VI. EXCLUSIONS

A. CONSENT TO SETTLE

1. Common Law Subrogation.

Most policies contain a provision requiring the insured, after payment under the uninsured motorist endorsement, to hold in trust for the insurer's benefit, the insured's right of recovery against the uninsured motorist. The provision further requires the insured, as trustee, to take such action necessary to recover the uninsured motorist payment from the uninsured motorist. Such agreements have been held to be an assignment of a personal injury cause of action prior to judgment which is prohibited by the common law.[1]

In *Berlinski v. Ovellette,* the plaintiff was injured in an accident with an uninsured motorist. The plaintiff was insured with Allstate and Allstate paid the Plaintiff for his injuries under the uninsured motorist protection of the Allstate policy. The plaintiff then signed a "trust agreement" wherein he agreed as trustee to hold for Allstate, all rights he had against the uninsured motorist and to take, through any representative designated by Allstate, such action as might be necessary to recover from the uninsured motorist the payment made by Allstate. The Supreme Court held that under the common law, and in the absence of a statutory provision to the contrary, [2] a cause of action for personal injuries resulting from negligence could not be assigned before judgment. To the extent that the agreement transferred to Allstate the right to prosecute and control at its own expense and by its own choice of counsel, the insured's personal injury cause of action against the uninsured motorist, the court found that the agreement was violative of the public policy of the State of Connecticut.

The court in *Berlinski* next considered whether Regs. Conn. State Agencies Section 38-175a-6(e) modified the common law prohibition against assignment of a personal injury cause of action before judgment. At the time *Berlinski* was decided, Regs. Conn. State Agencies Section 38-175a-6(e) provided as follows:

> **"The insurer may require the insured to hold in trust all rights against third parties or to exercise such rights after the insurer has paid any claim."**
> *Regs. Conn. State Agencies Section 38-175a-6(e)*

Assuming, without deciding that the regulation was valid, the court in *Berlinski*, further held that the trust agreement in the case went far beyond the regulation, in that the trust agreement transferred total control over the insured's personal injury cause of action to the insurer. The court also recognized that the modification of the common law rule was an issue for the legislature.

Under Connecticut's no-fault law, C.G.S. Section 38-325(c) (now repealed) allowed an insurer that had paid basic reparations benefits to an insured to be subrogated to the insured's personal injury cause of action against the uninsured motorist. However, in such an action, the

insurer was only entitled to recover the amount of basic reparations benefits it had paid to its insured. The insurer's recovery against the uninsured motorist could not include the amount the insurer had paid its insured as damages under the uninsured motorist endorsement.[3]

As a result of ***Berlinski,*** Regs. Conn. State Agencies Section 38a-175a-6(e) was amended to provide as follows:

> **"The insurer may require the insured to hold in trust all rights against third parties or to exercise such rights after the insurer has paid any claim, provided that the insurer shall not acquire by assignment prior to settlement or judgment, its insured's right of action to recovery for bodily injury from a third party."**

This regulation permits the insurer to obtain an interest in the proceeds of the insured's cause of action once it has been reduced to judgment.

Therefore, as a result of the court's decision in *Berlinski*, an uninsured motorist insurer could not recover the uninsured motorist benefits it paid to its insured from the uninsured motorist.

This result was changed by the court's decision in *Westchester Fire Ins. Co. v. Allstate Ins. Co.*[4] In *Westchester*, the court overruled *Berlinski*, and held that an uninsured motorist insurer that has paid uninsured motorist benefits to its insurer is subrogated, to the extent of its payments, to the insured's personal injury cause of action against the tortfeasor.

Public Act 97-58 Sec. 4, now codified as C. G. S. Section 38a-336(b),legislatively overruled *Westchester*, in part. The Statute provides as follows:

> **"Sec. 38a-336b. Subrogation against owner or operator of underinsured motor vehicle prohibited. No insurer providing underinsured motorist coverage as required under this title shall have any right of subrogation against the owner or operator of the underinsured motor vehicle for underinsured motorist benefits paid or payable by the insurer."** (emphasis supplied).

The Statute prohibits subrogation in the **underinsured** motorist context only. It continues to allow subrogation against **uninsured** motorists. However, it should be noted that the uninsured defendant is not bound to pay the amount of damages that the claimant received from their uninsured carrier. The uninsured defendant is entitled to litigate this issue in any suit brought by the uninsured carrier for reimbursement of the same.

The Regulation has been amended to comport with the statute. It provides:

Recovery Over. With respect to uninsured motorist coverage, the insurer may require the insured to hold in trust all rights against third parties or to exercise such rights after the insurer has paid any claim, provided that the insurer shall not acquire by assignment, prior to settlement or judgment, its insured's right of action to recover for bodily injury from any third party.

A claim for equitable subrogation is not subject to a statute of limitations.[5]

2. Purposes of a Consent to Settle Clause.

> **"The insurer's obligations to pay may be made inapplicable: (1) To any claim which has been settled with the uninsured motorist without the consent of the insurer . . ."**
> *Regs. Conn. State Agencies Sec. 38a-334-6(c)(1)*

One purpose of a consent-to-settle requirement is to protect the subrogation rights the uninsured motorist insurer has against the tortfeasor.[6] The clause also ensures that the claimant has exhausted the tortfeasor's liability coverage.[7]

The Connecticut appellate courts have not yet ruled on the issue of the enforceability of this provision. The validity of such an exclusion would depend upon the interrelationship of an insurer's subrogation rights and the requirement of exhaustion as a condition precedent to an underinsured motorist claim.

