

DOCKET NO: HHD-CV22-6162209-S : SUPERIOR COURT  
SONIA EARLINGTON : J.D. OF HARTFORD  
V. : AT HARTFORD  
JOSE ORTIZ, ET AL : MAY 30, 2024

**MEMORANDUM OF DECISION RE: DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT (Docket No. 124)**


INTRODUCTION

In the present action the plaintiff seeks uninsured/underinsured motorist coverage (UM/UIM) in connection with a motor vehicle accident under two policies issued by the defendant, Allstate Fire and Casualty Insurance Company (Allstate). Allstate moved for summary judgment on the grounds that the plaintiff received a settlement from the defendant tortfeasors that far exceeds the limits of Allstate's UM/UIM coverage, and thus any award in her favor against Allstate would be reduced to zero. For the reasons set forth below, Allstate's motion for summary judgment is denied.

FACTS AND PROCEDURAL HISTORY

The plaintiff, Sonia Earlington, commenced the present negligence action by complaint filed on November 3, 2022, against Jose Ortiz and Esteban Mercado-Mateo (collectively, the defendant tortfeasors) and Allstate. In her operative amended complaint (docket entry no. 110), the plaintiff alleges that she sustained injuries in a two car motor vehicle collision that occurred in Hartford, Connecticut on April 8, 2022. The plaintiff alleges that on April 7, 2022, the defendant tortfeasors, co-owners of a 2019 Acura TLX motor vehicle (Acura), left the Acura parked overnight at or near 60 Dart Street in New

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HARTFORD, CT

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London, Connecticut unlocked and with the keys inside. At some point between the evening hours of April 7, 2022, and the morning of April 8, 2022, the Acura was taken by an unidentified person and driven to Hartford. On April 8, 2022, at approximately 7:07 a.m., the plaintiff was a backseat passenger in a vehicle traveling southbound on Salisbury Street in Hartford with the right of way at its intersection with Litchfield Street when it was violently struck by an unidentified person operating the Acura at a high rate of speed. The unidentified person failed to stop at a stop sign and fled the scene of the accident on foot.

The plaintiff settled her claims against the defendant tortfeasors for \$225,000, and the action was withdrawn as to them on September 22, 2023. In count three of the complaint the plaintiff asserts a claim against Allstate for UM/UIM coverage in the amount of \$25,000 each person/\$50,000 each accident as the insurer of the motor vehicle in which she was a passenger (Hinds policy). In count four of the complaint the plaintiff asserts a claim against Allstate for UM/UIM coverage in the amount of \$50,000 each person/\$100,000 each accident under her automobile policy with Allstate (Earlington policy).

On October 27, 2023, Allstate moved for summary judgment on counts three and four of the complaint on the grounds that it is entitled to a judgment as a matter of law because the plaintiff's recovery of \$225,000 from the defendant tortfeasors far exceeds the maximum available UM/UIM coverage, and thus any award in favor of the plaintiff would

be reduced to zero.<sup>1</sup> The plaintiff filed her objection and memorandum of law in opposition to the summary judgment motion on November 30, 2023, contending that in this case, involving a multi-tortfeasor motor vehicle collision and an unidentified tortfeasor, a plaintiff may proceed against an insurer as a surrogate for the unidentified driver even if the plaintiff settles with an identified tortfeasor for an amount that exceeds the defendant insurer's UM/UIM coverage limits. The defendant filed its reply on December 7, 2023. The plaintiff filed a surreply on December 13, 2023. The court heard oral argument on the motion at a remote hearing on April 8, 2024.

Additional facts will be discussed below.

#### 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.” (Internal quotation marks omitted.) *Graham v. Commissioner of Transportation*, 330 Conn. 400, 414–15, 195 A.3d 664 (2018). “The test [for summary judgment] is whether a party would be entitled to a directed verdict on the same facts.” *Fernandez v. Mac Motors, Inc.*, 205 Conn. App. 669,

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<sup>1</sup> Allstate submitted the following exhibits with its motion for summary judgment: Exhibit A, a copy of the plaintiff's release of claims in favor of the defendant tortfeasors; Exhibit B, a copy of the Hinds policy in effect on the day of the incident; and Exhibit C, a copy of the Earlington policy in effect on the day of the incident.

