V. UNDERINSURED MOTORIST CLAIMS/ SPECIAL CONSIDERATIONS

A. PURPOSE

Underinsured motorist legislation was enacted to remedy the "anomalous situation where an injured party could find himself in a better position if the tortfeasor had no liability insurance than if he had only the statutory amount."[1]

Since the legislature intended to equate underinsured and uninsured motorist coverage, the regulations that apply to uninsured motorist coverage apply equally to underinsured motorist coverage.[2]

B. EXHAUSTION

1. In General

> **"An insurance company shall be obligated to make payment to its insured up to the limit of the policy's uninsured motorist coverage after . . . the limits of liability under all bodily injury liability bonds or insurance policies *applicable* at the time of the accident have been *exhausted by payment of judgments or settlements. . .*"** *Conn. Gen. Stat.Section 38a-336(b)*

An insurer is obligated to pay its uninsured coverage only after full exhaustion of the tortfeasor's liability insurance policies.[3] A settlement for less than the full amount of the tortfeasor's liability policy limit does not constitute the exhaustion required by the statute even if the uninsured motorist insurer is allowed a credit against its coverage for the full policy limit of the tortfeasor's coverage.[4] The statute requires that the tortfeasor's liability coverage be exhausted by payment of judgments or settlements to the claimant, not by a credit issued to the claimant's uninsured motorist insurer.[5] A claimant need exhaust only the per-person limit of a split-limit policy before proceeding to make an underinsured motorist claim.[6] For the purpose of determining the existence of an underinsured motorist claim, only the per-person liability coverage limit is available to the claimant and therefore is the only limit properly considered to be compared to the underinsured motorist policy limit.[7]

Although an insurer is not obligated to pay its underinsured motorist coverage until the claimant has exhausted the tortfeasor's automobile liability insurance policies, the claimant need not exhaust such coverage before making a claim to his or her underinsured motorist carrier.[8] A claimant can simultaneously commence an action or arbitration to recover underinsured motorist benefits and pursue a claim against the tortfeasor[9] and such claims may be pursued in a joint action.[10] Such an underinsured motorist claim, however, may be subject to summary disposition if the insured failed to satisfy the condition precedent of exhausting the liability coverage.[11] Additionally, bad faith claims may be joined with the uninsured motorist claim,[12] and such claims should not be bifurcated.[13]

Since a plaintiff in a personal-injury action may need a determination of the extent of liability coverage available to a tortfeasor to determine whether a claim for underinsured motorist coverage is available, an action for declaratory judgment can be maintained by the plaintiff against the insurer of the tortfeasor.[14] This action has been obviated by C. G. S. Section 38a-335, which requires automobile liability insurers to disclose their insured's liability policy limits.

Under the provisions of C.G.S. Section 38a-336(b) and (d), an insured need only exhaust the liability bond or insurance policies of one tortfeasor to be eligible to pursue underinsured motorist benefits.[15] Similarly, in an action involving multiple tortfeasors, one insured, the other unidentified, the insurance coverage of the unidentified tortfeasor is functionally unavailable to the plaintiff, and therefore the plaintiff has, in effect, exhausted the coverage of one of the tortfeasors and may pursue an uninsured motorist claim,[16] and such claims should not be bifurcated.[17]

A claimant injured by joint tortfeasors, after exhausting the liability policies of only one tortfeasor, can proceed immediately to an underinsured motorist claim, even though the claimant's suit against the remaining tortfeasor is still pending.[18] This conclusion is based upon statutory interpretation and public-policy considerations.

Section 38a-334-6(a) of the Regulations of Connecticut State Agencies provides in pertinent part that:

> **". . . the insurer shall undertake to pay on behalf of the insured all sums which the insured shall be legally entitled to recover as damages from the owner or operator of an uninsured [or underinsured] motor vehicle because of bodily injury sustained by the insured caused by an accident involving the uninsured [or underinsured] motorcycle." (Emphasis added.)**

The regulations envisioned the requirement that the insurance coverage of only one tortfeasor be exhausted."[19] This conclusion is based as well upon Regs. Conn. State Agencies §38a-334-6(e), which permits uninsured motorist insurers to include within the policy the right to be reimbursed if the insured recovers from a joint tortfeasor.[20]

Public policy supports the position "that an insured needs to exhaust the liability policies of only one tortfeasor before he may recover from his underinsured motorist policy."[21] The court continued by noting that "[i]f the plaintiff's claims were carried out in practice, the insured could be required to pursue claims of weak liability against third parties thereby fostering marginal and weak litigation in our courts."[22]

2. Exhaustion When Driver is not the Owner.

However, when a claimant is injured in an accident involving a vehicle operated by one party and owned by another, in which the operator and owner are covered under separate insurance policies, the claimant must exhaust the liability coverages available under both the operator's and the owner's policies before making an underinsured motorist claim.[23] When a claimant accepts the limit of an insurance policy covering the owner of a vehicle, but fails to exhaust the limit of an insurance policy covering the operator of that vehicle, the underinsured

motorist coverage is not triggered.[24] It should also be noted that a release given in favor of an agent, also releases a vicariously liable principal and therefore, if there were separate liability policies covering the principal and agent, the failure to exhaust both policies would prohibit an underinsured motorist claim.[25]

This result is statutorily mandated by C.G.S. Section 38a-336(b), which establishes the exhaustion requirement for underinsured motorist coverage. This subsection requires an underinsured motorist insurer to make payment only after "the limits of liability under **all** bodily injury liability bonds or insurance policies applicable at the time of the accident have been exhausted by payment of judgments of settlements. . . ." This language makes clear that the statute contemplated situations in which more than one liability policy would be available, as in the case in which one policy covers the owner of the vehicle and a different policy covers the operator, and prohibits a claimant who did not receive payment of the full policy limits of each of the applicable policies from making an underinsured motorist claim.[26] These cases are distinguishable from Wheeler since they involve a single tort claim involving a single at-fault vehicle, in which the owner and operator of that vehicle were each insured under separate policies of liability insurance; *Wheeler* concerned multiple tort claims arising out of an accident involving more than one at-fault vehicle.

