. Nationwide Mutual Insurance Co.*, 14 Conn. L. Rptr. No. 12, 368 (1995); *Aetna Life & Casualty Co. v. Pederson*, 1 Conn. Ops. 1193 (1995); *Marchevsky v. Allstate Ins. Co.*, 25 Conn. L. Rptr. No. 2, 66 (1999); contra; *Signorile v. National Union Fire Ins. Co.*, 3 Conn. L. Rptr. 230 (1991).

60 *Monsees v. Cigna Property and Casualty Insurance Co.*, 8 Conn. L. Rptr., No. 17, 525, 531 (1993); *Aviles v. Nationwide Mutual Insurance Co.*, 14 Conn. L. Rptr. No. 12, 368 (1995); *Aetna Life & Casualty Co. V. Pederson*, 1 Conn. Ops. 1193 (1995); *Marchevsky v. Allstate Ins. Co.*, 25 Conn. L. Rptr. No. 2, 66 (1999); contra; *Signorile v. National Union Fire Ins. Co.*, 3 Conn. L. Rptr. 230 (1991).

61 *Dodd v. Middlesex Mutual Assurance Co.*, 242 Conn. 375 (1997); Accord *Harkins v. Allstate Insurance Co.*, 15 CLR. 581 (1996); contra *Ferreira, et al v. Aetna Insurance Co.*, 13 Conn. L. Rptr. No. 15, 472 (1995); *Duke v. American Manufacture's Mutual Insurance Co.*, 17 CLR. 452 (1996).

62 *Matteo v. Alvarez*, 21 Conn. L. Rptr. No. 4, 137 (1998); aff'd 53 Conn. App. 452; *Kane v. Meyling*, 22 Conn. L. Rptr. No. 18, 605 (1998).

63 *Pecker v. Aetna Casualty and Surety Co.*, 171 Conn. 443 (1976); *Safeco Insurance Co. v. Vetre*, 174 Conn. 329 (1978).

64 *Dodd v. Middlesex Mutual Assurance* Co., 242 Conn. 375, 384 (1997); See also *Brown v. Employers Mutual Liability Co., et al.*, United States District Court (Dist. of Ct.) No. B77-255 (1979).

65 *Vitti v. Allstate Ins. Co.*, 245 Conn. 169 (1998).

66 *Vitti v. Allstate Ins. Co.*, 245 Conn. 169 (1998).

67 *Vitti v. Allstate Ins. Co.*, 245 Conn. 169, ftnt. 1 (1998).

68 *Vitti v. Allstate Ins. Co.*, 245 Conn. 169 (1998).

69 See Regs. Conn. State Agencies Section 38a-334-6(d)(b).

70 *Sepe v. Bethke*, 36 Conn. L. Rptr. No. 17, 633 (2004).

71 *Sepe v. Bethke*, 36 Conn. L. Rptr. No. 17, 633 (2004); Dillon v. Providence Washington Ins. Co., 33 Conn. No. 12, 419 (2003).

72 *Loika v. Aetna Casualty & Surety Co.*, 44 Conn. Sup. 59 (1995); aff'd 39 Conn. App. 717 (1995); aff'd 236 Conn. 902 (1996).

73 *Loika v. Aetna Casualty & Surety Co.*, 44 Conn. Sup. 59 (1995); aff'd 39 Conn. App. 717 (1995); aff'd 236 Conn. 902 (1996).

74 *American Motorists Insurance Co. v. Gould*, 213 Conn. 625, 636 (1990).

75 *Nichols v. Salem Subway Restaurant*, 98 Conn. App. 837 (2006); *American Motorists Insurance Co. v. Gould*, 213 Conn. 625, 636 (1990); *Cochran v. United States Fidelity and Guaranty*, 8 CSCR 225 (1993); *Pena v. Nationwide*, 56 Conn. L. Rptr. No. 14 (2013)

76 *Jacaruso v. Lebski*, 118 Conn. App. 216, (2009)

77 *Jacaruso v. Lebski*, 118 Conn. App. 216 (2009).

78 *Collimore v. Liberty Mutual Insurance Co.*, 7 CSCR 1214 (1992); *Guertin v. Holyoke*, 6 Conn. L. Rptr. No. 5, 127 (1992).

[79] *Regs. Conn. State Agencies*, Section 38-334-6(d); *Buell v. American Universal Insurance Co.*, 224 Conn. 766 (1993); *Stephan v. Pennsylvania General Insurance Co.*, 224 Conn. 758 (1993).