Until the *Westchester* case, in Connecticut, the uninsured motorist insurer had a limited right of subrogation extending only to the payments the insurer has made for basic or added reparations benefits,[8] not to payments the uninsured motorist insurer made to the insured under the uninsured motorist provisions of the policy.[9]

Westchester, which allowed an uninsured motorist insurer subrogation rights for the amount it paid under the uninsured motorist provision of the policy, breathed new life into the consent to settle clause. In *Westchester*, the court overruled *Berlinski v. Ovellette*,[10] and held that an uninsured motorist insurer that has paid uninsured motorist benefits to its insured may bring a subrogation action against the tortfeasor's liability insurer, which, the uninsured motorist insurer contended, had wrongfully denied coverage of the insured's claim against the tortfeasor.

If the claimant were to release the tortfeasor, the subrogation rights of the insurer also would be extinguished.[11] In such a situation, the consent-to-settle requirement would protect the legitimate interests of the insurer. However, even here, the insurer is not without a remedy, since it still can seek reimbursement from its insured for impairing its right of subrogation from the tortfeasor.[12]

The legislature partially overruled *Westchester* by enacting Public Act 97-58 Section 4, which provides as follows:

> **"No insurer providing underinsured motorist coverage as required under this Title shall have any right of subrogation against the owner or operator of the underinsured motor vehicle for underinsured motorist benefits paid or payable by the insurer."** *Public Act 97-58 Section 4 (now Section 38a-336(b))*

This act was effective upon passage and applies retroactively. The Public Act prohibits subrogation rights in the underinsured motorist context, thereby vitiating the purpose of a consent to settle clause in such cases.[13] The Act, however, preserves the subrogation rights of an insurer against an uninsured motorist.

As previously explained, exhaustion of the tortfeasor's automobile liability coverage is, under Connecticut law, a statutory condition precedent to the underinsured motorist insurer's obligation to pay underinsured motorist benefits.[14] Requiring the claimant to exhaust is a legitimate concern of an underinsured motorist insurer, and such a concern is served by a consent-to-settle clause.

However, settlement by an insured with a tortfeasor without the insurer's consent for the limit of the tortfeasor's liability policy should not bar recovery under an uninsured motorist policy.[15] Since an underinsured claim can be maintained only when all the other applicable insurance coverage is exhausted, the insurer could not conceivably have any grounds to withhold its consent to a settlement for the limits of the policy.[16]

Once the claimant provides evidence of exhaustion, the insurer has no legitimate reason to refuse its consent to a settlement by its insured with the tortfeasor. To do so would be unreasonable and would allow the insurer, by its own act of refusing consent, to prevent the insured from proceeding to an underinsured claim-an act that would excuse compliance with a condition precedent.

B. VEHICLES OWNED BY OR AVAILABLE FOR THE REGULAR USE OF THE NAMED INSURED OR RESIDENT RELATIVES

> **"The insurer's obligations to pay may be made inapplicable . . . (2) if the uninsured motor vehicle is owned by (A) the named insured or any relative who is a resident of the same household or is furnished for the regular use of any of the foregoing."**
> *Regs. Conn. State Agencies Sec. 38a-334-6(c)(2)(A)*

The regulation, by its express language, allows an exclusion from underinsured motorist coverage for a vehicle owned by or furnished for the regular use of the named insured or any resident relative of the named insured.[17] This exclusion also applies to uninsured motorist conversion coverage.[18]

The purpose of the clause is to cover the insured's infrequent or casual use of vehicles not described in the policy,[19] but to exclude coverage for vehicles the insured regularly uses.[20]

This regulation was enacted under the general statutory authority of C.G.S. Sec. 38a-334(a), which provides in pertinent part that the "insurance commissioner shall adopt regulations with respect to minimum provisions to be included in automobile liability insurance policies . . . Such regulations shall relate to the insuring agreements, exclusions, conditions and other terms applicable to the . . . uninsured motorist coverages under such policies . . ."

The regulation finds its origin in the difference between liability coverage and uninsured motorist coverage.[21] The regulation applies generally to one-car accidents in which passengers seek to recover from an insurer under both the liability and underinsured motorist coverages for the vehicle involved in the accident.[22]

In the case of a two-car accident, the exclusion has been found to be inapplicable, and a passenger has been allowed to assert a claim under both the liability portion of the policy and the underinsured portion of the same policy.[23] Implicit in the application of the regulation is that the uninsured motor vehicle must be the *tortfeasing vehicle*.[24] (Emphasis added.)

Most policies, by tracking the language of the regulation, exclude from their definition of "uninsured motor vehicle" any vehicle owned by the named insured and resident relatives, or available for their regular use.[25] Since an insurer may limit its liability for uninsured motorist coverage only to the extent authorized by statute or regulation,[26] policy language that is broader than the regulation is invalid.[27] For a policy provision to be expressly authorized, there must be "substantial congruence" between the policy language and the regulation.[28] If that congruence is present, the exclusion is authorized and therefore valid.[29]

The purpose of liability insurance is to protect passengers in the covered vehicle from the negligent driving of the owner or other person operating that vehicle.[30] Such coverage is third-party coverage.[31] The purpose of underinsured coverage is to protect against the risk that a negligent driver of another vehicle will have inadequate liability coverage.[32] Such coverage is first-party coverage.[33]

Insureds seeking greater protection from their own negligence for their passengers have the option of purchasing greater liability limits, or an umbrella policy.[34] Where passengers in an insured vehicle have collected under the liability portion of the policy, allowing them to collect under the underinsured portion of the same policy "would be to convert the underinsured motorist coverage into third-party insurance, treating it essentially the same as third-party liability coverage."[35] The regulation and policy provisions excluding a vehicle owned by or regularly furnished or available to the named insured prevent such a result.[36]

In an interesting case, a superior court judge has held that a plaintiff injured while a passenger in an uninsured truck is not entitled to uninsured motorist benefits under his personal auto policy, which excluded coverage for injuries caused by an uninsured motor vehicle "owned" by the named insured, upon the basis that the plaintiff had a special bailment interest in the uninsured vehicle sufficient to establish, as a matter of law, that he "owned" the vehicle at the time of the accident.[37] In *Budris*, the vehicle's legal owner had assigned the certificate of title and possession of the vehicle to the plaintiff as collateral for a loan which the plaintiff had made to the legal owner. The court held that this interest, along with the plaintiff's possession of the vehicle for seven months before the accident, made the plaintiff the owner of the vehicle at the time of the accident, and as the owner, the plaintiff was subject to the regulatory exclusion.