A policy provision that states "We will pay compensatory damages which an insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by an insured; and caused by an accident" is not an exhaustion clause, but only a statement of underinsured motorist coverage.[27] Since exhaustion is a statutory requirement, such policy language will not be read as a deviation from the statutory requirement of exhaustion, in the absence of a reasonably expressed or implied intention to so deviate. Therefore, the use of the disjunctive "or" in the policy does not allow an insured to pursue an underinsured motorist claim by exhausting the liability coverage of either the owner or the operator.[28]

In addition, when the owner and operator are covered under separate policies, and the claimant exhausts the owner's policy then accepts a nominal payment from the operator's insurer that had initially disclaimed coverage, the claimant has not exhausted all applicable liability policies.[29] By accepting less than the full limits of the driver's insurance policy, an insured forfeits his claim to underinsured motorist benefits. The fact that there may have been a good-faith deviation from the exhaustion requirement will not excuse the failure to satisfy this statutory condition precedent to the recovery of underinsured motorist benefits.[30]

3. Exhaustion Applies only to Automobile Liability Policies

The phrase "all bodily injury liability bonds or insurance policies applicable at the time of the accident" is not an unqualified clause referring to any kind of insurance; rather, it refers only to automobile liability policies issued to the tortfeasor.[31] It is logical and rational to construe "bodily injury liability bonds and insurance policies . . . as referring only to automobile policies"[32] because "in determining whether a motor vehicle is `underinsured' for purposes of C.G.S. §38-175 (now 38a-336(b)) the aggregate of the limits of all such bonds and policies on the tortfeasor's motor vehicle is compared against the amount of uninsured motorist coverage of the insured"[33] without reference to other insurance. A claimant need not exhaust

the limits of a general liability policy, before pursuing an underinsured motorist claim, since such a policy is not an automobile liability policy.[34] Since a dram shop policy is not an automobile liability policy, the claimant need not exhaust such coverage before proceeding to an underinsured motorist claim.[35] The statutory requirement of exhaustion is satisfied by a claimant's recovery from an attorney's malpractice insurer of the tortfeasor's liability limit.[36]

An employee, injured in the course of their employment while driving the employer's motor vehicle, is not required to exhaust the underinsured motorist limits of the employer's policy before asserting a claim for coverage under his own personal underinsured motorist policy since the requirement of exhaustion applies only to liability policies.[37]

Similarly, a claimant need not exhaust their underinsured motorist policy limits as a prerequisite to a negligence action against their insurance agent for failing to provide them with adequate underinsured motorist coverage.[38]

4. Definition of Applicable Coverage

An automobile policy issued to the lessor of a leased vehicle is not an "applicable" policy requiring exhaustion if the tortfeasor is not an authorized driver of the leased vehicle.[39] If the driver was an authorized driver, pursuant to the terms of the lease, then the liability policy covering the lessor is an "applicable" policy and its limits must be exhausted in order to make an underinsured motorist claim. [40] If the driver is not an authorized driver pursuant to the lease provisions, then the liability policy is not "applicable" and need not be exhausted prior to making an underinsured motorist claim. [41] Therefore, a claimant accepting less than the full policy limit of the lessor's coverage where the driver is not an authorized driver under the lease is not precluded from proceeding to an underinsured motorist claim against their own policy. [42] However, the amounts paid by the lessor's insurer may still be deducted by the underinsured motorist carrier from the claimant's damages. [43]

5. Exhaustion Requirement in Claims against Guaranty Fund

Under the terms of most insurance policies, the uninsured motorist insurer becomes obligated to pay uninsured motorist benefits when the tortfeasor's insurer denies coverage or becomes insolvent. This result is not changed by the presence of guaranty funds such as the Connecticut Insurance Guaranty Association, since the mere fact of the liability insurer's insolvency is the trigger for uninsured motorist coverage. To require the insured to exhaust their remedies against the guaranty fund would effectively preclude uninsured motorist coverage, contrary to policy language.[44] Consequently, the exhaustion requirement does not apply when the uninsured motorist claim is based on a company's insolvency or coverage denial.[45]

When the insurer for a tortfeasor becomes insolvent, the claimant has a claim against the Connecticut Insurance Guaranty Association. However, before recovering from the fund, the insurer must first pursue a claim and recover against their own uninsured motorist coverage. C. G. S. Section 38a-845 (1) provides that any amounts collected from the fund shall be reduced by the amounts **recoverable** under the claimant's uninsured motorist policy. The claimant's acceptance of less than the full policy limit of their own uninsured motorist

insurer does not preclude them from pursuing a claim against the uninsured tortfeasor or the fund, but the claimant's recovery is reduced by the full amount of their uninsured motorist limit. [46]

C. DEFINITION OF UNDERINSURED MOTOR VEHICLE

1. Definition of Underinsured Motor Vehicle under Statutory Underinsured Motorist Coverage

"For the purposes of this section, an `underinsured motor vehicle' means a motor vehicle with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of liability under the uninsured motorist portion of the policy against which claim is made under subdivision (1) of subsection (b) of this section." *Conn. Gen. Stat. Section 38a-336(d)*

The application of the statute involves two separate questions: whether the tortfeasor's motor vehicle is an "underinsured motor vehicle" within the definition of the statute and, if so, the amount of the award to be paid to the claimant.[47] For an insured to make an underinsured motorist claim, the tortfeasor's motor vehicle must be **underinsured** as defined in the statute.[48] To determine whether a motor vehicle is "underinsured," the **total amount of all automobile liability insurance policies on the tortfeasor's motor vehicle** must be compared to the **amount of underinsured motorist coverage provided by each policy** against which the insured is making an underinsured motorist claim.[49]

If the total amount of all automobile liability insurance policies on the tortfeasor's vehicle is less than the amount of underinsured motorist coverage provided by each individual underinsured motorist policy, then the underinsured motorist coverage is triggered.[50] If the total amount of all automobile liability insurance policies on the tortfeasor's vehicle is greater than the underinsured motorist coverage provided by each individual underinsured motorist policy, the underinsured motorist coverage is inaccessible.[51]

