

DIGEST OF INSURANCE LAW

CONNECTICUT

Courtesy of
[Ryan Ryan Deluca LLP](#)
Stamford, Connecticut

CIVIL JUDICIAL SYSTEM

Courts of Original Jurisdiction

Superior Court is sole court of original jurisdiction for all causes of action, except such actions over which courts of probate have original jurisdiction, as provided by statute. Conn. Gen. Stat. §51-164s, *State v. Anthony*, 24 Conn. App. 195, 588 A.2d 214 (1991). For purposes of establishing venue, it is compromised of 13 judicial districts, which are further broken down into geographical areas. Conn. Gen. Stat. §§51-344, 51-348. Any contract action pending in superior court in which only money damages are claimed (except for uninsured and underinsured motorist claims) where amount involved is less than fifty thousand dollars (\$50,000), exclusive of interest and costs, and which is not claimed to jury, may be referred to a fact-finder appointed by chief court administrator. Conn. Gen. Stat. §52-549n. Any civil action in which expectation of judgment is less than fifty thousand dollars exclusive of interest and costs may be referred to an arbitrator; Conn. Gen. Stat. §52-549u; although a trial de novo to superior court may be demanded. Conn. Gen. Stat. §52-549z.

Procedure for determination of small claims is prescribed by judges of superior court. Conn. Gen. Stat. §51-15. Small claims procedure shall be applicable to all actions except libel and slander, claiming money damages not in excess of five thousand (\$5,000) dollars. Conn. Gen. Stat. §51-15(d). Defendant in small claims action may request transfer, upon good cause, to regular superior court docket. Conn. Gen. Stat. §51-15(d). However, if plaintiff prevails after defendant has transferred case to regular docket, court has discretion to award to the plaintiff his costs, together with reasonable attorney's fees to be taxed by the court. Conn. Gen. Stat. §52-251a; *Forastiere v. Higbie*, 95 Conn. App. 652, 897 A.2d 722 (2006) (\$13,640 awarded in attorney's fees after small claims verdict of \$2,375).

The state is divided into 117 probate districts with a probate court for each district. Conn. Gen. Stat. §45a-2. Courts of probate in Connecticut have power to administer intestate estates of persons who are domiciled within their districts. Also, upon certain conditions described in

§45a-98, courts of probate may administer intestate estates of persons not domiciled within their districts. Courts of probate have power to admit wills to probate, to call fiduciaries to account concerning estates entrusted to their charge and to make any lawful orders or decrees to carry into effect power and jurisdiction conferred upon them by the laws of the State. Conn. Gen. Stat. §45a-98. Judges of probate court are elected every four years by voters within their district. Conn. Gen. Stat. §45a-18. Appeals of any order, denial or decree of a court of probate, unless otherwise specifically provided by law, are taken to Superior Court for judicial district in which court of probate is held, except that (1) any appeal under of §12-359(b), §12-367(b), or §12-395(b) shall be filed in Judicial District of Hartford, and (2) any appeal re: termination of parental rights shall be filed in Superior Court for Juvenile matters in Judicial District having jurisdiction. Conn. Gen. Stat. §45a-186.

Appellate Courts

The Appellate Court consists of a Chief Judge and eight judges. Conn. Gen. Stat. §51-197c(a). Appeals from final judgments or actions of Superior Court are taken to Appellate Court except for: small claims (which are not appealable); appeals within jurisdiction of Supreme Court; zoning appeals; and appeals as otherwise provided by statute. Conn. Gen. Stat. §51-197a. Appeals from administrative decisions shall be taken to Superior Court, except as provided by Conn. Gen. Stat. §31-301b (Workers' Compensation Act). Conn. Gen. Stat. §51-197b. Appellate jurisdiction is restricted to appeals from judgments that are final. *Presidential Capital Corp. v. Reale*, 240 Conn. 623, 692 A.2d 794 (1997); Conn. Gen. Stat. §52-263. Review of Appellate Court decisions is only by certification by Supreme Court upon petition by aggrieved party or Appellate panel which heard matter and upon vote of three justices of Supreme Court. Conn. Gen. Stat. §51-197f.

Supreme Court consists of one chief justice and six associate justices. Conn. Gen. Stat. §51-198. Supreme Court shall have final and conclusive jurisdiction of all matters brought before it according to law. Following matters shall be taken directly to Supreme Court: 1) any matter brought pursuant to original jurisdiction of Su-



preme Court under Section 2 of Article Sixteen of the amendments of the constitution; 2) appeal in any matter where superior court declares invalid a state statute or provision of state constitution; 3) appeal in a criminal action involving a conviction for a capital felony, class A felony, or other felony for which maximum sentence may exceed twenty years; 4) review of a death sentence pursuant to §53a-46b; 5) any election or primary dispute brought pursuant to §9-323 or §9-325; 6) appeal of any reprimand or censure of a probate judge; 7) any matter regarding judicial removal or suspension pursuant to §51-51j; 8) appeal of any decision of Judicial Review Council pursuant to §51-51r; 9) any matter brought to Supreme Court pursuant to §52-265a; 10) writs of error; and 11) any other matter as provided by law. Conn. Gen. Stat. §51-199. Supreme Court may transfer to itself a case pending in the Appellate Court and, except for any matter brought to its original jurisdiction under Section 2, Article Sixteen of the Amendments to the Constitution, Supreme Court may transfer a case or class of cases from itself to Appellate Court. Conn. Gen. Stat. §51-199.

LAW

Abbreviations

A. – Atlantic Reporter.
 A.2d – Atlantic Reporter, Second Series.
 Conn. – Connecticut Supreme Court Reports.
 Conn. App. – Connecticut Appellate Reports.
 Conn. Gen. Stat. – General Statutes, Revised to January 1, 2007.
 Conn. Supp. – Connecticut Supplement.
 P.A. – Public Acts.
 Superior Court decisions are printed in the Connecticut Supplement and are available via electronic databases.

ACCIDENT AND HEALTH INSURANCE

See “ACCIDENTAL MEANS” and “DISABILITY.”

Ambiguities. See “Construction of Policy” below.

Cancellation and Renewal. Conn. Gen. Stat. §§38a-324 and 38a-325 provide requirements for nonrenewal and cancellation of professional liability and commercial property and casualty policies. Conn. Gen. Stat. §38a-343 provides requirements for cancellation of private passenger motor vehicle policies. Conn. Gen. Stat. §38a-483 sets forth standard provisions for cancellation and reinstatement of individual health policies. Conn. Gen. Stat. §38a-537 provides requirements for cancellation or discontinuation for group health insurance to individual employee. Conn. Gen. Stat. §38a-538 further provides

conversion and extension rights of group coverage to ineligible individual or dependent who formally received coverage, pursuant to the Federal Consolidated Omnibus Budget Reconciliation Act (COBRA).