On appeal, the Appellate Court held that the trial court improperly granted the insurer's motion for summary judgment because factual issues concerning the vehicle's legal title, registration, possession and control over the vehicle, whether the plaintiff "owned" the vehicle was a genuine issue of material fact, and remanded the case for further proceedings.[38] *Budris*,[39] contains a useful discussion of the law relating to the indicia the courts consider with respect to the ownership of a motor vehicle.

In case of first impression, the Superior Court has held that a plaintiff, struck by her own car while trying to thwart a thief from stealing it, is covered under the uninsured motorist provision of the plaintiff's policy.[40] In that case the carrier denied coverage to the claimant under the liability portion of the policy because the operator was not a permissive user of the vehicle. The carrier also denied the plaintiff's claim for uninsured motorist coverage on the basis of the statutory and policy exclusion for uninsured vehicles owned by the named insured.[41] In holding that the plaintiff was entitled to uninsured motorist coverage in this factual scenario, the court distinguished *Lowrey,* on the basis that the claimant here had not been able

to collect under the third party liability coverage and therefore was not attempting to collect twice under the same policy. The court further found that to deny the claimant uninsured motorist coverage in this case would result in her not being able to recover at all for her injuries, which would contravene the public policy behind uninsured motorist coverage.[42]

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."[43]

C. SELF-INSURERS

> **"The insurer's obligations to pay may be made inapplicable: . . . (2) if the uninsured motor vehicle is owned by . . . (B) a self insurer under any motor vehicle law."**
> *Regs. Conn. State Agencies Sec.38a-334-6(c)(2)(B)*

This regulation is a valid exclusion which allows an uninsured or underinsured motorist insurer to exclude coverage when the at-fault vehicle is owned by a self insurer.[44] By its express terms this exclusion prohibits an uninsured motorist claim if the tortfeasing vehicle is owned by a self-insurer without regard to whether the self-insurer has sufficient financial responsibility to pay the claim.[45] The statutes pertaining to such insurance[46] require an owner of a motor vehicle to demonstrate to the commissioner of insurance the financial ability to adequately pay judgements incurred as the result of the operation of the motor vehicle.[47] Such an exclusion is justified if the self-insurer has sufficient assets to respond to claims for damages, but would seem to have little utility where the self-insurer is financially unsound.[48]

D. GOVERNMENT-OWNED VEHICLES

> **"The insurer's obligations to pay may be made inapplicable: . . . (2) if the uninsured motor vehicle is owned by . . . (C) any government or agency thereof**
> **. . ."**
> ***Regs. Conn. State Agencies '38a-334-6(c)(2)(C)***

1. Exclusion for UM/UIM claims against Governmental Owned Vehicle (Tortfeasing Vehicle)

The Connecticut Supreme Court addressed the validity of this exclusion and held that it was valid. [49] This exclusion allows an uninsured/underinsured motorist insurer to exclude paying such benefits to its' insured when the tortfeasing vehicle is owned by a governmental entity or agency. If the claimant is occupying a vehicle owned by a governmental entity which is not the tortfeasing vehicle, such an exclusion is inapplicable. [50]

2. Uninsured/Underinsured Claims Against the State

In *Duggins v. H.N.S. Management Co.,*[51] a passenger on a bus operated by H.N.S. Management Company Inc. d/b/a Connecticut Transit was injured when the bus was struck by an uninsured motorist. The passenger brought suit against H.N.S. Management seeking uninsured motorist benefits. The trial court reserved a question of law for the Appellate Court "as to whether a common carrier owned by the state of Connecticut was obligated to provide uninsured or underinsured motorist benefits pursuant to C.G.S. Section 38a-336 for the benefit of its passengers." The Appellate Court found that the stipulated facts proved that the state did not own the common carrier, but had merely contracted with H.N.S. Management, a private corporation doing business as Connecticut Transit, to provide bus transportation to the public, and since the state did not own the common carrier, the court refused to answer the question that was reserved.

In Gordon v. H.N.S. Management, [52] the court found that H. N. S. management, a private corporation, was an arm of the state, for the buses it operated under contracts with the state of Connecticut, and therefore was entitled to raise sovereign immunity as a defense to an uninsured motorist claim. The court did not answer the question of whether a motorbus was the type of motor vehicle subject to the uninsured and underinsured motorist provisions of the general statutes.

In *Moore v. H.N.S. Management,*[53] the court found that C.G.S. Section 38a-336 did not include the state of Connecticut as a "person" required to carry uninsured motorist coverage and granted a motion for summary judgment in favor of H.N.S.

It would seem therefore that to make a claim for uninsured motorist benefits against a state entity, a claimant must file such a claim with the claims commissioner for the state of Connecticut.

