THERESA ANASTASIA *v.* GENERAL CASUALTY COMPANY OF WISCONSIN
(SC 18766)

Rogers, C. J., and Palmer, Eveleigh, Harper and Beach, Js.*

Argued October 25, 2012—officially released February 5, 2013

Enrico Vaccaro, for the appellant (plaintiff).

Jon Berk, for the appellee (defendant).

Opinion

EVELEIGH, J. The primary issue in this appeal is whether an insurer is entitled to a reduction of its limits of liability for uninsured and underinsured motorist coverage (underinsured motorist coverage) by an amount equal to the sum of punitive damages paid to the insured. The trial court concluded that the defendant, General Casualty Company of Wisconsin, was entitled to such a deduction. The plaintiff, Theresa Anastasia, appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2. We affirm the judgment of the trial court.

The following undisputed facts are relevant to this appeal. The plaintiff and her husband, Peter Anastasia, held an insurance policy issued by the defendant that provided underinsured motorist coverage up to a maximum of $250,000. The plaintiff's husband was operating an automobile that was traveling in an easterly direction on Shadyside Lane in Milford with the plaintiff, the owner of that automobile, as a passenger. A car owned by Mark Mitsock and operated by his wife, Donna Mitsock (tortfeasor), was proceeding in a westerly direction on Shadyside Lane when it suddenly crossed the center line and collided head-on into the plaintiff's automobile. The tortfeasor allegedly attempted to evade responsibility for the accident by fleeing the scene. When apprehended, she was intoxicated with a blood alcohol level of 0.407, a level that is more than five times the legal limit.

As a result of the accident, the plaintiff and her husband suffered multiple significant injuries. At the time of the accident, the limit of the Mitsocks' liability coverage was $100,000 per person and $300,000 per accident. The plaintiff and her husband brought an action against the Mitsocks for compensatory damages, common-law punitive damages and exemplary damages under General Statutes § 14-295.[1] Following extensive pretrial proceedings, mediation and settlement negotiations, the parties entered into a settlement agreement. The total settlement amount, as it pertained to the plaintiff, was for $415,000. One hundred thousand dollars was paid to the plaintiff, pursuant to the Mitsocks' liability policy, to settle the plaintiff's negligence claim for compensatory damages, and $315,000 was paid personally by the Mitsocks to the plaintiff to settle her claim for common-law punitive damages and exemplary damages predicated pursuant to § 14-295 on the alleged reckless conduct of the tortfeasor.[2] The court, *Lager*, *J.*, approved the settlement agreement.

At the time of the collision, the motor vehicle driven by the tortfeasor was "underinsured" as defined by the plaintiff's insurance policy and by General Statutes

§ 38a-336 because the $100,000 coverage limit of the tortfeasor's policy was lower than the $250,000 underinsured motorist coverage limit of the plaintiff's policy. The plaintiff therefore submitted a timely claim for underinsured motorist coverage to the defendant, which the defendant denied in light of the plaintiff's recovery under the settlement agreement. Thereafter, the plaintiff brought this action seeking underinsured motorist coverage under her policy.[3]

The defendant filed a motion for summary judgment, claiming that it was entitled to a setoff equal to the amount of the entire settlement, to which the plaintiff objected. The trial court granted the motion and rendered judgment in favor of the defendant. This appeal followed.

On appeal, the plaintiff claims that the trial court improperly granted the defendant's motion for summary judgment because the trial court improperly concluded that the defendant could reduce its underinsured motorist coverage liability by an amount equal to the punitive damages received by the plaintiff. Specifically, the plaintiff claims that the policy language is ambiguous and incongruous with the requirements of § 38a-334-6 of the Regulations of Connecticut State Agencies. The plaintiff also claims that allowing an insurer to reduce its liability on the basis of punitive damages received by an insured contravenes the public policy underlying underinsured motorist coverage. In response, the defendant claims that the trial court properly granted the motion because the insurance policy language is unambiguous and is substantially congruent with the regulation. We agree with the defendant and, accordingly, affirm the judgment of the trial court.