Construction of Policy. If insurance coverage is defined in terms that are ambiguous, such ambiguity is, in accordance with standard rules of construction, resolved against insurance company. *QSP v. Aetna Cas. & Sur.*, 256 Conn. 343, 773 A.2d 906 (2001); *Hartford Cas. Ins. Co. v. Litchfield Mut. Fire Ins. Co.*, 274 Conn. 457, 876 A.2d 1139 (2005). Insurance policy is to be interpreted by same general rules that govern construction of any written contract and enforced in accordance with real intent of parties as expressed by language employed in policy. *Wentland v. American Equity Ins. Co.*, 267 Conn. 592, 840 A.2d 1158 (2004) (Connecticut applies “four corners” rule); *Imperial Cas. v. State*, 246 Conn. 313, 714 A.2d 1230 (1998). Unambiguous terms in a policy are to be given their plain and ordinary meaning. *Metropolitan Life Ins. Co. v. Aetna Cas. & Sur.*, 255 Conn. 295, 765 A.2d 891 (2001). Courts cannot indulge in forced construction ignoring provisions or so distorting them as to accord meaning other than that evidently intended by parties and court may not torture words to import ambiguity where ordinary meaning leaves no room for ambiguity and words do not become ambiguous simply because lawyers or laymen contend for different meanings. *Hammer v. Lumbermen’s Mut. Cas. Co.*, 214 Conn. 573, 573 A.2d 699 (1990).

Estoppel and Waiver. Breach of condition or warranty by insured, entitling insurer to void policy, is subject to estoppel asserted by insured and/or waiver by insurer where there is express agreement or conduct from which either may be implied. *Boyce v. Allstate Ins. Co.*, 236 Conn. 375, 673 A.2d 77 (1996). In freely applying doctrines of waiver and estoppel in suits on insurance policies, courts are merely recognizing that parties to insurance policy do not negotiate contract at arm’s length, that coverage must be purchased in form submitted without change, that there is no meeting of minds on provisions, and that policies are usually purchased by people who, as insurer knows, do not subject policy to scrutiny but have only “reasonable expectations” concerning coverage. *Bouchard v. Travelers Indem. Co.*, 28 Conn. Supp. 122, 253 A.2d 497 (1969).

Burden of Proof. To recover for insured’s death under accident policy, beneficiary is required to prove by a preponderance of evidence that insured was victim of accident and that accident was sole proximate cause of death and not merely dominant cause or concurrent proximate cause. *Ellice v. INA Life Ins. Co.*, 208 Conn. 218, 544 A.2d 623 (1988). Burden of proving exception to coverage under a subject policy is on insurer. *O’Brien*



v. John Hancock Mut. Life Ins. Co., 143 Conn. 25, 119 A.2d 329 (1955); *G & R Tire Distributors, Inc. v. Allstate Ins. Co.*, 177 Conn. 58, 411 A.2d 31 (1979).

Pre-existing Disease or Infirmary. Claimant under policy must prove insured was victim of accident and that accident was sole cause or sole proximate cause of insured's death or bodily injury, independent of all other causes. Where preexisting bodily disease or infirmity, independent of accidental injury, concurred, cooperated or contributed to produce resulting injury, death or loss, no liability exists under policy language. *Ellice v. INA Life Ins. Co.*, 208 Conn. at 226-27.

Suicide. Plaintiff has burden of proving that sole proximate cause of death of insured was accident. This requires that facts established by evidence and inferences reasonably drawn therefrom are such that reasonable persons fairly exercising their judgment could conclude that death was accidental and not suicidal. *Wojcik v. Metropolitan Life Ins. Co.*, 5 Conn. Supp. 412, *aff'd*, 124 Conn. 532, 1 A.2d 131 (1938).

Bodily Injury Defined. Accidental bodily injury is a localized abnormal condition of living body directly and contemporaneously caused by accident. *Discuillo v. Stone & Webster*, 242 Conn. 570, 598 A.2d 873 (1997).

Notice and Proof of Loss. Requirement in General. Notice of loss stipulation in insurance policy is a proper condition to impose on insured. *Arton v. Liberty Mut. Ins. Co.*, 163 Conn. 127, 302 A.2d 284 (1972); *National Semiconductor Corp. v. Allendale Mut. Ins. Co.*, 549 F. Supp. 1195 (D. Conn. 1982).

Terms of Notice Provisions. Insurance policy provisions employing terms such as "immediately" or "forthwith" are generally construed as requiring only that notice be given within a reasonable time under circumstances of particular case. *City of West Haven v. USF&G*, 174 Conn. 392, 389 A.2d 741 (1978). Proper balance between interest of insurer and insured requires factual inquiry into whether, in circumstances of particular case, insurer has been prejudiced by insured's delay in giving notice of event triggering insurance coverage. If insured can show that insurer suffered no material prejudice from delay, non-occurrence of condition of timely notice may be excused. *Nat'l Publ'g. Co. v. Hartford Fire Ins. Co.*, 287 Conn. 664, 949 A.2d 1203 (2008); *Aetna Cas. & Sur. Co. v. Murphy*, 206 Conn. 409, 538 A.2d 219 (1988).

ACCIDENTAL MEANS

Accident Defined. Accident is defined as event or occurrence which happens unexpectedly. *Metropolitan Life Ins. Co. v. Aetna Casualty and Surety Co., et al.*, 225 Conn. 295, 765 A.2d 891 (2001); *Higgins v. Con-*

necticut Light & Power Co., 129 Conn. 606, 30 A.2d 388 (1943). In regard to a liability insurance policy, a typical definition of the term "accident" is a lack of intention or necessity, often opposed to design; an unforeseen unplanned event; a sudden event or change occurring without intent or volition and producing an unfortunate result. In short, the relevant inquiry in determining whether an accident has occurred is whether the injuries at issue were caused by the intentional design of the insured, or rather, by a sudden, unforeseen event. *Vermont Mut. Ins. Co. v. Walukiewicz*, 290 Conn. 582, 966 A.2d 672 (2009). Burden of proving death by accidental means is on plaintiff. *Wojcik v. Metropolitan Life Ins. Co.*, 124 Conn. 532, 1 A.2d 131 (1938). Injuries resulting from voluntary exposure to danger and involving no unforeseeable accident or involuntary movement of body are not injuries caused by accidental means within condition of accident policy. *Southard v. Railway Passengers Assur. Co.*, 34 Conn. 574 (1868). Personal injuries and property damage caused by intentional acts are not covered by a policy of insurance which only covers liability arising from accident or from injuries accidentally sustained. *Aetna Cas. & Sur. Co. v. Murray*, 145 Conn. 427, 143 A.2d 646 (1958). Acts legitimately taken in self-defense are, by their very nature, instinctive, spontaneous and unplanned, and thus, are accidents under a liability policy. *Vermont Mut. Ins. Co. v. Walukiewicz*, 290 Conn. 582, 966 A.2d 672 (2009).