The statute mandates a comparison between **liability limits** and **underinsured motorist limits,** not between the claimant's damages and underinsured motorist limits.[52] The liability coverage limit potentially available to each claimant, rather than the amount which each claimant actually received, is compared with the claimant's underinsured motorist limit to determine whether the tortfeasor's vehicle is underinsured under the statute.[53] Therefore, in a situation involving multiple claimants, an insured whose damages exceed the total liability insurance coverage of the tortfeasor may not access the underinsured motorist coverage, unless the insured's underinsured motorist coverage limits are greater than the total liability limits for the tortfeasor's vehicle.[54] Such a construction of the statute in not a violation of the Due Process or Equal Protection Clauses of the federal and state constitutions.[55] In a situation involving three tortfeasors, each with liability limits less than the claimant's underinsured motorist coverage, each of the tortfeasors is underinsured with respect to the claimant.[56]

However, in the situation in which the owner of a vehicle is insured under one liability policy and an operator using the vehicle for his own purposes with the owner's permission is

insured under a different policy, both policies are applicable at the time of the accident and must be considered in the determination of whether that vehicle is underinsured.[57]

This analysis limits "interpolicy" stacking in underinsured motorist cases. As seen above, "interpolicy" stacking is the aggregation of underinsured motorist coverages of separate and distinct policies insuring separate motor vehicles. In making the initial determination of whether a motor vehicle is underinsured, a claimant cannot "interpolicy" stack. That is, they cannot aggregate the underinsured motorist limits of separate policies under which they are insured and then compare the total limit to the total of the tortfeasor's liability coverages.[58] "[T]he analysis directed by C.G.S. Section 38a-336 requires a comparison between the *aggregate* of liability limits available to the victim against the underinsured motorist limits in each single policy against which the victim has a claim."[59] (Emphasis in original.)

The reason "interpolicy" stacking is not permitted on this issue is that the statute references the tortfeasor's liability limits in the **plural**, but the underinsured motorist provisions in the **singular**.[60] Determining whether a motor vehicle is underinsured requires a comparison of the aggregate of liability limits and the underinsured motorist limit of each individual policy against which the insured has a claim.[61]

To be allowed to "interpolicy" stack in underinsured motorist cases, each individual underinsured motorist limit of each separate and distinct underinsured motorist policy must exceed the aggregate of the tortfeasor's liability limits. If that is the case, then the underinsured motorist limit of each separate and distinct underinsured motorist policy may be aggregated to provide more complete indemnification for the claimant's injuries.[62]

However, this analysis does not seem to prohibit "*intrapolicy*" stacking in making the initial determination of whether a motor vehicle is underinsured.[63] Since the statute references the underinsured motorist provisions in the singular, and since "intrapolicy" stacking is the aggregation of underinsured motorist coverages of multiple vehicles insured under a single policy, "intrapolicy" stacking, by its very definition, does not run afoul of the same statutory proscription as "interpolicy" stacking.[64] Since intrapolicy stacking is now prohibited by statute, this is now a moot issue.

Also, the initial determination of whether a tortfeasor's vehicle is underinsured is made before any applicable credits or set-offs are deducted.[65]

In order to determine whether a vehicle is underinsured, the tortfeasor's liability limits must be compared against the **per person, not the per accident limit** of each underinsured motorist policy,[66] even if there are multiple claimants against the tortfeasor's policy that will reduce the claimant's recovery from the liability policy to an amount below the per person limit of the underinsured policy.[67]

General liability policies are not automobile liability insurance policies and therefore are not considered in the initial determination of whether a tortfeasor's vehicle is underinsured, only automobile liability insurance policies are considered on this issue.[68]

Since a claimant may still make claim to multiple policies in the context of occupying a non owned vehicle, the above analysis is still pertinent to determine which policies the claimant may make claim to.

4. Definition of Underinsured Motor Vehicle in Underinsured Motorist Conversion Coverage

Sec. 38a-336a. Underinsured motorist conversion coverage. (a) Each insurer licensed to write automobile liability insurance in this state shall offer, for an additional premium, underinsured motorist conversion coverage with limits in accordance with section 38a-336. The purchase of such underinsured motorist conversion coverage shall be in lieu of underinsured motorist coverage pursuant to section 38a-336. For each new automobile liability insurance policy issued, the insurer shall disclose to an insured at the time of sale or issuance the availability of, the premium cost and a description of underinsured motorist conversion coverage. Such description of coverage shall be included in a conspicuous manner with the informed consent form specified in subdivision (2) of subsection (a) of section 38a-336.

(b) Such underinsured motorist conversion coverage shall provide for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles.

(c) Each insurer shall be obligated to pay to the insured, up to the limits of the policy's underinsured motorist conversion coverage, after the limits of liability under all bodily injury liability bonds or insurance policies applicable at the time of the accident have been exhausted by payment of judgments or settlements. If the insured purchases such underinsured motorist conversion coverage, then in no event shall the underinsured motorist coverage be reduced on account of any payment by or on behalf of the tortfeasor or by any third party.

(d) The selection of coverage under this section shall apply to all subsequent renewals of coverage and to all policies or endorsements which extend, change, supersede or replace an existing policy issued to the named insured, unless changed in writing by any named insured.

(e) For purposes of this section, an "underinsured motor vehicle" means a motor vehicle with respect to which the sum of all payments received by or on behalf of the covered person from or on behalf of the tortfeasor are less than the fair, just and reasonable damages of the covered person.

Conversion Coverage is in lieu of the statutory uninsured motorist coverage provided by C. G. S. Section 38a-336.

Sub paragraph (e) changes the definition of what constitutes an "underinsured motor vehicle" for purposes of Conversion Coverage. Under the statutory underinsured motorist law, an "underinsured motor vehicle" is defined as a motor vehicle with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of liability under the uninsured motorist portion of the policy against which claim is made under subsection (b) of this section (i.e. 38a-336) "[69]

The definition of underinsured motor vehicle under Section 38a-336 necessitates a comparison of the liability limits on the tortfeasor's vehicle with the uninsured motorist coverage limit of each policy under which the claimant is making an uninsured motorist claim.[70]

The Conversion Coverage statute defines an **underinsured motor vehicle** as "a motor vehicle with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the fair, just and reasonable damages of the covered person." This definition of an underinsured motor vehicle necessitates a comparison of the liability limits of the tortfeasor's vehicle with the fair, just and reasonable damages of the covered person. If such damages are greater than the tortfeasor's liability coverage, the tortfeasor's vehicle is underinsured. This definition is, of necessity, a factual one.