We begin by setting forth the standard of review governing this appeal. "The standards governing our review of a trial court's decision to grant a motion for summary judgment are well established. 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 seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . Finally, the scope of our review of the trial court's decision to grant the plaintiff's motion for summary judgment is plenary." (Internal quotation marks omitted.) *DiPietro* v. *Farmington Sports Arena, LLC*,

306 Conn. 107, 115–16, 49 A.3d 951 (2012).

Our resolution of the plaintiff's claims revolves around our interpretation of the regulation and the language of the plaintiff's insurance policy. "Interpretation of an insurance policy, like the interpretation of other written contracts, involves a determination of the intent of the parties as expressed by the language of the policy. . . . Unlike certain other contracts, however, where absent statutory warranty or definitive contract language the intent of the parties and thus the meaning of the contract is a factual question subject to limited appellate review . . . construction of a contract of insurance presents a question of law for the court which this court reviews de novo." (Internal quotation marks omitted.) *Vitti* v. *Allstate Ins. Co.*, 245 Conn. 169, 174, 713 A.2d 1269 (1998). "The Connecticut rule of construction of insurance policies is well settled. If the terms of an insurance policy are of doubtful meaning, that permissible construction which is most favorable to the insured is to be adopted; but if they are plain and unambiguous the established rules for the construction of contracts apply, the language, from which the intention of the parties is to be deduced, must be accorded its natural and ordinary meaning, and the courts cannot indulge in a forced construction ignoring provisions or so distorting them as to accord a meaning other than that evidently intended by the parties." (Internal quotation marks omitted.) Id., 176.

In Connecticut, insurers are required by statute to provide underinsured motorist coverage to their policyholders. According to General Statutes § 38a-334 (a),[4] "[t]he 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 bodily injury liability, property damage liability, medical payments and uninsured motorists coverages under such policies . . . ." (Emphasis added.) Additionally, § 38a-336 (a) (1)[5] provides that each automobile liability insurance policy shall provide uninsured and underinsured motorist coverage, in accordance with the regulations adopted by the insurance commissioner pursuant to § 38a-334. Section 38a-334-6 of the Regulations of Connecticut State Agencies has been promulgated by the insurance commissioner pursuant to § 38a-334 and provides minimum coverage that insurers must provide when issuing underinsured motorist policies. The regulation provides in relevant part: "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 motor vehicle. . . ." Regs., Conn. State Agencies § 38a-334-6 (a). The regula-

tion also allows an insurer to limit its underinsured motorist liability. Specifically, relevant to the present case, the regulation permits an insurer to limit its liability "to the extent that *damages* have been . . . paid by or on behalf of any person responsible for the injury . . . ." (Emphasis added.) Id., § 38a-334-6 (d) (1) (A).

We have previously concluded that "an insurer may not, by contract, reduce its liability for . . . uninsured or underinsured motorist coverage except as [§ 38a-334-6] of the Regulations of Connecticut State Agencies expressly authorizes." *Allstate Ins. Co.* v. *Ferrante*, 201 Conn. 478, 483, 518 A.2d 373 (1986). "In order for a policy exclusion to be expressly authorized by [a] statute [or regulation], there must be substantial congruence between the statutory [or regulatory] provision and the policy provision." (Internal quotation marks omitted.) *Lowrey* v. *Valley Forge Ins. Co.*, 224 Conn. 152, 156, 617 A.2d 454 (1992). Substantial congruence exists when "[t]he terms in the policy . . . and [the regulation] correspond in all material respects." *Vitti* v. *Allstate Ins. Co.*, supra, 245 Conn. 176.

Accordingly, in order to determine if the plaintiff's policy is substantially congruent with the regulation, we must examine the language of the policy and compare it to that of the regulation. As we stated earlier, the regulation permits insurers to reduce the amount payable pursuant to a claim for uninsured or underinsured motorist coverage "to the extent that *damages* have been . . . paid by or on behalf of any person responsible for the injury . . . ." (Emphasis added.) Regs., Conn. State Agencies § 38a-334-6 (d) (1) (A). The plaintiff's policy, on the other hand, provides that the defendant may reduce its underinsured motorist liability by "*all sums* . . . [p]aid because of the 'bodily injury' by or on behalf of persons or organizations who may be legally responsible. . . ." (Emphasis added.) Thus, the policy language differs from that in the regulation. The regulation provides that an insurer may reduce its underinsured motorist coverage limits to the extent that "damages" have been paid, whereas the plaintiff's policy states that the defendant may reduce its liability by "all sums" paid because of the bodily injury.

The crux of the plaintiff's claim is that the term "damages" is more restrictive than "all sums" and that, because an insurer may not limit its liability except as the regulation expressly authorizes, the use of "all sums" in the limitation provision of the insurance policy is incongruent with the requirements of the regulation in that the policy language allows for a broader reduction than permitted by the regulation. Thus, the plaintiff claims that the trial court improperly concluded that the defendant was entitled to offset its underinsured motorist liability to account for the $315,000 paid by the Mitsocks as punitive damages. The plaintiff claims that the regulation only allows the defendant to reduce

its underinsured motorist liability by the $100,000 designated as compensatory damages that the plaintiff received from the Mitsocks' liability insurer. Specifically, the plaintiff contends that in *American Universal Ins. Co.* v. *DelGreco*, 205 Conn. 178, 530 A.2d 171 (1987), this court concluded that policy language identical to that in the present case was ambiguous and was incongruous with the regulation because the policy language permitted a broader reduction of the insurer's liability than that which the regulation allows.