ADJUSTERS

Conn. Gen. Stat. §38a-723 defines a public adjuster as any person, partnership, association, limited liability company or corporation who or which practices as a business adjusting of loss or damage by fire or other hazard under any policies of insurance on behalf of insured under such policies, or who advertises or solicits business as such adjuster, or holds himself out to public as engaging in such adjusting as a business.

Licensing Requirements. Conn. Gen. Stat. §38a-769 provides that public adjusters must be licensed and contains relevant application and processing requirements. Conn. Gen. Stat. §38a-792 provides that no person shall act as adjuster of casualty claims for any insurance company or firm or corporation engaged in adjustment of casualty claims unless such person has first secured a license from Insurance Commissioner.

AGE

See "AUTOMOBILE"; "NEGLIGENCE."

Age of majority is eighteen years. Conn. Gen. Stat. §1-1d.

Conn. Gen. Stat. §45a-250 provides any person eighteen years or older, and of sound mind, may dispose of his estate by will.

AGENTS AND BROKERS

Definition. Insurance agent is a person expressly or impliedly authorized to represent insurance company in its dealings with third persons. Insurance broker is one who acts as a middleman between insured and insurer and who solicits insurance from public while not in employ of insurer and who either places order for insurance with a company selected by insured, or in absence of such selection, with a company that broker selects. *Lewis v. Michigan Millers Mut. Ins. Co.*, 154 Conn. 660, 228 A.2d 803 (1967). Connecticut General Statutes use term “insurance producer” in lieu of “insurance broker.” Conn. Gen. Stat. §38a-702a. Statutory definition and legislation regarding “insurance agent” and “insurance producer” may be found at Conn. Gen. Stat. §38a-702a.

Liability. To extent that insurance agent acts as agent of insurance company, and to extent that insurance broker acts as agent of insured for procurement of insurance, each may be liable under principles of agency law. Both insurance agents and insurance brokers have a duty to exercise reasonable skill, care, and diligence to see that their client has proper coverage. *Dimeo v. Burns, Brooks & McNeil, Inc.*, 6 Conn. App. 241, 504 A.2d 557 (1986), *cert. denied*, 199 Conn. 805, 508 A.2d 31 (agents); *Ursini v. Goldman*, 118 Conn. 554, 173 A. 789 (1934) (brokers); *but see Al-Janet, LLC v. Band B Home Improvements*, 101 Conn. App. 836, 925 A.2d 327 (2007). Agent has a duty to obtain and use correct information in applying for insurance coverage and must process and transmit appropriate paperwork in a timely manner. *Rametta v. Stella*, 214 Conn. 484, 572 A.2d 978 (1990). Agent or broker who solicits or procures insurance with or by unlicensed insurance company, or otherwise aids such a transaction, is in violation of Conn. Gen. Stat. §38a-703. Any agent or broker who makes a contract on behalf of unlicensed company is personally liable to insured for performance of contract by insurance company. Conn. Gen. Stat. §38a-714. Insurance broker must exercise reasonable skill, care and diligence in effecting insurance, and any negligence or other breach of duty on insurance broker’s part which defeats insurance, which he undertakes to secure, will render him liable to his principal for resulting loss. *Hallas v. Boehmke & Dobosz*, 239 Conn. 658, 686 A.2d 491 (1997). Action against insurance agent may be brought under theory of breach of contract or negligence. *Rametta v. Stella, supra*.

Agency Contracts and Compensation. An insurance agent’s contractual rights vis-à-vis an insurer exist to

extent they are present in agency or licensing agreement between them. *O’Connor v. United Cas. Co.*, 8 Conn. Supp. 270 (1940). To extent that contract fails to address a particular right or obligation, general principles of agency will apply. *Id.* Statutory requirements for termination of a producer’s appointment and agency contracts with a company authorized to transact fire or casualty business may be found at Conn. Gen. Stat. §38a-709. Producers are protected from cancellation of contract solely because of adverse underwriting experience for two years preceding date of cancellation. Conn. Gen. Stat. §38a-710.

Licensing. Any person, partnership, association or corporation acting in Connecticut in any insurance-related occupation must obtain a license from Connecticut Insurance Commissioner to do so. Conn. Gen. Stat. §38a-769. Eligibility requirements for obtaining and renewing such a license are set forth under Conn. Gen. Stat. §38a-769. Insurance commissioner may suspend or revoke any such license for cause shown after notice and hearing, and may impose a fine of \$1,000. Conn. Gen. Stat. §38a-774.

ARBITRATION

Connecticut courts encourage arbitration (as well as other forms of alternative dispute resolution). Voluntary arbitration agreements are enforceable by statute. Conn. Gen. Stat. §52-410 *et seq.* Courts are bound by an arbitrator’s factual findings when reviewing a claim that an award violates public policy, even if that claim has been addressed by the arbitrator in the context of a substantive attack on the validity of a contract. *HH East Parcel, LLC v. Handy & Harman, Inc.*, 287 Conn. 189, 947 A.2d 916 (2008). There are three grounds for vacating an award when the submission is unrestricted. These grounds arise when the award 1) rules on the constitutionality of a statute, 2) violates clear public policy or 3) contravenes one or more of the statutory proscriptions of §52-418 of the Connecticut General Statutes. *Board of Police Commissioners v. Stanley*, 92 Conn. App. 723, 887 A.2d 394 (2005); *but see HH East Parcel, LLC v. Handy & Harman, Inc.*, 287 Conn. 189, 947 A.2d 916 (2008). If submission to arbitration is unrestricted, then award is final and binding and cannot be reviewed for errors of law or fact. *Blakeslee, Arpaia, Chapman, Inc. v. Dept. of Transp.*, 273 Conn. 746, 873 A.2d 155 (2005). Policy provisions requiring that arbitrators decide whether insured is “legally entitled to recover damages” and providing that “local rules of law as to arbitration procedure and evidence will apply” do not result in a restricted submission. *USF&G v. Hutchinson*, 244 Conn. 513, 710 A.2d 1343 (1998). However, an arbitration award can be reviewed for arbitral misconduct. Conn. Gen. Stat. §52-418; *O & G/O’Connell Joint Venture v. Chase Family*



Ltd. Partnership No. 3, 203 Conn. 133, 523 A.2d 1271 (1987). Such arbitral misconduct is reviewable even in context of tripartite arbitrations. *Metropolitan Prop. & Cas. Ins. Co. v. J.C. Penney Cas. Ins. Co.*, 780 F. Supp. 885 (D. Conn. 1991).