673, 259 A.3d 1239 (2021). “In ruling on a motion for summary judgment, the court’s function is not to decide issues of material fact . . . but rather to determine whether any such issues exist.” (Internal quotation marks omitted.) *RMS Residential Properties, LLC v. Miller*, 303 Conn. 224, 233, 32 A.3d 307 (2011).

“The movant has the burden of showing the nonexistence of such issues but the evidence thus presented, if otherwise sufficient, is not rebutted by the bald statement that an issue of fact does exist. . . . To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant’s affidavits and documents. . . . The opposing party to a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue.” (Internal quotation marks omitted.) *Parnoff v. Aquarion Water Co. of Connecticut*, 188 Conn. App. 153, 165, 204 A.3d 717 (2019). “Although the court must view the inferences to be drawn from the facts in the light most favorable to the party opposing the motion . . . a party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment. . . .” (Internal quotation marks omitted.) *Perez v. Metropolitan District Commission*, 186 Conn. App. 466, 476, 200 A.3d 202 (2018).

There is no genuine issue of material fact (and the parties agree) that the plaintiff settled her claims against the defendant tortfeasors for \$225,000, that there is potentially available UM/UIM coverage under the Earlington and Hinds policies, and that the amount of the settlement far exceeds the amount of potentially available coverage. The sole issue

on summary judgment, then, is whether, as a matter of law, the plaintiff may recover under those policies.

The defendant argues that any award to the plaintiff on counts three and four must be reduced to zero pursuant to General Statutes § 38a-336. The court does not agree. General Statutes § 38a-336 provides in relevant part: “Each automobile liability insurance policy shall provide insurance, herein called uninsured and underinsured motorist coverage, in accordance with the regulations adopted pursuant to [General Statutes §] 38a-344 . . . 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 . . . .”<sup>2</sup> Section 38a-336 “reflects the public policy of this state to afford a personal injury claimant access to insurance protection to compensate for the damages that would have been recoverable if the uninsured motorist had maintained an adequate policy of liability insurance . . . . Section 38a-336 (b) also provides, however that ‘in no event shall the total amount of recovery from all policies, including any amount recovered under the insured’s uninsured motorist coverage, exceed the limits of the insured’s uninsured motorist coverage.’” (Citations omitted.) *Bennet v. Automobile Ins. Co. of Hartford*, 230 Conn. 795, 800-801, 646 A.2d 806 (1994). This limitation on an insured’s recovery to the maximum amount allowed under the policy’s uninsured motorist provision serves to avoid the

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<sup>2</sup> Section 38a-334-6 (d) (1) (A) of the Regulations of Connecticut State Agencies 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. . . .”

anomaly of a greater recovery under those policy provisions than would have been available from a tortfeasor carrying liability insurance equal to the coverage of the insured. *Smith v. Safeco Ins. Co. of America*, 225 Conn. 566, 573, 624 A.2d 892 (1993).

The Earlington and Hinds policies track the requirements of General Statutes § 38a-336. For example, the Hinds policy provides in relevant part that: “[i]n the case of accidents involving a legally liable uninsured motorist, the limits of this coverage will be reduced by: 1. all amounts paid by or on behalf of the owner or operator of the uninsured auto or anyone else responsible. This includes all sums paid under the bodily injury liability coverage of this or any other policy.” Docket entry no. 124, Exhibit C, Hinds policy, p. 14. See also docket entry no. 124, Exhibit B (Earlington policy).