In response, the defendant claims that the relevant policy language in the present case is unambiguous and substantially congruent with the regulation. Specifically, the defendant claims that in *Bodner* v. *United Services Automobile Assn.*, 222 Conn. 480, 495, 610 A.2d 1212 (1992), this court held that the term "damages" as used in an insurance policy is not more restrictive than the term "all sums," and that the plain meaning of the term "damages" includes both compensatory and punitive damages. Thus, the defendant claims that the use of the term "all sums" in the plaintiff's policy does not permit a broader reduction of underinsured motorist limits than provided for under the regulation because the regulation allows an insurer to offset underinsured motorist liability by punitive damages received by the insured. We agree with the defendant.

We conclude that our decision in *Bodner* controls our resolution of whether the term "damages" is more restrictive than the term "all sums," and thus whether the policy is substantially congruent with the regulation. The issue in *Bodner* was whether the plaintiff insured was entitled to recover punitive damages awarded in an arbitration proceeding against the uninsured tortfeasor from the defendant insurer under the underinsured motorist provision of the insurance policy. Id., 493. In *Bodner*, the underinsured motorist provision of the policy stated that the insured was entitled to recover "damages" as a result of bodily injury caused by an accident. Id. The plaintiff claimed that the term "damages" allowed him to recover punitive damages from the defendant. Id., 491. In response, the defendant contended that the term "damages," as used in the insurance policy, only entitled the plaintiff to recover compensatory damages. Id., 493, 495. To support its argument, the defendant pointed to a prior case where this court had concluded that the term "all sums" encompassed punitive damages. Id., 494–95; see *Avis Rent A Car System, Inc.* v. *Liberty Mutual Ins. Co.*, 203 Conn. 667, 671, 526 A.2d 522 (1987). Accordingly, the defendant claimed that the term "damages" was more restrictive than the term "all sums" and that, because the plaintiff's policy stated that the plaintiff was entitled only to recover "damages" and not "all sums," he was entitled only to compensatory damages. *Bodner* v. *United Services Automobile Assn.*, supra, 222 Conn. 495.

In *Bodner*, this court agreed with the plaintiff and concluded that the plain meaning of the term "damages" encompassed common-law punitive damages. Id. The court stated that "Black's Law Dictionary (6th Ed. 1990) defines 'damages' as '[a] pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another.' " Id. Furthermore, the court noted that § 12A of the Restatement (Second) of Torts defines "damages" as "a sum of money awarded to a person injured by the tort of another." (Internal quotation marks omitted.) Id. Thus, the court concluded that "[i]t is evident from both of these definitions that common law punitive damages are an element of 'damages.' "[6] Id.

In accordance with this court's decision in *Bodner*, we conclude that the plain meaning of the term "damages," as used in § 38a-334-6 (d) (1) of the regulation, encompasses common-law punitive damages and that, therefore, the regulation permits an insurer to offset its underinsured motorist liability by an amount equal to any punitive damages paid to an insured by a party responsible for the injury. Accordingly, we conclude that the use of "all sums" in the limitation provision of the plaintiff's insurance policy corresponds in all material respects to the use of "damages" in the regulation. Thus, we conclude that the trial court properly determined that the policy language in the present case is unambiguous and substantially congruent with the regulation.[7]

The plaintiff contends, however, that this court's decision in *American Universal Ins. Co.* v. *DelGreco*, supra, 205 Conn. 178, requires us to conclude that the policy language at issue in the present case is incongruous with the regulation. The plaintiff claims that, in *DelGreco*, this court concluded that policy language identical to the policy language in the present case was ambiguous and broader than that permitted by the regulation. Accordingly, the plaintiff claims that we must conclude that the language in the present case is incongruous with the regulation and thus invalid. We disagree.