Arbitration Awards (Collateral Estoppel). Collateral Estoppel, or issue preclusion, prohibits re-litigation of an issue when that issue was actually litigated and necessarily determined in a prior action. For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated. Doctrine of collateral estoppel is based on public policy that a party should not be able to litigate a matter which it already has had an opportunity to litigate. *Connecticut Natural Gas Corp. v. Miller*, 239 Conn. 313, 684 A.2d 1173 (1996); *Aetna Cas. & Sur. Co. v. Jones*, 220 Conn. 285, 596 A.2d 414 (1991). Ordinarily, a factual determination made in a final and binding arbitration is entitled to preclusive effect. *Genovese v. Gallo Wine Merchants, Inc.*, 226 Conn. 475, 625 A.2d 946 (1993).

Because uninsured and underinsured motorist statute (Conn. Gen. Stat. §38a-336) mandates that automobile liability policies which provide for arbitration must also provide for arbitration of coverage disputes, a different standard of judicial review applies in such cases. In context of such compulsory arbitrations, reviewing court must conduct a de novo review of arbitrators' interpretation and application of law. *American Universal Ins. Co. v. DelGreco*, 205 Conn. 178, 530 A.2d 171 (1987). Supreme court has defined de novo review standard to be "substantial evidence" test utilized by courts in review of factual determinations by administrative agencies. *Chmielewski v. Aetna Cas. & Sur. Co.*, 218 Conn. 646, 591 A.2d 101 (1991). While parties to an arbitration may agree to limit authority of arbitrators, courts will subject such restrictions to close scrutiny. See e.g. *Bodner v. USAA*, 222 Conn. 480, 610 A.2d 1212 (1992).

Where an arbitration is pending, superior court may, upon application of claimant, issue an order pendente lite requiring respondent to post security in event claimant prevails. Conn. Gen. Stat. §52-422; *Goodson v. State*, 232 Conn. 175, 653 A.2d 177 (1995).

ASSIGNMENT

In General. An assignment, to be effective, must transfer some chose in action or thing which actually or potentially exists as a specific entity or some definite part thereof. *Hansel v. Hartford-Connecticut Trust Co.*, 133 Conn. 181, 49 A.2d 666 (1946). Effects of valid assignment include succession by assignee to exclusive ownership of all or part of assignor's rights respecting subject matter of assignment and a corresponding extin-

guishment of those rights in the assignor. *Bouchard v. People's Bank*, 219 Conn. 465, 594 A.2d 1 (1991). Assignee of chose in action stands in shoes of assignor. *Schoonmaker v. Lawrence Brunoli, Inc.*, 265 Conn. 210, 828 A.2d 64 (2003).

Mode/Validity of Assignment. Whether an assignment becomes effective as matter of law depends, initially, on intention of asserted assignor, and parol evidence rule is not violated by showing intention of parties with respect to document and whether it was intended to become operative. *Heyman v. Kline*, 344 F. Supp. 1088 (D. Conn. 1970), *aff'd in part, rev'd in part*, 456 F.2d 123 (2nd Cir. 1972), *cert. denied*, 409 U.S. 847 (1972).

Claims for Personal Injuries. Connecticut law prohibits assignment of claims for personal injuries, but does not prohibit assignment of claims for injuries to property. *Whitaker v. Gavit*, 18 Conn. 522 (1847). A common law cause of action for personal injuries cannot be assigned prior to reduction of such claimed judgment. *Iseli Co. v. Connecticut Light & Power Co.*, 211 Conn. 133, 558 A.2d 966 (1989). A subrogation action to recover uninsured or underinsured motorist benefits is not equivalent of assignment of a personal injury claim and allows insurer to recover from party primarily liable for loss. *Westchester Fire Ins. Co. v. Allstate Ins. Co.*, 236 Conn. 362, 672 A.2d 939 (1996). An insurer may not, however, pursue a subrogation claim against owner or operator of underinsured vehicle. Conn. Gen. Stat. §38a-336b.

Right to Profits. A partner may assign his right to profits from a partnership. Conn. Gen. Stat. §34-27.

Workers' Compensation Benefits. All compensation due under workers' compensation law shall be exempt from attachment and execution and shall be non-assignable before and after award. Conn. Gen. Stat. §31-320.

ATTORNEYS

Conduct of attorneys in state of Connecticut is regulated by Rules of Professional Conduct which have been adopted by judges of the Superior Court. *Bergeron v. Mackler*, 225 Conn. 391, 623 A.2d 489 (1993). These Rules have been held to have force of law and a lawyer's failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking disciplinary process. See *Statewide Grievance Committee v. Presnick*, 215 Conn. 162, 575 A.2d 210, *on subsequent appeal*, 216 Conn. 135, 577 A.2d 1058 (1990). Rules are designed to provide professional and ethical guidance to lawyers and to provide a structure for regulating attorney conduct through disciplinary agencies established and maintained by judges of Superior Court. See Connecticut

Practice Book §2-29 *et seq.* They are not designed to provide a basis for civil liability and should not be deemed to augment any substantive legal duty of lawyers. Rules of Professional Conduct, Preamble (1986); *Mozzochi v. Beck*, 204 Conn. 490, 529 A.2d 171 (1987).

Grievance. Although Rules of Professional Conduct define misconduct on part of an attorney, they do not provide guidance for determining what sanctions are appropriate. *Statewide Grievance Comm. v. Glass*, 46 Conn. App. 472, 699 A.2d 1058 (1997). Provision of Practice Book governing discipline of attorneys convicted in other jurisdictions does not preclude sanction or reprimand, even though provision mentions only suspension or disbarment. *Statewide Grievance Comm. v. Shluger*, 230 Conn. 668, 646 A.2d 781 (1994). Where a court determines that suspension of an attorney who has committed a felony is appropriate and felony committed is Class A or Class B felony under Connecticut law, length of suspension is determined by statute. Conn. Gen. Stat. §51-91a. However, Conn. Gen. Stat. §51-91a does not apply to attorneys convicted of felonies in federal court or court of another state. *Statewide Grievance Comm. v. Spirer*, 247 Conn. 762, 725 A.2d 948 (1999). Standard of proof for an attorney's violation of Rules of Professional Conduct is clear and convincing evidence. Burden of proof is upon Statewide Grievance Committee. *Somers v. Statewide Grievance Comm.*, 245 Conn. 277, 715 A.2d 712 (1998).

Appointment and Authority. General rule in Connecticut is that acts of attorney are imputed to client when those acts are performed in furtherance of business for which attorney has been retained. *Allen v. Nissley*, 184 Conn. 539, 440 A.2d 231 (1981). *See also Varley v. Varley*, 189 Conn. 490, 457 A.2d 1065 (1983). Client not bound where attorney acts in bad faith or intentionally neglects the client's business. *Allen v. Nissley, supra*. Whether an attorney-client relationship exists is an issue for trier of fact to determine and party claiming its existence has burden of establishing its existence. *Dunham v. Dunham*, 204 Conn. 303, 528 A.2d 1123 (1987), *on subsequent appeal*, 217 Conn. 24, 584 A.2d 445 (1991), *overruled on other grounds by, Santopietro v. New Haven*, 239 Conn. 207, 682 A.2d 106 (1996). Connecticut recognizes right of client to exercise unfettered discretion to change attorneys. *Marsh, Day & Calhoun v. Solomon*, 204 Conn. 639, 529 A.2d 702 (1987).