D. CREDIT AGAINST UNDERINSURED MOTORIST LIMITS

Since interpolicy stacking is still allowed when the claimant is an occupant of a non owned vehicle. The question arises as to whether each underinsured motorist insurer is a credit for the payments made by the tortfeasor. The decision in *Covenant Insurance Co. v. Coon*[71] addresses the issue of whether each underinsured motorist insurer is entitled to take a separate credit for the tortfeasor's liability coverage.

The correct resolution of this issue requires a careful reading of Coon. The court in that case held that the application of C.G.S. Section 38a-336 involves two separate questions: (1) Is the tortfeasor's motor vehicle an "underinsured motor vehicle" within the definition of the statute? and (2) If so, what is the amount of the award to be paid to the claimant?[72]

Regarding the second question, the *Coon* court has stated that "in the context of the final award to be paid the victim, . . . while C.G.S. Section 38a-336 does not specifically address the issue of “stacking” coverage . . . a fair reading of the statute discloses no prohibition against such aggregation."

Although interpolicy stacking is prohibited in determining the initial question of whether underinsured motorist coverage is applicable, it is appropriate to aggregate the amounts available under the applicable policies in the ultimate calculation of the underinsured motorist benefits due to an insured party.[73]

Once the total amount of underinsured motorist coverage is calculated, Regs. Conn. State Agencies Sec. 38a-336-6(d)(1) provides that an insurer "may provide for the reduction of limits to the extent that damages have been . . . paid by or on behalf of any person responsible for the injury."

Therefore, in the second step of the analysis, if the claimant has an underinsured motorist claim under more than one underinsured motorist policy, the underinsured motorist limits under the policies are stacked, and the amount of damages paid by the tortfeasor are subtracted from the total stacked underinsured motorist coverage, not from each individual underinsured motorist policy.[74]

Although certain policies may contain language allowing 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 would unfairly penalize the claimant by allowing an underinsured

motorist insurer a reduction for more than the total amount paid out by or on behalf of a tortfeasor.[75]

E. UPPER LIMIT OF UNDERINSURED MOTORIST RECOVERY

> **"An insurance company shall be obligated to make payment to its insured up to the limits of the policy's uninsured motorist coverage . . . but in no event shall the total amount of recovery from all policies including any amount recovered under the insured's uninsured motorist coverage, exceed the limits of the insured's uninsured motorist coverage." (Emphasis added.)**
> *Conn. Gen. Stat. '38a-336(b)*

1. Upper Limit of Recovery Under Statutory Underinsured Motorist Coverage

Depending upon the policy language, the total amount of damages received by the claimant may exceed the underinsured motorist limits of the underinsured motorist policy.

In *United States Fidelity & Guaranty Co. v. Pitruzzello,*[76] the court held that the insurer was not entitled to credits for payments made to other claimants by or on behalf of the tortfeasor in calculating the offset against damages owed to each of the claimants. In that case, Lorenzo Pitruzzello, Troy Kreder and Louis Catalano were injured in a motor vehicle collision while occupying Kreder's car. The car was insured with USF&G with an underinsured motorist policy limit of $50,000. The tortfeasor was insured under a liability policy with a policy limit of $20,000 per person and $40,000 per accident. From the liability policy, Pitruzzello received $18,000, Kreder and Catalano received $9,000 each, and a fourth occupant received $4,000. Collectively, Pitruzzello, Kreder and Catalano received $36,000 from the tortfeasor's $40,000 liability policy, the remaining $4,000 being disbursed to a fourth person who did not make an underinsured claim under USF&G's policy. At the arbitration proceeding, Pitruzzello was awarded $32,000, Kreder $5,000 and Catalano $4,200. Adding the amounts received by the claimants under the tortfeasor's liability policy and Kreder's underinsured motorist policy, Pitruzzello received a total of $50,000, Kreder a total of $14,000 and Catalano a total of $13,200, for a grand total of $77,200 under both policies. The insurer contended on appeal that the claimants should be compensated by no more than they would have been had they been injured by a motorist carrying a $50,000, single-limit liability policy, thereby limiting the claimants to collecting no more than $10,000 from the insurer under the underinsured motorist provision, i.e., the difference between the underinsured motorist policy limit and the liability limit of the tortfeasor's policy.

The underinsured motorist provision of the USF&G policy provided, "Any amounts otherwise payable as damages under this coverage shall be reduced by all sums . . . [p]aid because of the `bodily injury' by or on behalf of persons or organizations who may be legally responsible. . . ." Language identical to this had been interpreted in *Stephen v. Pennsylvania General Insurance Co.*,[77] and *Buell v. American Universal Insurance Co.*,[78] to prohibit an insurer from reducing the damages owed to a claimant under an underinsured motorist policy by taking credits for payments made to other claimants. The court held that the specific terms of the underinsured motorist policy at issue did not entitle the insurer to take a credit for

payments made to other claimants in calculating the offset of damages owed to each of the claimants. Collectively, therefore, the claimants could recover an amount in excess of the underinsured motorist coverage.

The *Pitruzzello* court did not conclude that claimants are always entitled to recover damages up to the limit of the underinsured motorist policy regardless of whether the total payments to all claimants exceed the value of the policy. The court's holding was based upon a consideration of the policy language employed by the insurer; it was not based on whether C.G.S. Section 38a-336(b) required that payments made on behalf of a tortfeasor to persons other than the particular claimant for underinsured motorist benefits be deducted from the coverage or benefits of that claimant. Therefore, Pitruzzello did not consider whether there existed a statutory limit on underinsured motorist recovery.

In *Ohmes v. Government Employees Insurance Co.,*[79] the court was directly faced with the question of whether there existed a statutory limit on an underinsured motorist recovery. As in *Pitruzzello*, some, but not all, of the persons injured in the accident with the underinsured motorist made claim to underinsured motorist benefits. The *Ohmes* court held that the maximum benefit as limited by C.G.S. Section 38a-336(b) is not reduced by payments received from the tortfeasor's liability policy for a party covered by, but not claiming, underinsured motorist benefits. [80] Although the statute permits an insurer to include policy language authorizing a reduction for all amounts paid to all persons, claimants and non-claimants alike, the statute does not mandate this result. For an insurer to take advantage of such a reduction, it must incorporate the appropriate language in its policy.