E.REIMBURSEMENT FOR WORKER'S COMPENSATION BENEFITS

> **". . . The insurer's obligations to pay may be made inapplicable: . . . (3) to pay or reimburse for worker's compensation or disability benefits . . ."**
> *Regs. Conn. State Agencies '38a-334-6(c)(3)*

Uninsured motorist limits may be reduced by worker's compensation and disability benefits received by the claimant, thereby reducing the claimant's damages. To require an uninsured motorist insurer to reimburse the worker's compensation insurer or provider of disability benefits would be to allow a double reduction of the claimant's damages.[54]

Although a worker's compensation insurer is entitled to a lien on the claimant's recovery arising out of a third-party claim,[55] such insurer does not have a lien on or right of reimbursement from the claimant's recovery of uninsured motorist benefits.[56] Payment of damages in a third-party recovery are made on behalf of the third party, while uninsured motorist benefits are paid "on behalf of the insured."[57] Therefore the proceeds of an uninsured motorist recovery do not inure to the benefit of the worker's compensation insurer.[58]

F. EXCLUSION FOR UNINSURED VEHICLES OWNED OR OCCUPIED BY THE NAMED INSURED OR RESIDENT RELATIVES

Before Public Act 83-461 was enacted to amend C.G.S. Section 38a-336(a), uninsured coverage was held to be "person-oriented" rather than "vehicle-oriented"--that is, the coverage followed the named insured and resident relatives or spouse regardless of their location.[59] Under that theory, an insured was covered while occupying any vehicle, even an uninsured or underinsured vehicle owned by an insured.[60] Such result was acknowledged to create a disincentive to purchase liability coverage and to increase the risk of injury by uninsured motorists.[61]

As a consequence, the legislature enacted Public Act 83-461, which amended C.G.S. Sec. 38a-175a, now C.G.S. Section 38a-336, to provide that:

> **"No insurer shall be required to provide uninsured motorist coverage to (a) a named insured or relatives residing in his household when occupying, or struck as a pedestrian by, an uninsured or underinsured motor vehicle or motorcycle that is owned by the named insured, or (b) to any insured occupying an uninsured or underinsured motor vehicle owned by such insured."**
>
> **Conn. Gen. Stat. Section 38a-336**

As amended, the statute allows an insurer to provide exclusions from coverage in the above instances. To some degree this amendment changed the "person-oriented" nature of uninsured motorist coverage to a "vehicle- oriented" type of coverage.[62]

An occupant who is neither a named insured nor resident relative of the named insured and who does not own the car occupied is not excluded from underinsured motorist coverage under the provisions of this statute.[63]

Similarly, the policy language must incorporate the statutory language for the insurer to take advantage of the exclusion. Policy language broader than the statutorily permitted exclusions is invalid.[64]

The statute permits an insurer to exclude uninsured motorist coverage for both motor vehicles and motorcycles. A policy provision that excludes coverage only for motor vehicles is not valid to exclude coverage for injuries sustained by the insured while operating his motorcycle.[65] Although the statute authorizes an exclusion for both categories of vehicles, the insurer's use of the phrase "motor vehicle" failed to take advantage of the full exclusion authorized by the statute.[66]

1. Requirement that Uninsured/Underinsured Vehicle be at fault for exclusion to apply.

An argument can be made that although these exclusions would seem, by their express language, to apply to uninsured or underinsured motor vehicles not at fault, case law imposes the requirement that the motor vehicle involved be the tortfeasing motor vehicle for the statutory exclusion to apply.[67]

This requirement finds its genesis in C.G.S. Section 38a-336(b)(2), which defines an underinsured motor vehicle. In *American Universal Insurance Co. v. DelGreco*,[68] the court held that in determining whether a motor vehicle was underinsured for the purposes of C.G.S. Section 38a-336(b)(2), 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. The statutory definition of an underinsured motor vehicle in C.G.S. Section 38a-336(b)(2) refers to such vehicle as the tortfeasor's motor vehicle. While the statutory "language of C.G.S. Section 38a-336(b)(1) does not specifically limit the phrase `all bodily injury bonds or insurance policies applicable at the time of the accident' to the tortfeasor's motor vehicle as does subsection (b)(2), when read together with the entire statute, in order for the legislation to be consistent, it must also be interpreted as referring to any automobile policy issued to the tortfeasor."[69] By this interpretation, the term underinsured motor vehicle, as used in the statute, means a tortfeasing vehicle.

This requirement finds further support in *American Motorist Insurance Co. v. Gould*,[70] which held that a tortfeasing motor vehicle is underinsured only if the insured's uninsured motorist coverage limits are greater than the liability limits of the tortfeasing vehicle.

Further justification for this interpretation is found in the holding of *Travelers Insurance Co. v. Kulla*,[71] which stated:

> **"Implicit in the statutory scheme of §38-175c and in the definition of an 'uninsured motor vehicle' §38-175c(b)(2), is the commonsensical requirement that the underinsured vehicle be casually connected to the loss for which the claimant seeks compensation. The purpose of underinsured coverage is to protect the named insured and other additional insureds from suffering an inadequately compensated injury *caused by an accident with an inadequately insured automobile*."[72] (Emphasis in original.)**

Based on these cases, the statutory term "underinsured motor vehicle" refers to a tortfeasing vehicle.[73] If the underinsured motor vehicle is not the tortfeasing motor vehicle, the exclusion does not apply.[74]

2. Uninsured/Underinsured Vehicle need not be at fault for exclusion to apply.

Despite the cases cited in the above Section one, it has been held that the exclusions apply to uninsured/underinsured motor vehicles not at fault, as long as the exclusion tracks the statutory language permitted by the statute. [75]

G. EXCLUSION FOR RESIDENT RELATIVES OWNING THEIR OWN VEHICLES

The rationale underlying uninsured motorist coverage is to entitle insureds to recover uninsured motorist benefits for the damages they "would have been able to recover if the uninsured tortfeasor had maintained a policy of liability insurance."[76]

An insurer may exclude from uninsured motorist coverage a resident relative of the named insured who owns his or her own car and who is injured by an uninsured motorist while

occupying his or her own car.[77] Connecticut public policy does not preclude an insurer from including such an exclusion in a policy[78], even though neither the statutes nor regulations expressly permit it.[79]