Conflict of Interest. General rule regarding issues of attorney conflict of interest is found in Rule 1.7 of Rules of Professional Conduct. Loyalty is an essential element in lawyer's relationship to a client. As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Rules of Professional Conduct, Rule 1.7

cmt. *See also* Rules of Professional Conduct, Rule 1.8 (governing conflict of interest and prohibited transactions between an attorney and a client or former client); Rules of Professional Conduct, Rule 1.9 (governing questions of conflict of interest between an attorney and a former client; *Bergeron v. Mackler, supra* (discussing when disqualification of an attorney is necessary).

In area of litigation, Rule 1.7 (a) prohibits simultaneous representation of opposing parties in a dispute. In addition, a lawyer is ordinarily prohibited from acting as advocate against a client lawyer represents in some other matter, even if other matter is wholly unrelated. Rules of Professional Conduct, Rule 1.7 cmt. Rule 1.9 prohibits a lawyer who has formerly represented a client from representing another person in same or substantially related matter in which that person's interest are materially adverse to interests of former client, unless former client consents. Rules of Professional Conduct, Rule 1.9. *See State v. Bunkley*, 202 Conn. 629, 522 A.2d 795 (1987); *Fiddelman v. Redmon*, 31 Conn. App. 201, 623 A.2d 1064, *cert. denied*, 226 Conn. 915, 628 A.2d 986 (1993).

Legal Malpractice. Malpractice has been defined in Connecticut as "the failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss, or damage to the recipient of those services." *Davis v. Margolis*, 215 Conn. 408, 415, 576 A.2d 489 (1990). In order to prevail in a legal malpractice claim, plaintiff must demonstrate that an attorney-client relationship existed between plaintiff and defendant, that defendant breached professional standard of care owed to plaintiff, and that breach was a proximate cause of injury suffered by plaintiff. *Solomon v. Aberman*, 196 Conn. 359, 493 A.2d 193 (1985); *Davis v. Margolis, supra*.

An attorney is not insulated from malpractice claim simply because a judge approved settlement of client's case. *See Grayson v. Wofsey, Rosen, Kweskin & Kuriansky*, 231 Conn. 168, 646 A.2d 195 (1994). Clients may pursue a malpractice claim against an attorney under Connecticut Unfair Trade Practices Act, as long as claim relates to entrepreneurial aspects of attorney's conduct and practice. *Beverly Hills Concepts, Inc. v. Schatz & Schatz*, 247 Conn. 48, 717 A.2d 724 (1998). CUTPA, however, does not apply to representation of clients in a traditional legal capacity. *See Haynes v. Yale New Haven Hosp.*, 243 Conn. 17, 699 A.2d 964 (1997).

A plaintiff in Connecticut must present expert testimony to establish standard of proper professional skill or care. *Davis v. Margolis, supra*, at 416. Purpose of expert testimony in malpractice cases is to assist trier of fact, to understand applicable standard of care and to

evaluate conduct of defendant in light of that standard. *Grayson, supra*.

Fees. Issues regarding appropriateness and propriety of a lawyer's fee are governed by Rules of Professional Conduct, Rule 1.5. Rule 1.5 states that, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses" and offers factors to be considered in determining reasonableness of a fee. These include: time and labor required, novelty and difficulty of questions involved, skill requisite to perform legal service, likelihood that acceptance of employment will preclude acceptance of other employment by lawyer, fee customarily charged in locality for similar legal services, amount involved and results obtained, time limitations imposed on lawyer, nature of lawyer's relationship with client, experience, reputation, and ability of lawyer, and whether fee is fixed or contingent. Rules of Professional Conduct, Rule 1.5 (a); *Sorrentino v. All Seasons Svcs.*, 245 Conn. 756, 717 A.2d 150 (1998).

When a lawyer undertakes representation of a client whom lawyer has not regularly represented, lawyer must communicate to client, in writing before or within a reasonable time after commencing representation, basis or rate of fee, whether and to what extent client shall be responsible for court costs and expenses of litigation, and scope of matter to be undertaken. Rules of Professional Conduct, Rule 1.5 (b). A lawyer's fee may be contingent on outcome of the matter for which service is rendered except that fee may not be contingent upon securing of a divorce or civil union or upon amount of alimony, support, or property settlement in a domestic relations matter and fee may not be contingent for representing a defendant in a criminal case. Rules of Professional Conduct, Rule 1.5 (d). *See Marcus v. DuPerry*, 25 Conn. App. 293, 593 A.2d 163 (1991), *aff'd in part, rev'd in part*, 223 Conn. 484, 611 A.2d 859 (1992). Limitations on attorney contingency fees in personal injury, wrongful death and property damage actions are governed by Conn. Gen. Stat. §52-251c. A claimant may waive the percentage limitations of §52-251c if the claim is substantially complex, unique or different from other wrongful death, personal injury or property damage claims. If a claimant waives the percentage limitations, in no event shall the total fee under the contingency fee agreement exceed one third of the damages awarded. Conn. Gen. Stat. §52-251c. If a contingent fee agreement is not reduced to writing, it is unenforceable. *Alan Silver, P.C. v. Jacobs*, 43 Conn. App. 184, 682 A.2d 551, *overruled in part by Gagne v. Vaccaro*, 255 Conn. 390, 766 A.2d 416 (2001). In absence of a written fee agreement between an attorney and his client, attorney who has worked on a personal injury case may, under doctrine of

quantum meruit or unjust enrichment, collect his fee from a successor attorney after settlement. *Gagne, supra*.

Pro Hac Vice Admission. Effective February 28, 2003, Conn. Gen. Stat. §51-81b was amended to provide that pro hac vice admittees to the bar must pay \$450 occupational tax "with respect to any year in which such person was admitted pro hac vice and engaged in the practice of law in this state." Upon grant of motion to admit an out-of-state attorney pro hac vice, that attorney must register with the Statewide Grievance Committee. Registration must be kept current for the duration of the case in which pro hac vice admission has occurred and for two years after conclusion of that case. Connecticut Practice Book §2-16.

AUTOMOBILES

See Law Digest Tables.

See "NEGLIGENCE"; "NO-FAULT."

Licensing Requirements. Persons must be 16 years or older in order to obtain a valid operator's license. Conn. Gen. Stat. §14-36. Specific licensing requirements for persons sixteen and seventeen years of age are governed by Conn. Gen. Stat. §14-36(d). Connecticut has adopted Commercial Driver's License Program. Conn. Gen. Stat. §14-260n(10).