[80] *Collimore v. Liberty Mutual Insurance Co.*, 7 CSCR 1214, 1215 (1992); *Guertin v. Holyoke Mutual Insurance Co.*, 6 Conn. L. Rptr. No. 5, 127 (1992).

[81] *Vitanza v. Amica Mutual Ins. Co. et al*, 76 Conn. App. 570 (2003).

[82] *Vitanza v. Amica Mutual Ins. Co.*, 31 Conn. Rptr. No. 14, 52 (2002).

[83] *Bobeck v. Public Service Mutual Insurance Co.*, 38 Conn. Sup. 318 (1981); *Houlihan v. Great American Insurance Co.*, 5 CLT No. 25, p. 15 (1979), aff'd 6 CLT No. 21, p. 12 (1980).

[84] *Kilby v. Safeco Insurance Co. of America*, 5 CLT No. 17 (1979).

[85] C.G.S. Section 38a-363(k)(k). Repealed by P.A. 93-297.

[86] C.G.S. Section 38a-363(b). Repealed by P.A. 93-297.

[87] *American Manufacture's Mutual Ins. Co. v. Waitt*, 23 Conn. L. Rptr. No. 6, 188 (1999).

[88] *Monsees v. Cigna Property and Casualty Insurance Co.*, 8 Conn. L. Rptr., No. 17, 525, 531 (1993); *Aviles v. Nationwide Mutual Insurance Co.*, 14 Conn. L. Rptr. No. 12, 368 (1995); *Aetna Life & Casualty Co. v. Pederson*, 1 Conn. Ops. 1193 (1995); *Marchevsky v. Allstate Ins. Co.*, 25 Conn. L. Rptr. No. 2, 66 (1999); contra; *Signorile v. National Union Fire Ins. Co.*, 3 Conn. L. Rptr. 230 (1991).

[89] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 156 (1992); *Streitweiser v. Middlesex Mutual Assurance Co.*, 219 Conn. 371, 377 (1991); *Chmielewski v. Aetna Casualty and Surety Co.*, 218 Conn. 646, 674 (1991); *Cohn v. Aetna Insurance Co.*, 213 Conn. 525, 529 (1990); *Nicolletta v. Nationwide Insurance Co.*, 211 Conn. 640, 645-46, 647-48 (1989); *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 198 (1987); *Allstate Insurance Co. v. Ferrante*, 201 Conn. 478, 483 (1986); *Nationwide Insurance Co. v. Gode*, 187 Conn. 386, 398-400 (1982), overruled in part *Covenant Insurance Co. v. Coon*, 220 Conn. 30 (1991); *Safeco Insurance Co. v. Vetre*, 174 Conn. 329, 332-33 (1978); *Pecker v. Aetna Casualty and Surety Co.*, 171 Conn. 443, 449 (1976).

[90] See Conn. Gen. Stat. Section 38a-334-6(d); See also *Smith v. Safeco Insurance Co. of America*, 225 Conn. 566, 572 (1993).

[91] See Conn. Gen. Stat. Section 52-225a, *et seq*.; *Smith v. Safeco Insurance Co. of America*, 225 Conn. 566, 570 (1993).

[92] C.G.S. Section 52-225a; *Smith v. Safeco Insurance Co. of America*, 225 Conn. 566, 570 (1993).

[93] *Smith v. Safeco Insurance Co. of America*, 225 Conn. 566, 573-74 (1993).

[94] *Smith v. Safeco Insurance Co. of America*, 225 Conn. 566, 573-74 (1993).

[95] *Smith v. Safeco Insurance Co. of America*, 225 Conn. 566, 574 (1993).

[96] *Smith v. Safeco Insurance Co. of America*, 225 Conn. 566, 574 (1993).

[97] *Smith v. Safeco Inurance Co. of America*, 225 Conn. 566, 574 (1993).

[98] *Allstate Insurance Co. v. Lenda*, 34 Conn. 444 (1994); See, however, *Aetna Life & Casualty v. Wicke*, 10 Conn. L. Rptr. No. 9, 263 (1993).

[99] *Rufus v. Taylor*, 9 Conn. L. Rptr. No. 17, 515 (1993).

[100] *Schroeder v. Triangulum Associates*, 259 Conn. 325 (2002); *Hanlon v. Kmart Corp.* 30 Conn. L. Rptr. No. 11, 416 (2001).