The policy involved in *Middlesex Insurance Co. v. Quinn*, supra, defined a resident relative of the named insured as "a member of the family who is a resident of the household and doesn't own a car. . ."[80] Rejecting the claimant's contention that this definition of limited coverage violated public policy, the court reviewed the uninsured motorist statutes and regulations and found no specific definition of an "insured" for the purposes of uninsured motorist coverage.[81] The uninsured motorist statute requires only that such coverage be provided "for the protection of persons insured thereunder."[82] The court concluded that the "persons insured" in the uninsured motorist statute must refer to the persons defined as insured under the liability coverage of the policy.[83]

Noting that the legislature could have expressly mandated uninsured motorist coverage for resident relatives of the named insured, even if they owned their own vehicles, the court refused to extend public policy to require coverage in such a situation.[84] The public policy embodied in the uninsured motorist statute and regulations requires that persons covered under the uninsured motorist section of the policy be coextensive with the persons covered under the liability section of the policy.[85] Further, there is no violation of public policy "unless the insurance policy specifically were to limit underinsured motorist coverage in such a way as `to [preclude] persons who would otherwise qualify as insured for liability purposes.'"[86] The definitional policy language must not improperly limit compulsory uninsured coverage "by labeling a forbidden exclusion as a definition."[87]

Uninsured motorist coverage for resident relatives owning their own vehicles must, in the first instance, be provided by the insurance policies on the vehicles owned by those family members.[88] Requiring a claimant to fall within the definition of an insured under the liability section of the policy to be an insured for the purpose of making an uninsured claim serves the public policy of encouraging persons to obtain liability coverage and decreases the risk of injury by uninsured motorists.[89] To allow a claimant not insured for liability purposes to recover uninsured motorist benefits subverts this public policy.[90]

An insurance policy's definition of persons insured would violate public policy only if the policy denied uninsured motorist coverage to a person who "would otherwise qualify as [an insured] for liability purposes."[91]

C.G.S. Sec. 38a-335(d) requires insurers to provide liability coverage to the resident relatives of the named insured when they are operating the motor vehicle insured under the policy. The statute applies only to the vehicle insured under the policy.[92] The statute mandates that with respect to the insured motor vehicle, resident relatives of the named insured must be covered for liability purposes (unless specifically excluded by endorsement) and therefore for uninsured motorist purposes. If an automobile liability insurance policy excluded from its coverage a resident relative who was operating the insured vehicle, such an exclusion would violate public policy. See *Middlesex Insurance Co. v. Rady*, 34 Conn. App. at 683.

This statute, however, does not preclude an automobile liability insurer from excluding a resident relative from uninsured motorist coverage under the named insured's policy when that resident relative owns a vehicle and is not an occupant of the vehicle insured under that policy.[93] Therefore an insurer may properly define an insured to preclude a resident family

member who owns a car from uninsured motorist coverage.[94] For the exclusion to apply, the car owned by the resident relative need not be "operable," but merely owned by that resident family member making the claim.[95]

H. EXCLUSION FOR NAMED INSURED AND RESIDENT RELATIVES

C.G.S. Sec. 38a-335(d), provides in pertinent part:

> **With respect to the insured motor vehicle, the coverage afforded under the bodily injury liability and property damage liability provisions in any such policy shall apply to the named insured and relatives residing in his household, unless any such person is specifically excluded by endorsement.@** (Emphasis supplied.)
> *C.G.S. §38a-335(d)*

Similarly, Regs. Conn. State Agencies '38a-334-5(c)(8) provides in pertinent part:
"The insurer's obligation to pay and defend may be made inapplicable . . . to the operation of a motor vehicle by an individual or individuals specifically named by endorsement accepted by the insured . . ."
Regs. Conn. State Agencies Section 38a-334(5)(c)(8)

This statute permits an insurer, to exclude by endorsement the named insured and residents residing in his or her household from coverage under the liability portion of the policy. Such a "named driver" exclusion would also operate to exclude coverage under the uninsured motorist provisions of the policy, thereby prohibiting an uninsured motorist claim by the "named driver". [96]

In Connecticut, a person need not be a licensed driver to own a motor vehicle.[97] The rationale behind such an exclusion is to allow, unlicensed persons who own a motor vehicle, such as the elderly, or handicapped, or those who had had their license revoked, to benefit by having other persons operate their vehicles.[98] Therefore, an insured, who executed a Anamed driver exclusion endorsement@, which endorsement excludes her for liability coverage while operating the insured vehicle and who is involved in a collision while operating the vehicle insured under the policy, is excluded from liability coverage under the policy insuring the vehicle, and such exclusion renders said vehicle an uninsured motor vehicle.[99]

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1 *Cluiewicz v. Doyle*, 172 Conn. 177 (1976); *Berlinski v. Ovellette*, 164 Conn. 482 (1973); overruled, *Westchester Fire Ins. Co. v. Allstate Ins. Co.*, 236 Conn. 362 (1996).

2 See, e.g., Conn. Gen. Stat. '31-293.

3 *Lumbermen's Mut. Casualty Co. v. Hansen*, 37 Conn. Supp. 672 (1981).

4 *Westchester Fire Ins. Co. v. Allstate Ins. Co.*, 236 Conn. 362 (1996).

[5] *Great American Ins. Co. v. Hartford Accident & Indemnity Co.*, 24 Conn. L. Rptr. No. 8, 273 (1999).

[6] A. Widiss, "Uninsured and Underinsured Motorist Insurance," Second Edition, '43.5. *Bertz v. Horace Mann Insurance Co.*, 14 Conn. L. Rptr. No. 17, 523 (1995)

[7] *Pinto v. Norfolk & Dedham Mutual Fire Insurance Co.*, 8 Conn. L. Rptr. No. 12, 397-98 (1993).

[8] Conn. Gen. Stat. '38-369; see also 'VI.A.