In *DelGreco*, the defendant's decedent died as a result of injuries sustained in an automobile accident. Id., 179. The defendant in *DelGreco*, the administrator of the decedent's estate, pursued claims against the driver of the other automobile and the restaurant that had served the driver alcohol on the night of the accident, pursuant to General Statutes § 30-102 (Dram Shop Act). Id. The decedent's estate was paid the $20,000 policy limit under the driver's insurance policy and also received the $20,000 policy limit under the restaurant's dram shop policy. Id., 179–80. Thereafter, the defendant made a claim for the underinsured motorist benefits provided

by the decedent's insurance policy. Id., 180. The plaintiff insurer refused to pay any underinsured motorist benefits, because it claimed that it was entitled to reduce the underinsured motorist limits by the amount of the dram shop payment. Id. The parties proceeded to arbitration, and the arbitration panel found in favor of the defendant. Id., 181–83. The plaintiff filed an application to vacate the arbitration award in the trial court, and the trial court affirmed the decision of the arbitration panel. Id., 183. The plaintiff appealed to the Appellate Court and, thereafter, the appeal was transferred to this court pursuant to what is now Practice Book § 65-1.[8] Id., 183–84.

On appeal, this court affirmed the judgment of the trial court, concluding that the plaintiff was not entitled to reduce its liability on the basis of the payment under the Dram Shop Act. Id., 197. The court concluded that the regulation, when read in conjunction with the language and intent of General Statutes § 38a-336,[9] related "only to setoffs of amounts received from other *automobile liability policies* of those responsible for the injury." (Emphasis added.) Id. The court concluded that the Dram Shop Act did not create a "person responsible for the injury"; Regs., Conn. State Agencies § 38a-334-6 (d) (1) (A); because the act "is not classified as automobile coverage." *American Universal Ins. Co.* v. *DelGreco*, supra, 205 Conn. 196. Rather, the court stated that the Dram Shop Act is "designed to cover risks arising out of the sale of intoxicating liquors." Id. Thus, the court concluded that the regulation did not permit underinsured motorist liability limits to be reduced by dram shop payments because dram shop payments were not payments from an automobile liability policy. Id. The court's conclusion, therefore, focused on the "remedial purpose" of underinsured motorist coverage rather than on whether the policy language was substantially congruent with the regulation.

In the present case, the punitive damages received by the plaintiff, although not paid by the Mitsocks' liability carrier, were paid in direct relation to the accident that caused the plaintiff's injuries. Accordingly, we conclude that the holding of *DelGreco* is inapplicable to the present case because, unlike payments received pursuant to a restaurant's dram shop policy, the punitive damages received by the plaintiff in the present case were paid by the party directly responsible for the plaintiff's injuries.

The plaintiff claims, however, that in footnote ten of this court's opinion in *DelGreco*, the court stated that the language of the policy at issue was broader than that of the regulation. See *American Universal Ins. Co.* v. *DelGreco*, supra, 205 Conn. 199 n.10. The plaintiff therefore claims that, because the policy language in *DelGreco* is allegedly identical to the policy language in the present case, we must conclude that the policy language in the present case is incongruous with the

regulation. We disagree. The language in the insurance policy in *DelGreco* provided that the insurer could reduce its underinsured motorist liability by "all sums . . . paid by or on behalf of persons or organizations who may be legally responsible." (Internal quotation marks omitted.) Id., 192 n.7. After comparing this language to that of § 38a-337-6 of the regulations, we find two possible rationales for the conclusion reached in *DelGreco*: (1) the policy contained the term "all sums" instead of the term "damages"; and (2) the policy exclusion was not qualified by the phrase "for the injury."

We conclude that neither possible rationale affects our analysis of the present case. First, to the extent that the court in *DelGreco* was concerned with the use of the term "all sums" in the policy rather than the term "damages" as used in § 38a-337-6 of the regulations, our subsequent decision in *Bodner* made clear that the plain meaning of the term "damages" encompasses punitive damages and, thus, is not more restrictive than the term "all sums." *Bodner* v. *United Services Automobile Assn.*, supra, 222 Conn. 495. Accordingly, to the extent that there is a conflict between *DelGreco* and *Bodner*, we conclude that the specific holding in *Bodner* controls in the present case. Second, we conclude that any concern that the court in *DelGreco* had regarding the fact that the limitation provision in the defendant's policy was not qualified by the phrase "for the injury" is irrelevant, because the policy language in *DelGreco* is not identical to the policy language in the present case. Although the limit of liability provision in *DelGreco* was not qualified by the phrase "for the injury," and thus possibly allowed for a broader reduction than specified in the regulation, the limit of liability provision in the present case is indeed qualified by the phrase "because of the 'bodily injury.' "[10] Accordingly, we conclude that *DelGreco* is inapposite and that, on the basis of our decision in *Bodner*, the policy language in the present case is unambiguous and substantially congruent with the regulation.