[101] *Brennan v. Burger King Corp., 46 Conn. App. 76, aff'd 244 Conn. 204 (1998); Mancini v. Ansonia Derby Water Co.*, 14 Conn. L. Rptr. No. 14, 433 (1995); *Hertz v. Nicotra*, 5 Conn. Ops. 722 (1999); *Medina v. Rousseau*, 25 Conn. L. Rptr. No. 14, 504 (1999); *Gerardi v. York, 28 Conn. L. Rptr. No. 1, 10 (2000).*

[102] *Alvarado v. Black*, 248 Conn. 409 (1999); *Delmoral v. Tilcon Connecticut*, 36 Conn. L. Rptr. No. 6, 214 (2004)

[103] *Jones v. Riley*, 263 Conn. 93 (2003).

[104] *Brennan v. Burger King Corporation*, 46 Conn. App. 76, aff'd 224 Conn. 204 (1998).

[105] See for example *Faires v. Pageau*, 5 Conn. Ops. 1441 (1999).

[106] *Mack v.* Lavalley, 55 Conn. App. 150 (1999); *Brennan v. Burger King Corporation*, 16 Conn. L. Rptr. No. 6, 189 (1996); *Pikulski v. Waterbury Hospital Health Center, 30* Conn. L. Rptr. No. 10, 384 (2001); See also *Jeffrey J. Tinley, Collateral Source 101: A Brief, But Important, Math Lesson for Lawyers*, 17 CTLA Forum No. 1, 20 (1999).

[107] *Winchell v. The Stop & Shop Cos. Inc.*, 2 Conn. Ops. 1329 (1996); *Brennan v. Burger King Corporation*, 16 Conn. L. Rptr. No. 6, 189 (1996).

[108] *DiSantis v. Allstate Ins. Co.*, 24 Conn. L. Rptr. No. 13, 450 (1999) (allowing such reduction); *Arkenbout v. Ryan*, 16 Conn. L. Rptr. 627 (1996); *Medina v. Rousseau*, 25 Conn. L. Rptr. No. 14, 505 (1999); Dillon v. Providence Washington Ins. Co., 33 Conn. L. Rptr. No. 12, 419 (2003) (disallowing such reduction).

[109] See *Amica Mutual Ins. Co. v. Woods*, 48 Conn. App. 690 (1998), cert. den'd 345 Conn. 916 (1998).

[110] *Rychling v. Norgaard*, 5 Conn. Ops. 10 (1999).

[111] *Ottiano v. Shetucket*, 61 Conn. App. 648 (2001).

[112] See e.g. *Gosney v. Chavest et al*., 32 Conn. L. Rptr. No. 11, 409 (2002); *Sackman v. Sullivan*, 33 Conn. L. Rptr. No. 5, 172 (2002); *Garbatini v. Allstate Ins. Co.*, 34 Conn. L. Rptr. No. 9, 346 (2003).

[113] *Mason v. ING Life Ins. And Annuity Co. et al*, 53 Conn. L. Rptr. No. 10, 382 (2012).

[114] *Jones v. Kramer*, 267 Conn. 336 (2004); *Pikulski v. Waterbury Hospital Health Center*, 269 Conn. 1 (2004); *Shriver v. Wal-Mart Stores*, 55 Conn. L. Rptr. No. 16, 610 (2013); *Guay v. Darden*, 37 Conn. L. Rptr. No. 22, 837 (2004).

[115] *Jones v. Kramer*, 267 Conn. 336 (2004); *Pikulski v. Waterbury Hospital Health Center*, 269 Conn. 1

(2004); *Shriver v. Wal-Mart Stores*, 55 Conn. L. Rptr. No. 16, 610 (2013); *Guay v. Darden*, 37 Conn. L. Rptr. No. 22, 837 (2004).

116 *Jones v. Kramer*, 267 Conn. 336 (2004); *Pikulski v. Waterbury Hospital Health Center*, 269 Conn. 1 (2004); *Shriver v. Wal-Mart Stores*, 55 Conn. L. Rptr. No. 16, 610 (2013); Guay v. Darden, 37 Conn. L. Rptr. No. 22, 837 (2004).

117 See *Perillo v. Jacobs*, 47 Conn. L. Rptr. 764 (2009); *Saraceno v. Hartford Ins. Co.*, 38 Conn L. Rptr. 325 (2004).

118 See *Haynes v. Yale New Haven Hospital*, 43 Conn. 17 (1997); *Fahey v. Safeco Ins. Co. of America*, 49 Conn. App. 306 (1998).