[9] *Ciulewicz v. Doyle*, 172 Conn. 177 (1976); *Berlinski v. Ovellette*, 164 Conn. 482 (1973); overruled, *Westchester Fire Ins. Co. v. Allstate Ins. Co.*, 236 Conn. 362 (1996); *Nationwide Insurance Co. v. Bergeron*, 8 CLT No. 12, p. 13, 14-15 (1982).

[10] *Berlinski v. Ovellette*, 164 Conn. 482 (1973).

[11] *Amica Mutual Insurance Co. v. Barton*, 1 Conn. App. 569 (1984); *Pinto v. Norfolk & Dedham Mutual Fire Insurance Co.*, 8 Conn. L. Rptr. No. 12, 397 (1993).

[12] *Amica Mutual Insurance Co. v. Barton*, 1 Conn. App. 569 (1984).

[13] *Magda v. Hartford underwriters Ins. Co., 27 Conn. L. Rptr No. 13, 462 (2000).*

[14] *Continental Insurance Co. v. Cebe-Habersky*, 213 Conn. 209 (1990); See also 'V.B.

[15] *Pinto v. Norfolk & Dedham Mutual Fire Insurance Co.*, 8 Conn. L. Rptr. No. 12, 397 (1993); *Connor v. State Farm Mutual Insurance Co.*, 8 Conn. L. Rptr. No. 2, 35 (1993); *Lebish v. CNA Ins.*, 4 Conn. Ops. 1250 (1998). For cases allowing a special defense of the insured's failure to obtain the insurer's consent to settle, see *Bertz v. Horace Mann Insurance Co.*, 14 Conn. L. Rptr. No. 17, 523 (1995); *Melita v. American States Ins. Co.*, 3 Conn. Ops. 520 (1997); *Garcia v. ITT Hartford Ins. Co.*, 5 Conn. Ops. 73 (1999). *Carnein v. Allstate Ins. Co., 29* Conn. L. Rptr. No. 14, 510, 516 (2001).

[16] *Pinto v. Norfolk & Dedham Mutual Fire Insurance Co.*, 8 Conn. L. Rptr. No. 12, 397 (1993); *Connor v. State Farm Mutual Insurance Co.*, 8 Conn. L. Rptr. No. 2, 35 (1993); *Lebish v. CNA Ins.*, 4 Conn. Ops. 1250 (1998). For cases allowing a special defense of the insured's failure to obtain the insurer's consent to settle, see *Bertz v. Horace Mann Insurance Co.*, 14 Conn. L. Rptr. No. 17, 523 (1995); *Melita v. American States Ins. Co.*, 3 Conn. Ops. 520 (1997), *Carnein v. Allstate Ins. Co., 29* Conn. L. Rptr. No. 14, 510, 516 (2001).

[17] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 157 (1992); *Samele v. Masucci*, 7 CSCR 1054, 1055 (1992); See also *Perry v. Allstate Insurance Co.*, 7 Conn. L. Rptr. No. 10, 279 (1992); *Shelby Insurance v. Smulski*, 3 Conn. L. Rptr. 475 (1991); *Government Employees Insurance Co. v. Donato*, 2 Conn. L. Rptr. 837 (1990); *Quinn v. Allstate Insurance Co.*, 37 Conn. App. 188 (1995); *Fama v. Lumbermens Mutual Casualty Co.*, 1994 Ct. CaseBase 1823 (1994); *Keyes v. Pennsylvania General Accident Ins. Co.*, 44 Conn. Sup. 499 (1997), aff'd 45 Conn. App. 140 (1997); Cameron v. Naationwide General Ins. 56 Conn. L. Rptr. No. 13, 498 (2013).

[18] *Fleet Bank v. Aetna Ins. Co.*, 45 Conn. Sup. 355 (1998); aff'd 245 Conn. 546 (1998).

[19] *Lumbermens Mutual Casualty Co. v. Charland*, 6 CLT No. 17 (1980).

[20] *Lumbermens Mutual Casualty Co. v. Charland*, 6 CLT No. 17 (1980).

[21] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 157 (1992).

[22] See *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 157-58 (1992); *Travelers Insurance Co. v. Kulla*, 216 Conn. 390 (1990); *Perry v. Allstate Insurance Co.*, 7 Conn. L. Rptr. No. 10, 279 (1992); *Samele v. Masucci*, 7 CSCR 1054 (1992); *Shelby Insurance Co. v. Smulski*, 3 Conn. L. Rptr. 475 (1991); *Government Employees Insurance Co. v. Donato*, 2 Conn. L. Rptr. 837 (1990); *Quinn v. Allstate Insurance Co.*, 37 Conn. App. 188 (1995); *Fama v. Lumbermens Mutual Casualty Co.*, 1994 Ct. CaseBase 1823 (1994); *Keyes v. Pennsylvania General Accident Ins. Co.*, 44 Conn. Sup. 499 (1997), aff'd 45 Conn. App. 140 (1997).

[23] *Catalina v. General Accident Insurance*, 11 Conn. L. Rptr. No. 16, 502 (1994); *See Keyes v. Pennsylvania General Accident Ins. Co.*, 44 Conn. Sup. 499 (1997), aff'd 45 Conn. App. 140 (1997); see footnote 9 for an excellent hypothetical discussing the application of the exclusion in two car collisions.

[24] *Travelers Insurance Co. v. Kulla*, 216 Conn. 390 (1990); See also *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178 (1987); *American Motorist Insurance Co. v. Gould*, 213 Conn. 625 (1990).

[25] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 157 (1992); *Samele v. Masucci*, 7 CSCR 1054, 1055 (1992); See also *Perry v. Allstate Insurance Co.*, 7 Conn. L. Rptr. No. 10, 279 (1992); See however, *Norfolk & Dedham Mutual Fire Insurance Co. v. Tropiano*, 8 CSCR 837 (1993), where the policy did not exclude resident relatives and therefore such a claimant was allowed to recover; *Keyes v. Pennsylvania General Accident Ins. Co.*, 44 Conn. Sup. 499 (1997), aff'd 45 Conn. App. 140 (1997).