The plaintiff next claims that the trial court improperly allowed the defendant to reduce its underinsured motorist liability by an amount equal to the punitive damages received by the plaintiff because the public policy underlying underinsured motorist coverage requires that an injured insured recover the same amount of compensatory damages that she would have received had the tortfeasor maintained liability insurance with limits equal to the injured insured's underinsured motorist coverage. In other words, the plaintiff claims that, had the Mitsocks maintained liability insurance with a $250,000 limit, the plaintiff would have been entitled to receive $250,000 in compensatory damages as well as the $315,000 she received as punitive damages. Thus, the plaintiff claims that, by allowing the defendant to reduce the policy limits by an amount equal to the punitive damages received by the plaintiff,

she was denied $150,000 and, therefore, was placed in an overall worse situation than if the Mitsocks had the same liability coverage as the plaintiff's underinsured motorist coverage. In response, the defendant contends that, in accordance with this court's decision in *Bodner*, it properly reduced its liability by the amount that was paid to the plaintiff as punitive damages. We agree with the defendant.

Our prior decisions regarding the public policy of underinsured motorist coverage demonstrate that the plaintiff misstates the purpose of such coverage. "Although compensating the victim of an underinsured motorist as if the tortfeasor were adequately insured is a general public policy objective of the uninsured motorist statute; *Buell* v. *American Universal Ins. Co.*, [224 Conn. 766, 774–75, 621 A.2d 262 (1993)]; *Rydingsword* v. *Liberty Mutual Ins. Co.*, [224 Conn. 8, 18, 615 A.2d 1032 (1992)]; *Harvey* v. *Travelers Indemnity Co.*, [188 Conn. 245, 249, 449 A.2d 157 (1982)]; we have concluded that other policy considerations preclude conferring the selfsame rights on both the victim of an adequately insured tortfeasor and the victim of an inadequately insured tortfeasor. See generally *Buell* v. *American Universal Ins. Co.*, supra, 774–75 (settlement payment by one who may or may not be responsible for harm to insured); *Rydingsword* v. *Liberty Mutual Ins. Co.*, supra, 17–18 (unclaimed workers' compensation benefits); *Wilson* v. *Security Ins. Co.*, [213 Conn. 532, 538, 569 A.2d 40, cert. denied, 498 U.S. 814, 111 S. Ct. 52, 112 L. Ed. 2d 28 (1990), cert. denied, 502 U.S. 1005, 112 S. Ct. 640, 116 L. Ed. 2d 658 (1991)] (workers' compensation benefits); *Roy* v. *Centennial Ins. Co.*, [171 Conn. 463, 475, 370 A.2d 1011 (1976)] (settlement by tortfeasor). As we have earlier observed, [t]he plain words of . . . [§ 38a-336] simply require that each policy provide *a minimum level of uninsured* [*and underinsured*] *motorist coverage* for the protection of persons insured thereunder. The statute does not require that [underinsured] motorist coverage be made available when the insured has been otherwise protected . . . . Nor does the statute provide that the [underinsured] motorist coverage shall stand as an independent source of recovery for the insured, *or that the coverage limits shall not be reduced under appropriate circumstances*. The statute merely requires that a certain minimum level of protection be provided for those insured under automobile liability insurance policies; *the insurance commissioner has been left with the task of defining those terms and conditions which will suffice to satisfy the requirement of protection*." (Emphasis altered; internal quotation marks omitted.) *Vitti* v. *Allstate Ins. Co.*, supra, 245 Conn. 183–84.

"Accordingly, the general objective of equivalent recovery is limited by an insurer's regulatory authority to reduce the limits of liability as permitted by § 38a-334-6 (d), as long as the insured retains a minimum

level of protection as mandated by statute. See *Buell* v. *American Universal Ins. Co.*, supra, 224 Conn. 774; *Rydingsword* v. *Liberty Mutual Ins. Co.*, supra, 224 Conn. 18; *Wilson* v. *Security Ins. Co.*, supra, 213 Conn. 538; *Roy* v. *Centennial Ins. Co.*, supra, 171 Conn. 475. In the underinsured motorist coverage context, the minimum amount of compensation that the insured is entitled to receive is equivalent to the amount of underinsured motorist protection that the insured carried. General Statutes § 38a-336 (b) and (e).