119 *Haynes v. Yale New Haven Hospital*, 243 Conn. 17 (1997); *Vitti v. Allstate Ins. Co.*, 245 Conn. 169 (1998); *Fahey v. Safeco Ins. Co. of America*, 49 Conn. App. 306 (1998); *Hartford Casualty Ins. Co., v. Farrish-LeDuc*, 275 Conn. 748 (2005).

120 *Haynes v. Yale-New Haven Hospital*, 243 Conn. 17 (1997); See also *Fahey v. Safeco Ins. Co. of America*, 49 Conn. App. 306 (1998).

121 *Jones v. Kramer*, 267 Conn. 336 (2004); *Pikulski v. Waterbury Hospital Health Center*, 269 Conn. 1 (2004); *Shriver v. Wal-Mart Stores*, 55 Conn. L. Rptr. No. 16, 610 (2013); *Guay v. Darden*, 37 Conn. L. Rptr. No. 22, 837 (2004*); Hunte v. Amica Mut. Ins. Co.*, 68 Conn. App. 534 (2002); *Dimmock v. Allstate Ins. Co.*, 84 Conn. App. 236.

122 *Bennett v. Automobile Insurance Co. of Hartford*, 230 Conn. 795 (1994); *Fahey v. Safeco Ins. Co. of America*, 49 Conn. App. 306 (1998). See also *Impellizzieri, Adm. v. Massachusetts Bay Insurance Co.*, 11 Conn. L. Rptr. No. 2, 48 (1994); and Connecticut Practice Book, 1998, Section 10-78.

123 *Bennett v. Automobile Insurance Co. of Hartford*, 230 Conn. 795 (1994).

124 *Bennett v. Automobile Insurance Co. of Hartford*, 32 Conn. App. 617 (1993), rev′d *Bennett v. Automobile Insurance Co. of Hartford*, 230 Conn. 795 (1994); See also *Mayers v. Allstate Insurance*, 9 CSCR 398 (1994).

125 *Bennett v. Automobile Insurance Co. of Hartford*, 32 Conn. App. 617 (1993).

126 *Palmieri v. Nationwide Mutual Insurance Co.*, 9 CSCR 248 (1994). *Wicke v. Aetna Casualty and Surety Co.*, 11 Conn. L. Rptr. No. 13, 421 (1994); *Boyle v. Peerless Insurance Co.*, 9 CSCR 740 (1994); *Morgan v. Windsor Insurance Co.*, et al., 13 Conn. L. Rptr. No. 13, 415 (1995); *Vitti v. Allstate Insurance Co.*, et al., 13 Conn. L. Rptr. No. 17, 539 (1995); *Papadopoulos v. General Accident Insurance* Co., 1 Conn. Ops. 505 (1995); *Gold v. American Economy Ins. Co.*, 16 CLR 641 (1996); *Ouellette v. Patriot General Insurance Co.*, 17 CLR 5405 (1996); *Garcia v. ITT Hartford Ins. Co.*, 5 Conn. Ops. 73 (1999); *Lynch v. Fisher*, 25 Conn. L. Rptr. No. 16, 567 (1999); *Gallimore v. General Ins. Co. of America, 5 Conn. Ops. 1386 (1999); Selle v. GEICO*, 40 Conn. L. Rptr. No., 16, 573 (2006).

127 *Benoit v. Travelers Insurance Company*, 1996 Ct. Sup. 2392 (1996).

128 *Hilbert v. American Financial Corp.*, 1 Conn. Ops. 989 (1995); *Bowersox v. Providian Property*, 1996 Ct. Sup. 3659 (1996); *Gore v. Allstate Insurance Co.*, 17 Conn. L. Rptr. 125 (1996); *Delancy v. Patriot General Insurance Company*, 1996 Ct. Sup. 4502 (1996); *Lungi v. Aetna Casualty & Surety Co.*, 18 Conn. L. Rptr. No. 11, 398 (1997); *Rivera v. Progressive Northwestern Ins. Co.*, 25 Conn. L. Rptr. No. 10, 345

(1999).

129 *Rufus v. Taylor*, 9 Conn. L. Rptr. No. 17, 515 (1993).

130 *Richards v. Deaton a/k/a, et al.*, 1 Conn. Ops. 267 (1995).

131 *DiRusso v. Wilt*, 17 CLR 147 (1996); *Berger v. Lucker*, 1996 Ct. Sup. 4213 (1996).

132 *DiRusso v. Wilt*, 17 CLR 147 (1996).

133 *Hilbert v. American Financial Corp.*, 1 Conn. Ops. 989 (1995).