DOCKET NO.: MMX-CV-21-6032829-S	:	SUPERIOR COURT Judicial District of Middlesex State of Connecticut
RANDAL CORNELIO	:	JUDICIAL DISTRICT OF MIDDLESEX
V.	:	AT MIDDLETOWN
LIBERTY MUTUAL INSURANCE CO.	:	MAY 21, 2024

MEMORANDUM OF DECISION REGARDING THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (DOCKET ENTRY NO. 116)

I
INTRODUCTION

The defendant, CSAA Affinity Insurance Co. (CSAA), moves for summary judgment on the plaintiff's claim for uninsured motorist coverage because it claims that there is no genuine issue of material fact that the plaintiff has already recovered worker's compensation benefits that exceed the policy limit. The plaintiff filed an objection and contends that there are material issues of fact regarding the policy exclusions and limits and whether the policy is enforceable under Connecticut law. The court heard this matter remotely on April 22, 2024. After consideration, the court grants the motion for summary judgment regarding the plaintiff's claim.

II
STATEMENT OF FACTS

Based on the pleadings and the filings in connection with the summary judgment motion, taken in a light most favorable to the plaintiff, the court finds the following pertinent facts.

The plaintiff, at all times relevant to this action, is a Connecticut resident. By complaint dated October 25, 2021, the plaintiff alleges that on November 2, 2018, he was operating a vehicle owned by Jani-King of Hartford, Inc. (Jani-King). At that time, the plaintiff was employed by Jani-King and was operating that vehicle as part of his employment. As the plaintiff's vehicle was traveling on Airport Road in Hartford, it was hit from behind by a vehicle operated by Joseph Lopez. The plaintiff alleges he sustained various injuries in the accident.

The plaintiff sues Liberty Mutual Insurance (Liberty Mutual) as the underinsurance provider for the Jani-King vehicle that plaintiff was operating, and against CSAA, as the underinsurance provider for the plaintiff's personal auto insurance policy. The plaintiff withdrew his claim against Liberty Mutual (docket entry no. 105), leaving the plaintiff's claim for underinsured benefits from CSAA as the sole remaining issue in the case.

The plaintiff has a CSAA policy, policy CTSS-207******. This policy has underinsurance bodily injury liability limits of $250,000 per person. . (Docket entry no. 117, exhibit 3.) The CSAA policy contains a provision that states the following: "The limit of liability shall be reduced by all sums: (1) Paid because of the bodily injury by or on behalf of any persons or organizations who may be legally responsible. This includes all sums paid under Part I; and (2) Paid or payable because of the bodily injury under workers' compensation law or similar law." (Docket entry no. 117, exhibit 3.)

III
LEGAL STANDARD

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. . . . [T]he moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving

party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue." (Internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America*, 310 Conn. 304, 319-20, 77 A.3d 726 (2013).

IV
ANALYSIS

The defendant moves for summary judgment on the plaintiff's claim under the CSAA policy because the defendant contends that there is no genuine issue of material fact regarding three operative issues. First, the defendant explains that the governing insurance policy contains a permissible provision which reduces underinsured motorist (UIM) benefits to the extent that the plaintiff received workers' compensation benefits. Second, the defendant states that the net limit of CSAA's potential UIM liability is $200,000 since the plaintiff has received $50,000 from the at fault party. Finally, because the plaintiff has received more than $450,000 in workers' compensation benefits, the defendant contends that there is a complete set off of CSAA's potential liability.

The plaintiff opposes the motion. The plaintiff acknowledges that he has received workers' compensation benefits in the amounts the defendant states and acknowledges that the insurance regulations allow for certain reductions to the extent that amounts have been recovered from an at fault party. The plaintiff argues that the provision in the plaintiff's policy is unenforceable because he has not received any damages for lost wages or pain and suffering from workers' compensation. He also argues it is unenforceable because the defendant's provision is an overly broad and unjust interpretation of Section 38a-334-6 (d) (1) of the Regulations of Connecticut State Agencies. Finally, the plaintiff claims that workers'

compensation benefits should not be considered as damages under Section 38a-334-6 (d) (1) and relies on the fact that workers' compensation benefits are not considered collateral sources for the purposes of General Statutes § 52-225a.

In reviewing the law, affidavits, and arguments that both parties submitted, the court finds that the defendant is entitled to a reduction for workers' compensation benefits and that the CSAA policy is enforceable. Pursuant to Section 38a-334-6 (d) (1) (B) of the Regulations of Connecticut State Agencies, underinsurance benefits may be reduced "to the extent that damages have been . . . "paid or are payable under any worker's compensation law . . . ." The governing CSAA policy contains language implementing this limitation and substantially follows the language of the regulation. CSAA Policy Part III, Uninsured/Underinsured Motorist Coverage - Limit of Liability Section D, provides: "The limit of liability shall be reduced by all sums . . . [p]aid or payable because of the bodily injury under any workers' compensation law or similar law." (Docket entry no. 117, exhibit 3.)