The defendant cites a single decision in support of its argument, *Guarino v. Allstate Property & Casualty Ins. Co.*, 315 Conn. 249, 105 A.3d 878 (2015). However, *Guarino* is inapposite. As the Supreme Court noted, in *Guarino* the plaintiff settled claims on behalf of the decedent’s estate with all *identified* tortfeasors before seeking recovery for UM/UIM coverage. *Id.*, 262. The Court contrasted that factual scenario with that presented in the Appellate Court’s decision in *Garcia v. ITT Hartford Ins. Co.*, 72 Conn. App. 588, 805 A.2d 779 (2002). In *Garcia*, the plaintiff was injured in an accident caused by an identified motorist and an *unidentified* motorist who fled the scene. *Id.*, 588-89. The plaintiff settled with the known tortfeasor in an amount that exceeded the uninsured motorist coverage, and then brought an action against the UM/UIM insurer who was “standing in the shoes of the *unidentified* tortfeasor, whom the plaintiff has not settled with in any amount.” (Emphasis added.) *Id.*, 600. The Supreme Court construed the *Garcia* holding as “simply treating the

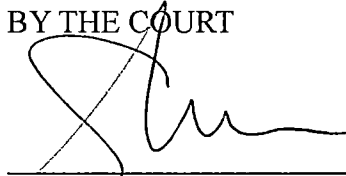
uninsured motorist carrier as if it were the tortfeasor and applying the rules of apportionment that apply in the multitortfeasor context.” *Guarino v. Property & Casualty Ins. Co.*, supra, 263-64.

In the present case, the plaintiff settled her claims with the known tortfeasors and thus may pursue her claims against the defendant as the insurer standing in the shoes of the unidentified tortfeasor.

CONCLUSION

For the foregoing reasons, the defendant’s motion for summary judgment is denied.

BY THE COURT



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Rosen, J.

## Checklist for Clerk

**Docket Number:** HHD-CV22-6162209-S

**Case Name:** Sonia Earlington v. Jose Ortiz, Et Al

**Memorandum of Decision dated:** 5/30/24

**File Sealed:** Yes No X

**Memo Sealed:** Yes No X

**This Memorandum of Decision may be released to the Reporter of Judicial Decisions for Publication XXXX**

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Superior Court Case Look-up  
Civil/Family  
Housing  
Small Claims

e HHD-CV22-6162209-S

EARLINGTON, SONIA v. ORTIZ, JOSE Et Al

Prefix: HD2

Case Type: V09

File Date: 11/03/2022

Return Date: 11/29/2022

[Case Detail](#) | [Notices](#) | [History](#) | [Scheduled Court Dates](#) | [E-Services Login](#) | [Screen Section Help](#) | [Exhibits](#)  
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Case Look-up  
By Party Name  
By Docket Number  
By Attorney/Firm Juris Number  
By Property Address

Information Updated as of: 05/30/2024

### Case Information

Case Type: V09 - Vehicular - Motor Vehicle - All other

Court Location: HARTFORD JD

List Type: JURY (JY)

Trial List Claim: 03/17/2023

Last Action Date: 03/01/2024 (The "last action date" is the date the information was entered in the system)

Short Calendar Look-up  
By Court Location  
By Attorney/Firm Juris Number  
Motion to Seal or Close  
Calendar Notices

Court Events Look-up  
By Date  
By Docket Number  
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### Disposition Information

Disposition Date:

Disposition:

Judge or Magistrate:

Legal Notices

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### Party & Appearance Information

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#### Party

No Fee Category

Party	No Fee	Category
P-01 SONIA EARLINGTON Attorney: e WALSH WOODARD LLC (412145) 527 PROSPECT AVENUE WEST HARTFORD , CT 06105	File Date: 11/03/2022	Plaintiff
D-01 JOSE ORTIZ REMOVED		Defendant
D-02 ESTABAN MERCADO-MATEO REMOVED		Defendant
D-03 ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY Attorney: e LAW OFFICES OF DENNIS J RINALDI (423029) 55 CAPITAL BOULEVARD SUITE 202 ROCKY HILL , CT 06067	File Date: 11/03/2022	Defendant

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- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.\*
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