The results in *Pitruzzello* and *Ohmes* should be contrasted with *Allstate Insurance Co. v. Lenda,*[81] in which the court interpreted policy language to allow an award of underinsured motorist benefits to be reduced by amounts paid by or on behalf of a tortfeasor to all injured parties, both for bodily injury and property damage. Under such a policy provision, it would seem that the underinsured motorist policy limit would be the upper limit beyond which the claimant cannot recover.

When the terms of an uninsured motorist application and policy establishing the limits of uninsured motorist coverage on a per accident and a per claim basis are ambiguous; the limit of the uninsured motorist coverage should be applied separately to each claimant.[82] In *Dobuzinsky*, the application of insurance provided that the limits of uninsured motorist coverage applied once per claim. The application also provided that the application would become part of the insurance contract, once accepted by the insurer. The policy declarations provided that the uninsured motorist limits applied once per accident regardless of the number of claims made. The court held that the terms of the insurance application and policy applying the limits of the uninsured motorist coverage on a per accident basis, and the term of the application applying the limits on a per claim basis were irreconcilable and ambiguous and concluded that the limits applied separately for each claimant.

Where the plaintiff recovers a verdict against the uninsured motorist insurer, the statute does not prevent the plaintiff from recovering taxable costs over and above the uninsured motorist insurer's policy limit.[83] The issue of whether costs shall be paid is a matter of policy language. In *Larose* supra, the insurer's policy did not contain any language that limited its obligation to pay costs only up to the policy's limits. The court concluded that costs were separate and distinct from the plaintiff's damages and constituted a separate statutory obligation

that the prevailing party was entitled to in addition to damages.

2. Upper Limit of Recovery Under Underinsured Motorist Conversion Coverage

"The limitation on the total amount of recovery from all policies shall not apply to underinsured motorist conversion coverage purchase pursuant to section 2 of this act."
Conn. Gen. Stat.Section 38a-336(b) as amended by Public Act 93-297

The act expressly excepts underinsured motorist *conversion* coverage from the operation of this limitation on the claimant's recovery. Since uninsured motorist conversion coverage is not reduced on account of payment made by or on behalf of the tortfeasor,[84] the total recovery by the claimant under such coverage may exceed the conversion coverage limit.

F. UNDERINSURED MOTORIST CONVERSION COVERAGE

"(a) Each insurer licensed to write automobile liability insurance in this state shall offer, for an additional premium, underinsured motorist conversion coverage with limits in accordance with section 38a-336 of the general statutes, as amended by section 1 of this act. The purchase of such underinsured motorist conversion coverage shall be in lieu of underinsured motorist coverage pursuant to section 38a-336 of the general statutes.

(b) Such coverage shall provide for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles.

(c) If the insured purchases such underinsured motorist conversion coverage, then in no event shall the underinsured motorist coverage be reduced on account of any payment by or on behalf of the tortfeasor or by any third party.

(d) The selection of coverage under this section shall apply to all subsequent renewals of coverage and to all policies or endorsement which extend, change, supersede or replace an existing policy issued to the named insured, unless changed in writing by any named insured.

(e) For purposes of this section, an "underinsured motor vehicle" means a motor vehicle with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the fair, just and reasonable damages of the covered person."
Public Act 93-297 Section 2

Public Act 93-297 (now codified as C.G.S. Section 38a-336a) creates a new category of underinsured motorist coverage entitled "Underinsured Motorist Conversion Coverage." This section requires insurers to offer, for an additional premium, uninsured motorist coverage, in an amount up to twice the limits of the insured's liability coverage. This coverage is in lieu of

the *statutory* uninsured motorist coverage provided by C.G.S. Section 38a-336.

The limit of underinsured motorist conversion coverage is not subject to a reduction for amounts paid by or on behalf of the tortfeasor,[85] therefore, the total amount of recovery by the claimant may exceed the underinsured motorist conversion coverage limit.[86] This type of coverage can be characterized as add on coverage.

The statute prohibits a reduction only for payments made by or on behalf of the tortfeasor.[87] The regulation, on the other hand, prohibits the conversion coverage from being reduced by any of the usual reductions applicable to standard statutory uninsured motorist coverage.[88]

The selection of underinsured motorist conversion coverage applies to all subsequent renewals, policies, or endorsements extending, changing, superseding or replacing existing policies, unless changed in writing by any named insured.[89]

The act also changes the definition of what constitutes an "underinsured motor vehicle." Under current law, an "underinsured motor vehicle is defined as a motor vehicle with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of liability under the uninsured motorist portion of the policy against which claim is made under subsection (b) of this section."[90]

This definition necessitates a comparison of the liability limits on the tortfeasor's vehicle with the uninsured motorist coverage limit of each policy under which the claimant is making an uninsured motorist claim.[91]

The act defines an underinsured motor vehicle as "a motor vehicle with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the fair, just and reasonable damages of the covered person." This definition of an underinsured motor vehicle necessitates a comparison of the liability limits of the tortfeasor's vehicle with the fair, just and reasonable damages of the covered person. If such damages are greater than the tortfeasor's liability coverage, the tortfeasor's vehicle is underinsured. This definition is, of necessity, a factual one.

It appears that conversion coverage may be subject to the same exclusions as statutory uninsured motorist coverage. An insurer providing conversion coverage may exclude from such coverage “a vehicle owned by the insured or available for the regular use of any family member of the insured.”[92]

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1 *Nationwide Insurance Co. v. Gode*, 187 Conn. 386, 391 (1982), overruled in part *Covenant Insurance Co. v. Coon*, 220 Conn. 30 (1991); *Simonette v. Great American Insurance Co.*, 165 Conn. 466, 471 (1973) where the court refused to hold that the term "uninsured" did not encompass the term "underinsured."

2 *American Motorist Insurance Co. v. Gould*, 213 Conn. 625, 628 (1990); *Nationwide Insurance Co. v. Gode*, 187 Conn. 386, 399-400 (1982).

