

DOCKET NO. CV09-6003243 S : SUPERIOR COURT
DANIEL SLUBOWSKI : JUDICIAL DISTRICT OF NEW HAVEN
V. : AT NEW HAVEN
CIRMA : AUGUST 31, 2009

**MEMORANDUM OF DECISION RE:
MOTION FOR SUMMARY JUDGMENT (#122)**

This action arises out of a motor vehicle accident that occurred on November 29, 2005, in New Haven. The plaintiffs, Daniel Slubowski and Abigail Levine, were passengers in an ambulance owned and operated by Guilford Ambulance when the ambulance was struck by an unidentified motorist. The plaintiffs allege injuries as a result of the collision.

Counts one and three of the plaintiffs' four count complaint seek uninsured motorist benefits for each plaintiff from Guilford Ambulance's insurer, defendant Connecticut Interlocal Risk Management Agency (CIRMA). Count two is a claim by plaintiff Slubowski for uninsured motorist benefits from defendant OneBeacon Midwest Insurance Company (OneBeacon), under a policy in which Slubowski is a named insured. Count four is a claim by plaintiff Levine for uninsured motorist benefits from defendant Travelers Commercial Insurance Company (Travelers), under a policy in which Levine is a name insured.

Travelers now moves for summary judgment on the fourth count of the complaint, on the ground that plaintiff Levine's claim against it is precluded by General Statutes § 38a-336 (d). In addition to its memorandum of law in support of its motion, Travelers submits the following: its unanswered request to admit served on CIRMA on April 28, 2009; CIRMA's declaration of coverage

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Counsel/Pro Se Parties notified 9-1-09
By JDO Copy of Memo Other

for its policy issued to the Town of Guilford; CIRMA's responses to plaintiff's interrogatories and request for production; and Travelers' responses to plaintiff's interrogatories and request for production, including a copy of the policy declarations for Travelers' policy covering Levine. The plaintiff did not provide any objections, opposing memoranda or affidavits.

DISCUSSION

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law." (Internal quotation marks omitted.) *Allen v. Cox*, 285 Conn. 603, 609, 942 A.2d 296 (2008).

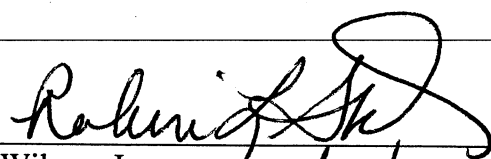
Travelers argues that, as a matter of law pursuant to General Statutes § 38a-336 (d), the plaintiff cannot make a claim against the Travelers policy. Section 38a-336 (d) provides in relevant part: "Regardless of the number of policies issued, vehicles or premiums shown on a policy, premiums paid, persons covered, vehicles involved in an accident, or claims made, in no event shall the limit of liability for uninsured and underinsured motorist coverage applicable to two or more motor vehicles covered under the same or separate policies be added together to determine the limit of liability for such coverage available to an injured person or persons for any one accident. If a person insured for uninsured and underinsured motorist coverage is an occupant of a nonowned

vehicle covered by a policy also providing uninsured and underinsured motorist coverage, the coverage of the occupied vehicle shall be primary and any coverage for which such person is a named insured shall be secondary. All other applicable policies shall be excess. The total amount of uninsured and underinsured motorist coverage recoverable is limited to the highest amount recoverable under the primary policy, the secondary policy or any one of the excess policies."

The uncontested proof submitted by Travelers in support of its motion for summary judgment establishes that the Travelers policy is secondary to the CIRMA policy, and therefore the Travelers policy is considered excess. Levine was an occupant of the vehicle owned by Guilford Ambulance, and the vehicle is covered by the CIRMA policy. The evidence also establishes that the CIRMA policy provides up to \$1,000,000 coverage per occurrence for uninsured or underinsured motorist liability, and that the Travelers policy is limited to \$300,000 per accident. The total amount recoverable is therefore capped at \$1,000,000 under the primary CIRMA policy, and the excess Travelers policy coverage is not recoverable. As there is no genuine issue of material fact based on the evidence submitted to the court, General Statutes § 38a-336 (d) controls and, as a matter of law, the plaintiff will be unable to recover any damages under the Travelers policy.

CONCLUSION

For the foregoing reasons, the court grants defendant Travelers' motion for summary judgment as to count four of the complaint.


Wilson, J.

8/31/09