"In addition to the statute's primary policy objective of providing some minimum level of compensation for the victims of inadequately insured motorists by assuring that they are compensated in an amount equal to the level of their own uninsured motorist coverage; *Mass* v. *United States Fidelity & Guaranty Co.*, [222 Conn. 631, 647, 610 A.2d 1185 (1992)]; § 38a-334-6 (d) of the regulations furthers the additional policy objective of adhering to the time-honored rule that an injured party is entitled to full recovery only once for the harm suffered. *Buell* v. *American Universal Ins. Co.*, supra, 224 Conn. 775; *Rydingsword* v. *Liberty Mutual Ins. Co.*, supra, 224 Conn. 18. In accomplishing the myriad and difficult policy objectives inherent in the uninsured and underinsured motorist coverage statute, the legislature expressly left to the sound discretion of the insurance commissioner the authority to develop regulations pertaining to exclusions, including appropriate reductions to the limits of liability. General Statutes § 38a-334 (a); *Wilson* v. *Security Ins. Co.*, supra, 213 Conn. 538. We previously have concluded that it expressly has been left to the *commissioner* to determine whether an alternative source of recovery available to the insured should be an applicable offset; see, e.g., id.; and that a duly promulgated regulation has the force and effect of statute. See, e.g., *Dugas* v. *Lumbermens Mutual Casualty Co.*, [217 Conn. 631, 641, 587 A.2d 415 (1991)]. Section [38a-336] does not specifically prohibit the adoption of a regulation permitting the reduction of uninsured [and underinsured] motorist coverage, whereas [§ 38a-334] explicitly authorized the commission[er] to adopt regulations relating to the insuring agreements, exclusions, conditions and other terms applicable to . . . uninsured [and underinsured] motorist coverages. . . . *Wilson* v. *Security Ins. Co.*, supra, 538. . . .

"Furthermore, we are not persuaded that the insured's recovery from the insurer must always be identical to that which could be obtained from an adequately insured tortfeasor. We previously have concluded that the insurer is not the alter ego of the tortfeasor and . . . they do not share the same legal [status]. . . . *Haynes* v. *Yale-New Haven Hospital*, 243 Conn. 17, 25, 699 A.2d 964 (1997); *Dodd* v. *Middlesex Mutual Assurance Co.*, 242 Conn. 375, 385, 698 A.2d 859 (1997); *Mazziotti* v. *Allstate Ins. Co.*, 240 Conn.

799, 817, 695 A.2d 1010 (1997). It is not necessary, therefore, that an uninsured and underinsured motorist coverage carrier and a tortfeasor invariably be treated the same for all purposes and necessarily be entitled to only the same reductions in liability. The right of an insurer to offset the limits of liability for uninsured and underinsured motorist coverage is controlled by § 38a-334-6 [of the regulations]." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Vitti* v. *Allstate Ins. Co.*, supra, 245 Conn. 185–88.

Accordingly, we defer to the plain language of § 38a-334-6 (d) (1), the regulation adopted by the insurance commissioner, in determining whether an insurer may limit its underinsured motorist liability by punitive damages received by the insured. As we have stated, § 38a-334-6 (d) (1) permits an insurer to limit its liability to the extent that "damages have been . . . paid by or on behalf of any person responsible for the injury . . . ." Regs., Conn. State Agencies § 38a-334-6 (d) (1) (A). Because this court concluded in *Bodner* that the term "damages" encompasses punitive damages, we conclude that the plain language of § 38a-334-6 (d) (1) allows an insurer to limit its liability by punitive damages paid to the insured by a party who is responsible for the insured's injury.

Moreover, in accordance with the public policy underlying underinsured motorist coverage, we conclude that the plaintiff in the present case must be compensated, from *all available sources*, in the amount that would have been available if the tortfeasor had carried a policy limit of $250,000, which is the amount equal to the plaintiff's coverage. See *Vitti* v. *Allstate Ins. Co.*, supra, 245 Conn. 189–90. The plaintiff has received a total of $415,000 from all available sources, namely, the $100,000 paid by the Mitsocks' liability carrier and the $315,000 paid directly by the Mitsocks. Therefore, in light of the legislative intent to provide a certain minimal level of protection while preventing double recovery on the part of the insured, we conclude that an insurer may limit its liability by offsetting its underinsured motorist liability by an amount equal to any punitive damages paid to the insured from a party responsible for her injuries. Accordingly, we conclude that the decision of the trial court does not violate the public policy underlying underinsured motorist coverage in this state because the plaintiff was sufficiently compensated.[11]

Finally, the plaintiff claims that the trial court's decision allowing the reduction of underinsured motorist coverage by punitive damages contravenes the public policy of this state favoring the pursuit of punitive damages for reckless conduct as a means of deterring dangerous behavior. Specifically, the plaintiff claims that, if an insurer is able to reduce its underinsured motorist liability by punitive damages received by the insured,

an injured insured will never bring an action against a tortfeasor for punitive damages when the tortfeasor's personal assets are less than the insured's underinsured motorist limits. The plaintiff therefore contends that the amount of civil actions aimed at recovering punitive damages from reckless drivers will decline and that such a reduction will, in turn, cause a rise in reckless conduct on the state's roads and highways. We disagree.