Multiple courts have held that the language of Section 38a-334-6 (d) (1) allows for a reduction of benefits in certain circumstances, such as the present case. See, e.g., *Bakes* v. *Yanez-Ventura*, Superior Court, judicial district of New Haven, Docket No. CV-16-6060829 (August 11, 2020, *Abrams, J.*) (granting summary judgment where the plaintiff received $292,540.06 in workers' compensation benefits which "serves to offset the $100,000 in [UIM] coverage"); *Davis v. ACE American Ins. Co.*, Superior Court, judicial district of Waterbury, Docket No.CV-11-6009097 (August 29, 2012, *Dooley, J.*), citing *Loika* v. *Aetna Casualty & Surety Co.*, 44 Conn. Supp. 59, 69-70, 667 A.2d 1308 (1995), (finding the defendant entitled to summary judgment where the amount of workers' compensation benefits paid to insured, less repayment from settlement with the tortfeasor, exceeded the UIM policy limit); *Mingione* v. *Transamerica*

Ins. Co., Superior Court, judicial district of Fairfield, Docket No. CV-96-0329892 (July 24, 2002, *Melville, J.*) ("nothing in the language of regulation 38-175a-6(d) [now § 38a-334-6(d)] that quantifies the kinds of damages that must be paid before a valid reduction in uninsured motorist benefits may occur by reason of any payments made pursuant to the workers' compensation law. If damages are paid pursuant to the workers' compensation law, the uninsured motorist coverage may be reduced accordingly."); *Pettola* v. *New Haven,* Superior Court, judicial district of New Haven, Docket No. CV-92-0330932-S (April 3, 1996, *Corradino, J.*) (16 Conn. L. Rptr.) (No recovery for the plaintiff where he received $201,712.07 in workers' compensation benefits and the UIM policy had a $150,000 limit. "Admittedly Section 38-334-6 permits an insurer to limit its liability . . . ."); and *Boyle* v. *Allstate Ins. Co.*, Superior Court, judicial district of Hartford, Docket No. 104265 (December 7, 1995, *Hurley, J.*) (denying the plaintiff's motion for summary judgment and granting the defendant's cross-motion for summary judgment, where the offsets exceed the policy's limits, the defendant was allowed to credit the worker's compensation payments that the plaintiff received from his employer's compensation carrier and the plaintiff was not entitled to any additional amount under the policy).

As the Connecticut Supreme Court has noted, the established uninsured-underinsured law in Connecticut as embodied in General Statutes § 38a- 336 "does not require that uninsured motorist coverage be made available when the insured has been otherwise protected . . . or when the uninsured motorist has other resources available to protect the insured. Nor does the statute provide that the uninsured 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

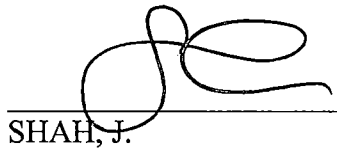
task of defining those terms and conditions which will suffice to satisfy the requirement of 'protection.'" (Emphasis in original; internal quotation marks omitted.) *Wilson* v. *Security Ins. Co.*, 213 Conn. 532, 538, 569 A.2d 40 (1990) (holding that the insurance commissioner was authorized to adopt regulation under General Statutes § 38-175a-6(d), which was [replaced by Section 38a-334-6 (d), to permit insurers to reduce UIM coverage for amounts paid or payable under workers' compensation law]). Here, the governing policy contains language which has been found to be clear and unambiguous and permitted under Section 38a-334-6 (d) (1) (B). Therefore, there is no issue of material fact that the controlling CSAA policy contains permitted limiting parameters for sums paid or payable under workers' compensation.

Finally, the plaintiff's argument that the CSAA policy did not properly put him on notice that the policy was subject to these specific reductions is misplaced. The CSAA policy uses language derivative of the language used in Section 38a-334-6 (d) (1) (B). Connecticut courts have enforced insurance policy provisions containing the same language contained in the CSAA policy. See, *Rydingsword* v. *Liberty Mutual Ins. Co.*, 224 Conn. 8, 615 A.2d 1032 (1992); *Wilson* v. *Security Ins. Co.*, supra, 213 Conn. 532.

V
CONCLUSION

Accordingly, the court grants the defendant's motion. So ordered.

BY THE COURT,



SHAH, J.