Agency and Imputed Negligence. There is a rebuttable presumption that operator of a motor vehicle, if he is other than the owner of the motor vehicle, shall be presumed to be the agent and servant of the owner of the motor vehicle and operating it in the course of his employment. Conn. Gen. Stat. §52-183. The owner of a leased or rented vehicle is liable for damage or injury caused by the operator, if the operator would have been liable. However, if the leased term is for one year or more and if, at the time damages are incurred, the leased vehicle is insured for bodily injury liability in the amount of not less than \$100,000 per person and \$300,000 per accident, there is no vicarious liability of the owner of the leased vehicle. Conn. Gen. Stat. §14-154a. Double or treble damages awarded pursuant to Conn. Gen. Stat. §14-295 are not imputable to the owner of a leased vehicle, provided that the owner was not operating the vehicle at the time of the accident. The owner of motor vehicle is not vicariously liable for punitive damages resulting from a non-owner operator's reckless operation of the vehicle. *Matthiessen v. Vanech*, 266 Conn. 822, 836 A.2d 394 (2003). There is a split in the superior courts with respect to whether double or treble damages under Conn. Gen. Stat. §14-295 constitute punitive damages controlled by *Matthiessen*. *See Welton v. Ferrara*, 2008 Conn. Super. LEXIS 723 (Conn. Super. Ct. Mar. 18, 2008); *Gross v. Wright*, 2006 Conn. Super.



LEXIS 747 (Conn. Super. Ct., Mar. 15, 2002). If the operator of a leased or rented vehicle is not lawfully in possession of it pursuant to the terms of the rental contract, *i.e.* an “authorized driver,” no liability will extend to the owner of the leased vehicle; liability under statute extends only to harm caused by person to whom vehicle has been entrusted. *Pedevillano v. Bryon*, 231 Conn. 265, 648 A.2d 873 (1994). Owner of trailer portion of tractor-trailer may be vicariously liable for negligence of operator of tractor portion. *Denler v. Dodge Transfer Corp.*, 201 F. Supp. 431 (D. Conn. 1962) (interpreting Conn. Gen. Stat. §52-183).

49 U.S.C. §30106 (effective for all actions filed after August 10, 2005) eliminates vicarious liability for lessors and renters of motor vehicles pursuant to §14-154a. The federal statute provides that “[a]n owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle..., for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if...the owner...is engaged in the trade or business of renting or leasing motor vehicles; and...there is no negligence or criminal wrong doing on the part of owner.” This effectively supersedes §14-154a at least with respect to any action filed after August 10, 2005, the effective date of the federal statute.

It should be noted that the federal statute is explicitly drafted so as not to apply to financial responsibility laws which impose insurance standards on the owner of motor vehicle for the privilege of registering and operating the motor vehicle. Nor does the statute preempt state laws which impose liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under state law. §38a-334-5(c)(11)(B)(ii) of the Insurance Commissioner’s regulations authorizes a motor vehicle lessor to exclude liability coverage for leased or rented motor vehicles.

Contributory Negligence. In negligence cases, contributory negligence of plaintiff will only bar recovery if negligence of plaintiff was greater than combined negligence of defendants, including settled or released persons. Conn. Gen. Stat. §52-572h(b). Damages recovered by a plaintiff in a negligence action are diminished in proportion to percentage of comparative negligence attributable to plaintiff. *Id.*

Compulsory Insurance Coverage. Owners or operators of a private passenger vehicle must insure liability for personal injury or death at a minimum of \$20,000 per person/\$40,000 per accident/\$10,000 for property damage. Conn. Gen. Stat. §14-112(a). Owners or operators

of motorcycles are subject to the same minimum limits, but policy may include an exclusion for personal injury coverage for passengers. Conn. Gen. Stat. §14-289f. Amounts vary for buses, taxicabs, student transportation vehicles, and livery vehicles based upon seating capacity. Conn. Gen. Stat. §14-29.

Driving while Intoxicated or under the Influence of Drugs. A person is guilty of driving while under the influence if he operates a motor vehicle while having a blood alcohol content of .08 percent or greater, or while under the influence of intoxicating liquor or any drug or both. Conn. Gen. Stat. §14-227a.

Damages. In addition to compensatory damages, a driver who deliberately or recklessly violates specific rules of road may be subject to double or treble damages. Conn. Gen. Stat. §14-295; *Leone v. Knighton*, 196 Conn. 494, 493 A.2d 887 (1985); *Avis Rent-A-Car System, Inc. v. Liberty Mut. Ins. Co.*, 203 Conn. 667, 526 A.2d 522 (1987).

Family Car. Where operator is husband, wife, parent, or child of owner, vehicle is presumed to be operated as a family vehicle within scope of general authority. Conn. Gen. Stat. §52-182; *Brockett v. Jensen*, 154 Conn. 328, 225 A.2d 190 (1966). Doctrine may be applied to a controlled non-family member. *Hunt v. Richter*, 163 Conn. 84, 302 A.2d 117 (1972). Husband owner of a motor vehicle may be liable to his wife, a passenger, for negligence of minor son operator. *Silverman v. Silverman*, 145 Conn. 663, 145 A.2d 826 (1958). Family car doctrine may not be applied to impute contributory or comparative negligence to owner. Conn. Gen. Stat. §52-572h(m).

Guests. There is no statutory restriction of liability for injury to a guest in a motor vehicle.

Last Clear Chance. Doctrines of last clear chance and assumption of risk have been abolished by statute in automobile cases. Conn. Gen. Stat. §52-572h(l).

Ownership/Title. An owner is any person holding title to or having legal right to register a motor vehicle, including purchasers under conditional bills of sale. Conn. Gen. Stat. §14-1 (60). A certificate of title is prima facie evidence of facts appearing on it, including ownership of motor vehicle. Conn. Gen. Stat. §14-174(d). However, owner of automobile may be person other than title or registration holder. *Gill v. Petrazzuoli Bros., Inc.*, 10 Conn. App. 22, 521 A.2d 212 (1987). Registration is merely evidence of ownership, to be considered in conjunction with other evidence in case upon that issue. *Burakowski v. Grustas*, 134 Conn. 205, 56 A.2d 461 (1947).

No-Fault. Effective January 1, 1994, no-fault insurance was statutorily repealed. P.A. 93-297.

Motorized Bicycles. Motorized bicycles are to be operated only by persons with a valid motor vehicle or motorcycle operator's license unless otherwise authorized by special permit. Conn. Gen. Stat. §14-286.