3 *Kronberg v. New Hampshire Ins. Co.*, 69 Conn. app. 330, (2002).

[4] *Continental Insurance Co. v. Cebe-Habersky*, 214 Conn. 209 (1990).

[5] *Continental Insurance Co. v. Cebe-Habersky*, 214 Conn. 209, 213 (1990).

[6] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 34 (1991).

[7] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 34 (1991); *D'Arcangelo v. Hartford Casualty Insurance Co.*, 15 Conn. L. Rptr. No. 10, 327 (1995); aff'd 44 Conn. App. 377 (1997); cert. denied 240 Conn. 925 (1997).

[8] *Maringola v. Carroll*, 34 Conn. L. Rptr. No. 18, 679 (2003).

[9] *McGlinchey v. Aetna Casualty & Surety Co.*, 224 Conn. 133, 141 n.7 (1992); *Hotkowski v. Aetna Life & Casualty Co.*, 224 Conn. 145, 150 n.6 (1992); *Serrano v. Aetna Insurance Co.*, 233 Conn. 437 (1995); *Stevens v. Aetna Life & Casualty Co.*, 233 Conn. 460 (1995); *Cummings v. Ray*, 11 Conn. L. Rptr. No. 17, 530 (1994); *Frank v. Iacovino*, 1996 Ct. Sup. 1518 (1996);*DiRusso v. Wilt*, 17 CLR 147 (1996); *Berger v. Lucker*, 1996 Ct. Sup. 4213 (1996); *Taylor v. Wolfmann et al*, 18 Conn. L. Rptr. No. 14 505 (1997); *Kocsis v. Gerencser*, 3 Conn. Ops. 607 (1997); *McGrimley v. Karpicky*, 22 Conn. L. Rptr. No. 1, 55 (1998); *Petro v. Jarvis, et al*, 23 Conn. L. Rptr. No. 11, 371 (1999); *Dibella v. Nationwide Mut. Ins. Co.*, 31 Conn. L. Rptr. No. 14, 509 (2002).

[10] *Cavallaro v. Amara*, 20 Conn. L. Rptr. No. 15, 538 (1998); *Petro v. Jarvis et al*, 23 Conn. L. Rptr. No. 11, 371 (1999).

[11] *McGlinchey*, 224 Conn. at 142 (Berdon, dissenting).

[12] *Zamary v. Allstate Ins. Co.*, 22 Conn. L. Rptr. No. 9, 317 (1998); *Hennessey v. The Travelers Property Casualty Ins. Co.*, 24 Conn. L. Rptr. No. 11, 368 (1999).

[13] *Hennessey v. The Travelers Property Casualty Ins. Co.*, 24 Conn. L. Rptr. No. 11, 368 (1999).

[14] *Wynn v. Commercial Union Insurance Co.*, 12 Conn. L. Rptr. No. 2, 51 (1994).

[15] *General Accident Insurance Co. v. Wheeler*, 221 Conn. 206, 214 (1992); See also *Buell v. American Universal Insurance Co.*, 224 Conn. 766, 772 (1993).

[16] *Orion Group v.* Menucci, 5 Conn. L. Rptr. 198 (1991); *Luckman v. Lumbermens Mutual Casualty Co.*, 8 CSCR 965 (1993); *Arcucci v. Sanstrom*, 24 Conn. L. Rptr. No. 13, 432 (1999); *Guidi v. Mitchell*, 5 Conn. Ops. 1476 (1999).

[17] *Hennessey v. The Travelers Property Casualty Ins. Co.*, 24 Conn. L. Rptr. No. 11, 368 (1999). See also VI A. 3 for apportionment claims in such situations.

[18] *General Accident Insurance Co. v. Wheeler*, 221 Conn. 206 (1992); See also *Buell v. American Universal Insurance Co.*, 224 Conn. 766, 772 (1993).

[19] *General Accident Insurance Co. v. Wheeler*, 221 Conn. 206, 211 (1992).

[20] *General Accident Insurance Co. v. Wheeler*, 221 Conn. 206, 211-12 (1992).

[21] *General Accident Insurance Co. v. Wheeler*, 221 Conn. 206, 213 (1992).

[22] *General Accident Insurance Co. v. Wheeler*, 221 Conn. 206, 213 (1992).

[23] *Ciarelli v. Commercial Union Insurance Co.*, 234 Conn. 807 (1995); *Smith v. New Hampshire Insurance Co.*, 12 Conn. L. Rptr. No. 10, 330 (1994); *Stanlake v. USAA*, 12 Conn. L. Rptr. No. 9, 299 (1994); *Wilson v. Rodriguez, 28 Conn. L. Rptr. No. 3, 81 (2000).*

[24] *Ciarelli v. Commercial Union Insurance Co.*, 234 Conn. 807 (1995); *Wilson v. Rodriguez, 28 Conn. L. Rptr. No. 3, 81 (2000).*

[25] Notwithdtanding C. G. S. Section 52-572e, a release executed in favor of a lessee of a motor vehicle also acts to release the lessor, since they are not joint tortfeasors within the meaning of the statute. *Cunha v. Colon*, 260 Conn. 15 (2002); similarly a release of either an agent or principal releases the other, *Alvarez v. New Haven Register, Inc.*, 249 Conn. 709 (1999). These cases would apply to all situations involving vicarious liability, either by statute or common law.

[26] *Ciarelli v. Commercial Union Insurance Co.*, 234 Conn. 807 (1995); *Wilson v. Rodriguez, 28 Conn. L. Rptr. No. 3, 81 (2000).*

[27] *Ciarelli v. Commercial Union Insurance Co.*, 234 Conn. 807 (1995).

[28] *Ciarelli v. Commercial Union Insurance Co.*, 234 Conn. 807 (1995).

[29] *Smith v. New Hampshire Insurance Co.*, 12 Conn. L. Rptr. No. 10, 330.

[30] *Smith v. New Hampshire Insurance Co.*, 12 Conn. L. Rptr. No. 10, 330.

[31] *American Universal Insurance Co v. DelGreco*, 205 Conn. 178, 193-95 (1987).

[32] *American Universal Insurance Co. v. DelGreco*, 225 Conn. 178, 194 (1987).