[26] *Stephan v. Pennsylvania General Insurance Co.*, 224 Conn. 758 (1993); *Buell v. American Universal Insurance Co.*, 224 Conn. 766 (1993); *Rydingsword v. Liberty Mutual Insurance Co.*, 224 Conn. 8 (1992); *Nationwide Insurance Co. v. Gode*, 187 Conn. 386 (1982), rev'd on other grounds *Covenant Insurance v. Coon*, 220 Conn. 30 (1991); *Chmielewski v. Aetna Casualty and Surety Co.*, 218 Conn. 646 (1991); *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178 (1987).

[27] *Chmielewski v. Aetna Casualty and Surety Co.*, 218 Conn. 646 (1991).

[28] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 157 (1992); *Chmielewski v. Aetna Casualty and Surety Co.*, 218 Conn. 646, 674-75 (1991).

[29] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 157 (1992).

[30] *Lowrey v. Valley Forge Insurance Co.* 224 Conn. 152, 157 (1992); *Quinn v. Allstate Insurance Co.*, 37 Conn. App. 188 (1995).

[31] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 158 (1992); *Quinn v. Allstate Insurance Co.*, 37 Conn. App. 188 (1995).

[32] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 157 (1992); *Quinn v. Allstate Insurance Co.*, 37 Conn. App. 188 (1995).

[33] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 158 (1992); *Quinn v. Allstate Insurance Co.*, 37 Conn. App. 188 (1995).

[34] *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 157-58 (1992); *Quinn v. Allstate Insurance Co.*, 37

Conn. App. 188 (1995).

35 *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 158 (1992); *Quinn v. Allstate Insurance Co.*, 37 Conn. App. 188 (1995).

36 *Lowrey v. Valley Forge Insurance Co.*, 224 Conn. 152, 158 (1992); See also *Travelers Insurance Co. v. Kulla*, 216 Conn. 390 (1990); *Quinn v. Allstate Insurance Co.*, 37 Conn. App. 188 (1995); See however, *Loika v. Aetna Casualty & Surety Co.*, 44 Conn. Sup. 59; Aff'd 39 Conn. App. 714 (1995); cert. denied, 236 Conn. 902, where the court allowed a non-owner, non-policy holder, passenger in a single vehicle accident to collect under both the bodily injury liability portion and the underinsured motorist coverage of the same policy. See also, *Reznik, Adm. v. Allstate Ins. Co.*, 21 Conn. L. Rptr. No. 19, 667 (1998).

37 *Budris v. Allstate Insurance Co.*, 1 Conn. Ops. 864 (1995).

38 *Budris v. Allstate Insurance Co.*, 44 Conn. App. 53 (1996).

39 *Budris v. Allstate Insurance Co.*, 44 Conn. App. 53 (1996).

40 *Periolo v. American Nat'l Fire Ins. Co.*, 19 Conn. L. Rptr. No. 7, 246 (1997).

41 *Periolo v. American Nat'l Fire Ins. Co.*, 19 Conn. L. Rptr. No. 7, 246 (1997).

42 *Periolo v. American Nat'l Fire Ins. Co.*, 19 Conn. L. Rptr. No. 7, 246 (1997)

43 *Fleet Nat'l Bank v. Aetna Ins. Co.*, 45 Conn. Sup. (1998); aff'd. 245 Conn. 546 (1998).

44 *Orkney v. Hanoer Ins. Co.*, 248 Conn. 195 (1999); *Odena v. Elrac*, 47 Conn. L. Rptr No. 13 (2009)

45 *Odena v. Elrac*, 47 Conn. L. Rptr No. 13 (2009)

46 C.G.S. Sections 14-129 and 38a-371.

47 *Orkney v. Hanover Ins. Co.*, 248 Conn. 195, 205, 206 (1999).

48 *A. Widiss, "Uninsured and Underinsured Motorist Insurance," Second Edition*, ''8.7, 35.12; See also *Stanlake v. USAA*, 12 Conn. L. Rptr. No. 9, 299 (1994), for an interesting discussion regarding exclusions for self-insured motor vehicles.

49 *Giglio v. American Economy Ins. Co.*, 278 Conn. 900 (2006).

50 Henebery v. Great American Ins. Co., 39 Conn. L. Rptr. No. 3, 201 (2005).

51 *Duggins v. H.N.S. Management Co.*, 34 Conn. App. 863 (1994).

52 *Gordon v. H.N.S. Management*, 272 Conn. 81 (2004).

53 *Moore v. H.N.S. Management* (Sup. Ct. Doc. No. 360326, 1995).

54 *Dodd v. Middlesex Mutual Assurance Co.*, 242 Conn. 375 (1997).

55 See Conn. Gen. Stat. '31-293.

[56] *Dodd v. Middlesex Mutual Assurance Co.*, 242 Conn. 375 (1997).

[57] *Pecker v. Aetna Casualty and Surety Co.*, 171 Conn. 443, 451 (1976).

[58] *Brown v. Employers Mutual Liability Co. et al.*, No. B77-255, Dist. Ct. (1979) (unpublished); See also *Shea v. AIU Insurance Co.*, 5 CLT No. 47 (1979).

[59] *Harvey v. Travelers Indemnity Co.*, 188 Conn. 245 (1982).

[60] *Harvey v. Travelers Indemnity Co.*, 188 Conn. 245 (1982).

[61] *Harvey v. Travelers Indemnity Co.*, 188 Conn. 245, 252-53 (1982).

[62] *Travelers Insurance Co. v. Kulla*, 216 Conn. 390, 400, 3 n.7 (1990).