Seat Belts and Vehicle Equipment. Seat belts are required in all new cars sold or registered in state. All drivers and front seat passenger must wear seat belts. Driver is responsible for ensuring that front seat passengers between the ages of 7 and 16 wear seat belts. Conn. Gen. Stat. §14-100a. Child restraint systems must be used on all children under the age of six, weighing less than sixty pounds. Conn. Gen. Stat. §14-100a(d). Any person who transports a child under one year of age or weighing less than twenty pounds shall require the child to ride rear-facing in an approved child restraint system. Conn. Gen. Stat. §14-100a(d)(2). Failure to wear a seat-belt does not constitute contributory negligence and is inadmissible in a civil action. Conn. Gen. Stat. §14-100a(c)(3).

Service of Process. See "SERVICE OF PROCESS."

Speed Limit. Maximum speed limit in Connecticut is 65 mph. Conn. Gen. Stat. §14-219(a)(3).

Trailers/Weight Limits. Vehicle operations in Connecticut must comply with size and weight limitations as set forth in Conn. Gen. Stat. §§14-261, 14-262, 14-264, 14-266, 14-267a, 14-267b, 14-269, 14-269a, and 14-270.

Uninsured and Underinsured Motorist Coverage. Conn. Gen. Stat. §38a-336 provides that each automobile liability insurance policy shall provide uninsured and underinsured motorist (UM/UIM) coverage for bodily injury or death in limits not less than those specified in liability portion of said policy. An insured may consent in writing, however, to UM/UIM limits less than liability limits; Conn. Gen. Stat. §38a-336(a)(2); or may purchase UM/UIM coverage with limits twice liability limits. Conn. Gen. Stat. §38a-336(a)(1). Insurer is obligated to make payments to its insured up to limit of policy's coverage, but only after limits of liability under all bodily injury liability bonds or insurance policies applicable at time of accident have been exhausted. In no event shall total amount of recovery from all policies, including any amount recovered under insured's UM/UIM policy, exceed limits of insured's UM/UIM motorist coverage. Conn. Gen. Stat. §38a-336(b). In alternative, UM/UIM conversion coverage can be obtained which provides coverage up to limit of policy without reduction of account of payments by or on behalf of tortfeasor or any third party. Conn. Gen. Stat. §38a-336a(b). Stacking of UM/UIM coverage is prohibited. Statute comprehensively handles primary-excess issues which

arise when more than one UM/UIM policy applies. Conn. Gen. Stat. §38a-336(d).

AVIATION

Powers of the Commissioner of Transportation. Commissioner of Transportation possesses comprehensive powers regarding enforcement of virtually every aspect of aeronautical activities within the state, including aeronautical activities conducted within a municipality. Conn. Gen. Stat. §§15-41, 15-44, 15-45 and 15-66; *Connecticut Air Service, Inc. v. Danbury Aviation Comm.*, 211 Conn. 690, 561 A.2d 120 (1989). Commissioner may participate as party plaintiff or defendant or as intervenor to a dispute regarding claimed encroachment. Conn. Gen. Stat. §15-43. Commissioner may revoke or suspend right to operate an aircraft if he determines that an aircraft is not airworthy or an airman is not qualified or has willfully violated an aeronautical law. Conn. Gen. Stat. §15-54. Operation or ownership of an aircraft in state by non-resident deems Commissioner of Transportation agent for service of process. Conn. Gen. Stat. §15-87. Definitions of "aircraft accident," "operator" and "substantial damage," Conn. Gen. Stat. §15-71b. All accidents resulting in personal injury or substantial damage to aircraft must be reported to commissioner or state police. Conn. Gen. Stat. §15-71a.

Liability. Government contractor defense barred technician's Connecticut product liability claim against manufacturer for failure to provide adequate warnings and instructions. *Nicholson v. United Technologies Corp.*, 697 F. Supp. 598 (D. Conn. 1988); see also "PRODUCTS LIABILITY." There are no limits to liability other than Warsaw Convention for international flights. 49 U.S.C. §40105.

Insurance. Exclusion in accidental death and dismemberment policy for "travel or flight in or on any aeronautical device" or for "participation in any operation thereof" does not apply merely while aeronautical device is in flight, but, instead, applies regardless of whether it is so engaged. *Jurrius v. Maccabees Mut. Life Ins. Co.*, 587 F. Supp. 1301 (D. Conn. 1984).

BAD FAITH

An insurer has a duty to act in good faith and fairly in handling an insured's claim and further has a duty not to unreasonably withhold payments due under a policy. Bad faith implies a design to mislead or to deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation not prompted by an honest mistake as to one's rights or duties. Bad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity. It contemplates a state of mind



affirmatively operating with furtive design or ill will. *Buckman v. People Express*, 205 Conn. 166, 530 A.2d 596 (1987).

To establish a cause of action for statutory bad faith under the Connecticut Unfair Trade Practices Act (CUTPA) and the Connecticut Unfair Insurance Practices Act (CUIPA), a plaintiff must establish a CUIPA violation as a condition precedent to pursuing a CUTPA claim against an insurance carrier. *Mead v. Burns*, 199 Conn. 651, 509 A.2d 11 (1986). CUIPA contains a business practice provision which applies to claims of unfair claims settlement practices. This provision requires that claims of bad faith predicated on unfair claims settlements require a showing of more than a single act of insurer misconduct. *Lees v. Middlesex Ins. Co.*, 229 Conn. 842, 643 A.2d 1282 (1994). Thus, an insurer's alleged improper conduct in the handling of single insurance claim without any evidence of misconduct by the insurer in the process of any other claim, does not rise to the level of a general business practice as required by CUIPA.

When suit is brought for uninsured/underinsured benefits, failure to include bad faith claim in lawsuit for conduct of insurer predating entry of judgment in uninsured/underinsured motorist case may result in a res judicata bar applied to subsequent assertion of bad faith claims against insurer. *Powell v. Infinity Ins. Co.*, 282 Conn. 594, 922 A.2d 1073 (2007).

BROKERS

See "AGENTS AND BROKERS."

BURGLARY INSURANCE

Policy indemnifying owner against burglary of safe by means of tools, explosives, etc., did not cover loss where burglar opened safe with combination secured from clerk at gun point. *Komroff v. Maryland Cas. Co.*, 105 Conn. 402, 135 A. 388 (1926). Liability of insurance agent or broker in failing to procure property burglary insurance may be based upon a theory of either negligence or breach of contract. *Ursini v. Goldman*, 118 Conn. 554, 173 A. 789 (1934); see *Rametta v. Stella*, 214 Conn. 484, 572 A.2d 978 (1990).

CANCELLATION

Where policy allows premium adjustment after cancellation, payment or tender of unearned premium on or before day set for cancellation is not essential for effective cancellation. *Westmoreland v. General Acc. Fire & Life Assur. Corp.*, 144 Conn. 265, 129 A.2d 623 (1957). Notice of cancellation may be given to agent of insured but it is not enough to give such notice to person who

acted as insured's agent merely in procuring policy, since his agency would have ceased upon delivery of policy. *Young v. Newark Fire Ins. Co.*, 59 Conn. 41, 22 A. 32 (1890). Insurance broker employed to procure insurance is agent of insured until insurance is procured, thereafter he has no authority to receive or waive for insured notice of cancellation. Cancellation is ineffective for want of five days notice required by policy. *Cheshire Brass Co. v. Wilson*, 86 Conn. 551, 86 A. 26 (1913).