[33] *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 194 (1987); *Allstate Insurance Co. v. Lenda*, 34 Conn. 444, 447, 448 (1994); *Allstate Insurance Co. v. Link*, 35 Conn. App. 338, 343 (1994).

[34] *Bond v. General Accident Ins. Co. of America*, 23 Conn. L. Rptr. No. 5, 183 (1998).

[35] *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 196 (1987).

[36] *Grant v. Great American Insurance Co.*, 1 Conn. Ops. 1194 (1995).

[37] *Fox, et al v. Hanover Ins. Co., et al*, 19 Conn. L. Rptr. No. 3, 80 (1997).

[38] *Lamadeleine v. H.D. Segur*, 24 Conn. L. Rptr. No. 6, 205 (1999).

[39] *Todd v. Nationwide Mutual Ins. Co.*, 121 Conn. App. 597 (2010).

[40] *Todd v. Nationwide Mutual Ins. Co.*, 121 Conn. App. 597 (2010).

[41] *Todd v. Nationwide Mutual Ins. Co.*, 121 Conn. App. 597 (2010).

[42] *Todd v. Nationwide Mutual Ins. Co.*, 121 Conn. App. 597 (2010).

[43] *See III A. 1 Reductions for Damages paid by or on behalf of the tortfeasor.*

[44] *Hamlet, et al v. Hartford Accident & Indemnity Co.*, 18 Conn. L. Rptr. No. 20, 691 (1997).

[45] *Hamlet, et al v. Hartford Accident & Indemnity Co.*, 18 Conn. L. Rptr. No. 20, 691 (1997).

[46] *Robinson v. Gailno*, 275 Conn. 290 (2005).

[47] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 33 (1991).

[48] *Travelers Insurance Co. v. Kulla*, 216 Conn. 390, 394 (1990; *Florestal v. Government Employees Ins. Co.*, 236 Conn. 299 (1996); *Lash v. Aetna Casualty and Surety Co.*, 236 Conn. 318 (1996); *Maryland Casualty Co. v. Callahan*, 16 CLR 443 (1996).

[49] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 33-34 (1991); *Farm and City Insurance Co. v. Stevens*, 215 Conn. 157, 159-60 (1990); *American Motorists Insurance Co. v. Gould*, 213 Conn. 625, 629-30 (1990); *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 194 (1987); *Allstate Insurance Co. v. Lenda*, 34 Conn. 444, 447, 448 (1994); *Allstate Insurance Co. v. Link*, 35 Conn. App. 338, 343 (1994); *Florestal v. Government Employees Ins. Co.*, 236 Conn. 299 (1996); *Lash v. Aetna Casualty and Surety Co.*, 236 Conn. 318 (1996); *Maryland Casualty Co. v. Callahan*, 16 CLR 443 (1996).

[50] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 34 (1991); *Farm and City Insurance Co. v. Stevens*, 215 Conn. 157, 159-60 (1990); *American Motorists Insurance Co. v. Gould*, 213 Conn. 625, 629-30 (1990); *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 194 (1987); *Florestal v. Government Employees Ins. Co.*, 236 Conn. 299 (1996); *Lash v. Aetna Casualty and Surety Co.*, 236 Conn. 318 (1996); *Maryland Casualty Co. v. Callahan*, 16 CLR 443 (1996).

[51] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 34 (1991); *Farm and City Insurance Co. v. Stevens*, 215 Conn. 157, 159-60 (1990); *American Motorists Insurance Co. v. Gould*, 213 Conn. 625, 629-30 (1990); *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 194 (1987); *Florestal v. Government Employees Ins. Co.*, 236 Conn. 299 (1996); *Lash v. Aetna Casualty and Surety Co.*, 236 Conn. 318 (1996); *Maryland Casualty Co. v. Callahan*, 16 CLR 443 (1996); *Hanz v. Dragone Ent., 6 Conn. Ops. 958 (2000).*

[52] *Trzaskos et al v. State Farm Mut.*, 28 Conn L. Rptr. No. 13, 480 (2001).

[53] *American Motorists Insurance Co. v. Gould*, 213 Conn. 625 (1990); *Florestal v. Government Employees Insurance Cos.*, 11 Conn. L. Rptr. No. 13, 396 (1994); aff'd 236 Conn. 299 (1996); *Matyskiela v. Geico General Insurance Co.*, 12 Conn. L. Rptr. No. 6, 193 (1994); *Hackett v. Allstate Ins. Co., 26 Conn. L. Rptr. No. 2 (2000).*

[54] *American Motorists Insurance Co. v. Gould*, 213 Conn. 625, 631 (1990); *Florestal v. Government Employees Insurance Cos.*, 11 Conn. L. Rptr. No. 13, 396 (1994); aff'd 236 Conn. 299 (1996); *Matyskiela v. Geico General Insurance Co.*, 12 Conn. L. Rptr. No. 6, 193 (1994).

[55] *Florestal v. Government Employees Insurance* Co., 11 Conn. L. Rptr. No. 13, 396 (1994), aff'd 236 Conn. 299 (1996); Lash *v. Aetna Casualty & Surety Co.*, 236 Conn. 318 (1996).

[56] *Gannon v. Aetna Casualty and Surety Co.*, 1994 Ct. CaseBase 3771 (1994).

[57] *Ciarelli v. Commercial Union Insurance Co.*, 234 Conn. 807 (1995); *Smith v. New Hampshire Insurance Co.*, 12 Conn. L. Rptr. No. 10, 330 (1994); *Stanlake v. USAA*, 12 Conn. L. Rptr. No. 9, 299 (1994); *Maryland Casualty Co. v. Callahan*, 16 CLR 443 (1996).

[58] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 35-6 (1991); *Boyce v. State Farm Insurance Co.*, 8 Conn. L. Rptr. No. 14, 463 (1993); *Allstate Insurance Co. v. Lenda*, 34 Conn. 444, 447, 448 (1994); *Allstate Insurance Co. v. Link*, 35 Conn. App. 338, 343 (1994); *Boyce v. State Farm Insurance Co.*, 34 Conn. App. 40, 43 (1994); *Lash v. Aetna Casualty & Surety Co.*, 236 Conn. 318 (1996).