[63] *Dunlop v. Government Employees Insurance Co.*, 8 Conn. L. Rptr. No. 11, 347, 349 (1993).

[64] *Chmielewski v. Aetna Casualty and Surety Co.*, 218 Conn. 646 (1991); *Norfolk & Dedham Mutual Fire Ins. Co. v. Wysocki*, 45 Conn. Sup. 144 (1997); aff'd 243 Conn. 239 (1997).

[65] *Prudential Property & Casualty Insurance Co. v. Paolella*, 11 Conn. L. Rptr. No. 17, 543 (1994).

[66] *Prudential Property & Casualty Insurance Co. v. Paolella*, 11 Conn. L. Rptr. No. 17, 543 (1994).

[67] *Travelers Insurance Co. v. Kulla*, 216 Conn. 390 (1990); *American Motorists Insurance Co. v. Gould*, 213 Conn. 625 (1990); See *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178 (1987); *Metropolitan Property and Casualty Insurance Co. v. Starr*, 4 Conn. L. Rptr. No. 10, 324 (1991); *Ruggiero v. Allstate Insurance Co.*, 10 Conn. L. Rptr. No.11, 367 (1994); See also 'VI.F.

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

[69] *American Universal Insurance Co. v. DelGreco*, 205 Conn. 178, 194-95 (1990).

[70] *American Motorist Insurance Co. v. Gould*, 213 Conn. 635 (1990).

[71] *Travelers Insurance Co. v. Kulla*, 216 Conn. 390, 398 (1990).

[72] *Travelers Insurance Co. v. Kulla*, 216 Conn. 390, 398 (1990).

[73] *Sentry Insurance Co. v. Schroeders*, 9 Conn. L. Rptr. No. 12, 375 (1993); *Aetna Casualty and Surety Co. v. Arduini*, 4 Conn. L. Rptr. No. 9, 282, 286 (1991); *Metropolitan Property and Casualty Insurance Co. v. Starr*, 4 Conn. L. Rptr. No. 10, 324, 326-27 (1991); *Ruggiero v. Allstate Insurance Co.*, 10 Conn. L. Rptr. No. 11, 367 (1994)..

[74] *Aetna Casualty and Surety Co. v. Arduini*, 4 Conn. L. Rptr. No. 9, 288 (1991); *Ruggiero v. Allstate Insurance Co.*, 10 Conn. L. Rptr. No. 11, 367 (1994).

[75] *McDonough v. Forrest*, 129 Conn. App. 851 (2011); *Reeve, Admr. v. Middlesex Mut. Assur. Co. et al*, 43 Conn L. Rptr. No. 12, 413 (2007).

[76] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 268 (1993); *Streitweiser v. Middlesex Mutual*

Assurance Co., 219 Conn. 371, 377 (1991).

[77] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257 (1993); *Middlesex Insurance Co. v. Castellano*, 225 Conn. 339 (1993); *Middlesex Insurance Co. v. Rady*, 34 Conn. App. 679 (1994); *Stewart v. Middlesex Insurance Co.*, 38 Conn. App. 194 (1995)..

[78] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257 (1993); *Middlesex Insurance Co. v. Castellano*, 225 Conn. 339 (1993); *Middlesex Insurance Co. v. Rady*, 34 Conn. App. 679 (1994); *Stewart v. Middlesex Insurance Co.*, 38 Conn. App. 194 (1995).

[79] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257 (1993); *Middlesex Insurance Co. v. Rady*, 34 Conn. App. 679 (1994); *Stewart v. Middlesex Insurance Co.*, 38 Conn. App. 194 (1995).

[80] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 262 (1993); see also *Middlesex Insurance Co. v. Castellano*, 225 Conn. 339 (1993); *Middlesex Insurance Co. v. Rady*, 34 Conn. App. 679 (1994); *Stewart v. Middlesex Insurance Co.*, 38 Conn. App. 194 (1995).

[81] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 262-64 (1993).

[82] Conn. Gen. Stat. ' 38a-336(a)(1); *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 264 (1993).

[83] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 264-65 (1993); See also *Middlesex Insurance Co. v. Castellano*, 225 Conn. 339 (1993); *Middlesex Insurance Co. v. Rady*, 34 Conn. App. 679 (1994); *Stewart v. Middlesex Insurance Co.*, 38 Conn. App. 194 (1995).

[84] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 265 (1993).

[85] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 267 (1993).

[86] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 265 (1993) (internal citations omitted).

[87] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 268 (1993).

[88] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 265 (1993).

[89] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 268-69 (1993).

[90] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 268-69 (1993).

[91] *Middlesex Insurance Co. v. Quinn*, 225 Conn. 257, 264-65 (1993); *Middlesex Insurance Co. v. Rady*, 34 Conn. App. 679, 681 (1994).

[92] *Middlesex Insurance Co. v. Rady*, 34 Conn. App. at 683.

[93] *Middlesex Insurance Co. v. Rady*, 34 Conn. App. at 683; *Stewart v. Middlesex Insurance Co.*, 38 Conn. App. 194 (1995).

[94] *Stewart v. Middlesex Insurance Co.*, 38 Conn. App. 194 (1995).

[95] *Stewart v. Middlesex Insurance Co.*, 38 Conn. App. 194 (1995).

[96] *Varela v. Progressive Cas. Ins. Co.*, 59 Conn. L. Rptr. No. 9, 334 (2015).

[97] *Colonial Penn. Ins. Co. v. Patriot General Ins. Co.*, 22 Conn. L. Rptr. No. 10, 355 (1998).

[98] *Colonial Penn. Ins. Co. v. Patriot General Ins. Co.*, 22 Conn. L. Rptr. No. 10, 355 (1998).

[99] *Colonial Penn Ins. Co. v. Patriot General Ins. Co.*, 22 Conn. L. Rptr. No. 10, 355 (1998).