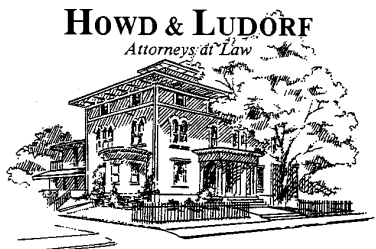


HOWD & LUDORF

Insurance Defense Newsletter

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PREMISES LIABILITY--SECURITY

The Connecticut Appellate Court recently addressed a premises security case in *Medcalf v. Washington Heights Condominium Assn., Inc.*, 57 Conn.App. 12 (2000). In *Medcalf*, the plaintiff was assaulted and injured by a third party when visiting the defendant's property. The plaintiff alleged that the defendant's intercom system malfunctioned and the plaintiff was left outside the building and was assaulted. At trial the jury found in favor of the plaintiff. The Appellate Court reversed the verdict and held that the assault was not a reasonably foreseeable risk created by the defendant's failure to maintain

the intercom system. The Court noted that the plaintiff did not offer any evidence that the intercom system was designed to provide security to a person outside the building. The Court also noted that it was not reasonably foreseeable that a failure of the intercom system would provide a substantial inducement for the commission of a violent assault by one stranger upon another. In its decision the Court relied on *Doe v. Manheimer*, 212 Conn. 762 (1989) (overgrown bushes) and *Suerez v. Sordo*, 43 Conn. App. 770 (1996) (locks on apartment doors) two recent decisions with similar results from similar claims.

SIDEWALK DEFECTS

In *Major v. New London*, 27 Conn. L. Rptr. No. 6, 217 (July 24, 2000), the Court (Corradino, J.) denied a defendant business owner's motion for summary judgment as to liability for a fall down which occurred outside the defendant's premises on a public sidewalk allegedly due to a crack. Although the Court acknowledged that the defendant did not have a duty directly related to the specific defect

alleged on the public sidewalk, the Court found that the defendant could still be found to have breached a duty to the plaintiff who was a business invitee of the defendant. The Court held that the defendant owed its patrons a duty to provide a reasonably safe entrance and a trier of fact could find that the defendant breached this duty if it directed its patrons over a defective sidewalk.

UNINSURED MOTORIST COVERAGE

Excess Coverage - Collateral Estoppel

In *Young v. Metropolitan Property & Casualty Ins. Co.*, 60 Conn.App. 107 (2000) the Connecticut Appellate Court held that an excess underinsured motorist carrier is not bound by an arbitration verdict against the primary underinsured motorist carrier. In *Young*, the plaintiff collected the tortfeasor's liability policy limits. Thereafter, the plaintiff proceeded to arbitrate his claim against the primary underinsured motorist carrier. The excess underinsured motorist carrier, whose policy did not require arbitration, declined an invitation to participate in the arbitration. The arbitration verdict exceeded the limits of the primary underinsured motorist coverage carrier's limits. The plaintiff sought to enforce the verdict against the excess underinsured motorist carrier and to preclude the excess carrier from relitigating the issue of damages. The Court in *Young* determined that the excess carrier was not estopped from litigating the issue of the plaintiff's damages. The Court held that the excess carrier would only be collaterally estopped from litigating the issue of damages if it was in privity with the arbitration defendant. The evaluation of privity was a matter of substance rather than form and in each case the relationship of the parties must be analyzed. The *Young* Court determined that although the primary and excess carriers would have similar interests in litigating the plaintiff's damages, the interests of the parties would not be sufficiently representing the same legal

rights as to policy terms and limits so as to justify preclusion. The Court hedged the application of its decision by emphasizing that the excess carrier had a contract right not to accept arbitration as a forum. The Court noted that it could be fair to preclude the plaintiff, who participated in the underlying arbitration, from relitigating issues decided against him in the prior proceeding. (Citing *Russo v. Aetna Casualty & Surety Co.*, 34 Conn.App. 904 (1994)).

Unfair Settlement Practices

A trial court in *Smith v. Allstate*, 26 Conn. L. Rptr. No. 3, 83 (Melville, J., February 14, 2000) held that an insurer's practice of refusing to pay UM benefits on accidents involving minimal impacts, while not a statutory unfair insurance practice pursuant to Conn. Gen. Stat. § 38a-315 (CUIPA), is an Unfair Trade Practice pursuant to § 42-110 *et seq.* (CUTPA). The Court did not find any of the enumerated unfair insurance settlement practices directly applicable and, therefore, did not find that CUIPA applied. The Court did find that the practice of excluding coverage of a particular type of claim while accepting a premium for the coverage was against public policy and therefore a potential CUTPA violation.

Apportionment Claims

In *Ferellec v. GEICO*, 26 Conn. L. Rptr. No. 15, 546

(Thompson, J., May 8, 2000) the Trial Court held that claims for apportionment are permitted in negligence claims only and are not permitted under the statute for contract claims for UM coverage, which claims are limited to the liability of an uninsured operator.

Determination of Underinsured Vehicle

The Connecticut Supreme Court recently held that a tortfeasor's vehicle is not underinsured where the single limit liability coverage is less than the total of the plaintiff's split limit underinsured policy but equal to or greater than the per person underinsured limit. In *Doyle v. Metropolitan Property & Casualty Ins. Co.*, 252 Conn. 79 (2000) the Court held that the determination of underinsured motorist coverage is based on a simple comparison of the liability limits and underinsured motorist limits available to the plaintiff. The Court ruled that no consideration is to be given to the number of claimants or nature of claims within each potential limit available to the plaintiff.

Reduction - Social Security Benefits

Public Act No. 00-143 amended Connecticut General Statutes Section 38a-336 to prohibit the reduction of UM coverage for any benefits paid or payable pursuant to the Social Security Act.

MOTOR VEHICLE CASES

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