[59] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 36 (1991); *Boyce v. State Farm Insurance Co.*, 34 Conn. App. 40, 43 (1994); *Lash v. Aetna Casualty & Surety Co.*, 236 Conn. 318 (1996).

[60] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 36 n.6 (1991); *Allstate Insurance Co. v. Lenda*, 34 Conn. 444, 447, 448 (1994); *Allstate Insurance Co. v. Link*, 35 Conn. App. 338, 343 (1994); *Boyce v. State Farm Insurance Co.*, 34 Conn. App. 40, 43 (1994); *Lash v. Aetna Casualty & Surety Co.*, 236 Conn. 318 (1996).

[61] *Covenant Insurance Co. v. Coon*, 220 Conn. 30, 36 (1991); *Allstate Insurance Co. v. Lenda*, 34 Conn. 444, 447, 448 (1994); *Allstate Insurance Co. v. Link*, 35 Conn. App. 338, 343 (1994); *Boyce v. State Farm*, 34 Conn. App. 40, 43 (1994); *Lash v. Aetna Casualty & Surety Co.*, 236 Conn. 318 (1996).

[62] *Covenant Insurance Co. v. Coon*, 220 Conn. 30 (1991).

[63] *Allstate Insurance Co. v. Link*, 8 CSCR 50, 51 (1993); See also *Nationwide Insurance Co. v. Gode*, 187 Conn. 386 (1982) overruled in part, *Covenant Insurance Co. v. Coon*, 220 Conn. 30 (1991); *Allstate Insurance Co. v. Lenda*, 34 Conn. 444, 447, 448 (1994); *Allstate Insurance Co. v. Link*, 35 Conn. App. 338, 343 (1994); *Allstate Insurance Co. v. Dooley*, 10 Conn. L. Rptr. No. 2, 44 (1993).

[64] *Nationwide Insurance Co. v. Gode*, 187 Conn. 386 (1982) overruled in part, *Covenant Insurance Co. v. Coon*, 200 Conn. 30 (1991); *Allstate Insurance Co. v. Lenda*, 34 Conn. 444, 447, 448 (1994); *Allstate Insurance Co. v. Link*, 35 Conn. App. 338, 343 (1994); *Allstate Insurance Co. v. Dooley*, 10 Conn. L. Rptr. No. 2, 44 (1993).

[65] *Monsees v. Cigna Property and Casualty Insurance Co.* 8 Conn. L. Rptr. No. 17, 526, 528-29 (1993); *Loika v. Allstate Insurance Co.*, 9 Conn. L. Rptr. No. 11, 347 (1993).

[66] *Covenant Ins. Co. v. Coon*, 220 Conn. 30 (1991); *D'Arcangelo v. Hartford Casualty Ins. Co.*, 44 Conn. App. 377 (1997); cert. den'd. 240 Conn. 925 (1997); *Doyle v. Metropolitan Property & Casualty Insurance Co.*, 18 Conn. L. Rptr. No. 20, 693 (1997), aff'd 252 Conn. 79 (2000); *Cotter v. Allstate Ins. Co.*, 4 Conn. Ops. 1183 (1998); *Jones v. McTigue*, 24 Conn. L. Rptr. No. 7, 256 (1999); See however, *Stride v. Allstate Insurance Co.*, 12 Conn. L. Rptr. No. 5, 142 (1994).

[67] *D'Arcangelo v. Hartford Casualty Insurance Co.*, 15 Conn. L. Rptr. No. 10 (1995); aff'd 44 Conn. App. 377 (1997); cert. den'd 240 Conn. 925 (1997); *Doyle v. Metropolitan Property & Casualty Insurance Co.*, 18 Conn. L. Rptr. No. 20, 693 (1997), aff'd 252 Conn. 79 (2000); *Cotter v. Allstate Ins. Co.*, 4 Conn. Ops. 1183 (1998); *Jones v. McTigue*, 24 Conn. L. Rptr. No. 7, 256 (1999).

[68] *Bond v. General Accident Ins. Co. of America*, 23 Conn. L. Rptr. No. 5, 181 (1998).

[69] See V.C.

[70] See V.C.

[71] *Covenant Insurance Co. v. Coon*, 220 Conn. 30 (1991).

[72] *Covenant Insurance Co. v. Coon*, 220 Conn. 33 (1991).

[73] *Allstate Insurance Co. v. Lenda*, 34 Conn. App. 444 (1994); *Allstate Insurance Co. v. Link*, 35 Conn. App. 338 (1994).

[74] *Allstate Insurance Co. v. Link*, 35 Conn. App. 338; See also *State Farm Mutual Automobile Insurance Co. v. Varilla*, 7 CSCR 875 (1992) and *Dunlop v. Government Employees Insurance Co.*, 8 Conn. L. Rptr. No. 11, 347 (1993).

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

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

[77] *Stephen v. Pennsylvania General Insurance Co.*, 224 Conn. 758 (1993).

[78] *Buell v. American Universal Insurance Co.*, 224 Conn. 766 (1993).

[79] *Ohmes v. Governmental Employees Insurance Co.*, 13 Conn. L. Rptr. No. 11, 348 (1995).

[80] *Ohmes v. Governmental Employees Insurance Co.*, 13 Conn. L. Rptr. No. 11, 348 (1995).

[81] *Allstate Insurance Co. v. Lenda*, 34 Conn. App. 444 (1994).

[82] *Dobuzinsky v. Middlesex Mutual Assurance Co.*, 49 Conn. App. 398 (1998).

[83] *Larose v. Windsor Insurance Company*, 16 CLR 412 (1996).

[84] See III.B and V.F.

[85] Conn. Gen. Stat. Sec. 38a-336a(c).

[86] Conn. Gen. Stat. Sec. 38a-336(b) as amended by Public Act 93-297.

[87] Conn. Gen. Stat. Sec.38a-336a(c).

[88] See Regs. Conn. State Agencies Sec.38a-334-6(d).

[89] Public Act 93-297 Section2(d).

[90] See V.C.

[91] See V.C.

[92] *Fleet Nat'l Bank v. Aetna Ins. Co.*, 45 Conn. Sup. (1998) Aff'd. 245 Conn. 546 (1998).