Although Connecticut drivers may well be deterred from driving recklessly by the prospect of facing civil claims, the plaintiff's argument proves too much. Even if, as a result of our decision, the amount of civil actions seeking punitive damages decline, reckless drivers who cause injury to others will still be subject to possible criminal prosecution and be exposed to civil actions seeking compensatory damages. Accordingly, we do not believe that our decision today will cause otherwise prudent drivers to suddenly succumb to the urge to drive recklessly.

The judgment is affirmed.

In this opinion the other justices concurred

* This case was argued before a panel of this court consisting of Chief Justice Rogers and Justices Palmer, Zarella, Eveleigh and Harper. Thereafter Justice Zarella recused himself from the case and Judge Beach was added to the panel. Although Judge Beach was not present when the case was argued before this court, he read the record and briefs and listened to a recording of oral argument prior to participating in this decision.

The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] General Statutes § 14-295 provides: "In any civil action to recover damages resulting from personal injury, wrongful death or damage to property, the trier of fact may award double or treble damages if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of section 14-218a, 14-219, 14-222, 14-227a, 14-230, 14-234, 14-237, 14-239 or 14-240a, and that such violation was a substantial factor in causing such injury, death or damage to property. The owner of a rental or leased motor vehicle shall not be responsible for such damages unless the damages arose from such owner's operation of the motor vehicle."

[2] The plaintiff does not specify how much of the $315,000 was paid to settle her claim for common-law punitive damages and how much was paid to settle her claim for statutory exemplary damages. Common-law punitive damages "serve primarily to compensate the plaintiff for his injuries and, thus, are . . . limited to the plaintiff's litigation expenses less taxable costs. . . . [This] rule, when viewed in the light of the increasing costs of litigation, also serves to punish and deter wrongful conduct. . . . Such damages also are known as exemplary damages." (Citation omitted; internal quotation marks omitted.) *Matthiessen* v. *Vanech*, 266 Conn. 822, 826 n.5, 836 A.2d 394 (2003). Statutory exemplary damages have been defined as "a reward for securing the punishment of one who has committed a wrong of a public nature." *Avis Rent A Car System, Inc.* v. *Liberty Mutual Ins. Co.*, 203 Conn. 667, 673, 526 A.2d 522 (1987). For purposes of our analysis, any distinction between the two terms is irrelevant. Accordingly, any reference to "punitive damages" in this opinion refers both to common-law punitive damages as well as statutory exemplary damages.

[3] The plaintiff's complaint contained four counts: recovery of underinsured motorist benefits for the tortfeasor's negligent conduct; recovery of underinsured motorist benefits for the tortfeasor's reckless and wanton misconduct; breach of the covenant of good faith and fair dealing; and violation of the Connecticut Unfair Trade Practices Act. General Statutes § 42-110a et seq. The court, *Holden, J.*, granted the defendant's motion to strike the second through fourth counts of the complaint on March 3, 2008, leaving only the first count in which the plaintiff sought underinsured motorist benefits for the tortfeasor's negligent conduct.

[4] General Statutes § 38a-334 (a) provides: "The Insurance Commissioner shall adopt regulations with respect to minimum provisions to be included in automobile liability insurance policies issued after the effective date of such regulations and covering private passenger motor vehicles, as defined in subsection (e) of section 38a-363, motor vehicles with a commercial registration, as defined in section 14-1, motorcycles, as defined in section 14-1, motor vehicles used to transport passengers for hire, motor vehicles in livery service, as defined in section 13b-101, and vanpool vehicles, as defined in section 14-1, registered or principally garaged in this state. Such regulations shall relate to the insuring agreements, exclusions, conditions and other terms applicable to the bodily injury liability, property damage liability, medical payments and uninsured motorists coverages under such policies, shall make mandatory the inclusion of bodily injury liability, property damage liability and uninsured motorists coverages and shall include a provision that the insurer shall, upon request of the named insured, issue or arrange for the issuance of a bond which shall not exceed the aggregate limit of bodily injury coverage for the purpose of obtaining release of an attachment."

[5] General Statutes § 38a-336 (a) (1) provides: "Each automobile liability insurance policy shall provide insurance, herein called uninsured and underinsured motorist coverage, in accordance with the regulations adopted pursuant to section 38a-334, with limits for bodily injury or death not less than those specified in subsection (a) of section 14-112, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and underinsured motor vehicles and insured motor vehicles, the insurer of which becomes insolvent prior to payment of such damages, because of bodily injury, including death resulting therefrom. Each insurer licensed to write automobile liability insurance in this state shall provide uninsured and underinsured motorists coverage with limits requested by any named insured upon payment of the appropriate premium, provided each such insurer shall offer such coverage with limits that are twice the limits of the bodily injury coverage of the policy issued to the named insured. The insured's selection of uninsured and underinsured motorist coverage 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. No insurer shall be required to provide uninsured and underinsured 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 a motorcycle that is owned by the named insured, or (B) any insured occupying an uninsured or underinsured motor vehicle or motorcycle that is owned by such insured."

General Statutes § 38a-336 (b) governs the amount that an insurer must pay an insured as uninsured/underinsured motorist benefits and provides in relevant part: "An insurance company shall be obligated to make payment to its insured up to the limits of the policy's uninsured and underinsured 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, but in no event shall the total amount of recovery from all policies, including any amount recovered under the insured's uninsured and underinsured motorist coverage, exceed the limits of the insured's uninsured and underinsured motorist coverage. . . ."

[6] Although this court in *Bodner* concluded that the term "damages," as used in the insurance policy and the regulation, encompassed punitive damages, the court ultimately concluded, on public policy grounds, that the plaintiff was not entitled to common-law punitive damages under the policy. *Bodner* v. *United Services Automobile Assn.*, supra, 222 Conn. 497. Specifically, the court stated that "[a]llowing a recovery of punitive damages under uninsured motorist coverage would, in effect, place the insured in a better position than would exist if the tortfeasor had been insured." (Internal quotation marks omitted.) Id., 499. Additionally, the court stated that, although certain jurisdictions expressly require an underinsured motorist insurer to pay attorney's fees if it unsuccessfully contests a claim, Connecticut is not one of them. Id., 497. Accordingly, the court concluded that the plaintiff was not entitled to recover punitive damages under the policy.

We conclude that the public policy rationale in *Bodner* is inapplicable to the present case. The issue in *Bodner* was whether the insured could collect punitive damages, whereas the issue in the present case is whether an

insurer may offset its underinsured motorist liability by punitive damages. Accordingly, because the present case involves offsetting the insurer's liability, we are not confronted with the issue that the court faced in *Bodner* of placing the insured in a better position than if the tortfeasor had been insured, in contravention of the public policy established by the underinsured motorist statute. Thus, the public policy implications of *Bodner* do not apply to the present case.

[7] The plaintiff claims, however, that our holding in *Bodner* is inapplicable because the issue in that case was the interpretation of policy language *providing* coverage to an insured whereas, in the present case, we are interpreting policy language *excluding* coverage. The plaintiff therefore claims that the court in *Bodner* construed the terms of the policy broadly and in favor of the insured, so as to provide the coverage sought. Thus, the plaintiff contends that, because we must construe the policy language in the present case in favor of awarding the plaintiff coverage, we must conclude that the term "damages" only encompasses compensatory damages. We disagree.

A court will only construe the terms of an insurance policy in favor of the insured if "the terms of [the policy] are of doubtful meaning . . . ." (Internal quotation marks omitted.) *Vitti* v. *Allstate Ins. Co.*, supra, 245 Conn. 176. Where, however, the terms are plain and unambiguous, "the established rules for the construction of contracts apply" and the language "must be accorded its natural and ordinary meaning . . . ." (Internal quotation marks omitted.) Id. It is evident from the court's reliance in *Bodner* on the dictionary definition of the term "damages" that the court concluded that the term, as used in the policy and the regulation, was unambiguous and that the natural and ordinary meaning of the term "damages" included punitive damages. See *Bodner* v. *United Services Automobile Assn.*, supra, 222 Conn. 495. Thus, the court did not construe the terms of the policy in favor of the insured. Accordingly, the court's interpretation in *Bodner* of the term "damages" is directly applicable to the present case.

[8] At the time that the appeal in *DelGreco* was transferred to this court, the relevant Practice Book provision was § 4023.

[9] At the time *DelGreco* was decided, the relevant statutory provision was General Statutes § 38-175c. Section 38-175c was transferred to § 38a-336 in 1991. This change did not, however, affect the underlying intent of the statute or the language at issue in the present case.

[10] The limit of liability provision in the present case states: "The limit of liability 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. . . ." (Emphasis added.)

[11] We also note that a contrary conclusion would encourage an insured to manipulate settlement amounts by allocating damages in an entirely self-serving manner while disregarding the actual facts and circumstances of the case. In other words, in order to maximize recovery under an underinsured motorist provision, an insured could simply characterize certain payments received from a settlement agreement as "punitive" regardless of whether those payments accurately reflected punitive damages. We take no position on whether this has occurred in the present case.