Where automobile policy provides that mailing to policy holder written notice of cancellation is sufficient proof of notice, it is not necessary for insured to have received actual notice of cancellation for cancellation to have effect. *Echavarria v. National Grange*, 275 Conn. 408, 880 A.2d 882 (2005). When policy provides notice by mail is sufficient, that provision is broad enough to cover all kinds of mail which are commonly used to convey messages. *Westmoreland, supra*. See also *Stratton v. Abington Mut. Fire Ins. Co.*, 9 Conn. App. 557, 520 A.2d 617, cert. denied, 203 Conn. 807, 525 A.2d 522 (1987). Certificate of mailing sufficient to prove mailing of cancellation notice. *Echavarria, supra*. Strict compliance by insurer with statutory mandates and policy provisions as to notice is essential to effect cancellation through such notice. Any ambiguity in notice will be construed in favor of insured. *Travelers Ins. Co. v. Hendrickson*, 1 Conn. App. 409, 472 A.2d 356 (1984).

On two or more occasions, separated by years, surety company requested principal named in bond to arrange substitution of other surety and did nothing further. Such request is neither cancellation of bond nor notice of cancellation. *Gilpatric v. National Surety Co.*, 95 Conn. 10, 110 A. 545 (1920). Equity has jurisdiction to cancel in proper case. *New York Life Ins. Co. v. Costas Rigas*, 117 Conn. 437, 168 A. 22 (1933).

Connecticut permits cancellation of an accident or health policy by an insurer at any time by providing written notice at least five (5) days prior to cancellation provided insurer returns any and all unearned premium. Conn. Gen. Stat. §38a-483. Insured's right to return of unearned premium is prerequisite to cancellation of any such policy. *Bessette v. Fidelity & Cas. Co.*, 111 Conn. 549, 150 A. 706 (1930). Statutory notice requirements for cancellation of a motor vehicle liability policy are set forth in Conn. Gen. Stat. §§38a-343 through 38a-346. Cancellation notice must be sent by registered or certified mail. Conn. Gen. Stat. §38a-343; Conn. Gen. Stat. §38a-344. Bases for cancellation are set forth in Conn. Gen. Stat. §38a-342. A notice of cancellation is not required if insured did not renew policy. *Kane v. American Ins. Co.*, 252 Conn. 113, 743 A.2d 612 (2000). A notice of cancellation is not required when insured triggers policy's automatic termination clause by procuring other

similar insurance. *Majernicek v. Hartford Cas. Ins. Co.*, 240 Conn. 86, 688 A.2d 1330 (1997). An automobile policy issued for a period of less than six months is considered as a matter of law to be a six-month-long policy, unless insurer issues notice of cancellation in accordance with Conn. Gen. Stat. §38a-343. Conn. Gen. Stat. §38a-341. Where insurer failed to timely issue such notice, a policy written for three months was held to remain in effect after expiration of that three-month period. *Stenson v. Northland Ins. Co.*, 42 Conn. App. 177, 678 A.2d 1000 (1996). A fire insurance policy may be canceled at any time at request of insured, or by company by giving thirty (30) days written notice accompanied by a reason therefore, but where cancellation is for nonpayment of premium insurer need only give ten (10) days written notice accompanied by reason therefore. Conn. Gen. Stat. §38a-307. "Cancellation" retains same meaning throughout automobile insurance statutes. *Munroe v. Great Am. Ins. Co.*, 234 Conn. 182, 661 A.2d 581 (1995).

CHATTEL MORTGAGE

See "FIRE INSURANCE."

CONSTRUCTION OF POLICY

Ambiguity of Terms. It is function of court to construe provisions of an insurance contract. *Hammer v. Lumbermen's Mut. Cas. Co.*, 214 Conn. 573, 573 A.2d 699 (1990). An insurance policy is to be interpreted as any contract to determine real intent of parties as expressed in policy language. *Heyman Assoc. v. Insurance Co. of Pa.*, 231 Conn. 756, 653 A.2d 122 (1995). If language of insurance contract is plain and unambiguous, court will enforce its terms. *Hammer, supra*. However, ambiguities are construed against insurer, and when there are two equally reasonable constructions, ambiguity will be construed in favor of insured. *Schilberg Integrated Metals Corp. v. Cont'l Cas. Co.*, 263 Conn. 245, 819 A.2d 773 (2003). Provisions of insurance policy will be construed from perspective of a reasonable lay person. *Ceci v. National Indem. Co.*, 225 Conn. 165, 622 A.2d 545 (1993).

Conditional Receipt of Application. Where applicant submitted an application along with payment of policy premium on a life insurance policy, and conditions of receipt stated that insurance was subject to applicant being acceptable to insurer, policy was in effect at time of applicant's death where insurer failed to notify applicant prior to his death that he was not an acceptable risk. *Simses v. North Am. Co. for Life & Health Ins.*, 175 Conn. 77, 394 A.2d 710 (1978).

Oral Binders. Where an oral binder to provide fire insurance was issued, statutorily-required one year suit

provision of Conn. Gen. Stat. §38a-98 (now §38a-307) was considered to be incorporated in oral binder, thus precluding reimbursement for losses arising out of a fire loss. *Hanover Ins. Co. v. Fireman's Fund Ins. Co.*, 217 Conn. 340, 586 A.2d 567 (1991).

DAMAGES

Damages are defined as pecuniary compensation or indemnity which may be recovered in courts by any person who has suffered loss, detriment, or injury, whether to his person, property or rights through unlawful act or omission or negligence of another. *Allstate Ins. Co. v. Lenda*, 34 Conn. App. 444, 642 A.2d 22, cert denied, 231 Conn. 906, 648 A.2d 149 (1994).

Appellate Review (Excessive Verdicts). Assessment of damages is peculiarly within province of jury and their determination should be set aside only when verdict is plainly excessive and exorbitant. *Hammond v. City of Waterbury*, 219 Conn. 569, 594 A.2d 939 (1991). Trial court has inherent power to set aside a jury verdict which, in court's opinion, is either against law or evidence. Pursuant to this power, trial court has right and duty to set aside a verdict as being excessive or inadequate. *Buckman v. People Express, Inc.*, 205 Conn. 166, 530 A.2d 596 (1987). A verdict may be set aside if it so shocks sense of justice as to compel conclusion that jury was influenced by partiality, prejudice, mistake or corruption. *Slabinski v. Dix*, 138 Conn. 625, 88 A.2d 115 (1952); *Damato v. Thompson*, 64 Conn. App. 479, 780 A.2d 979 (2001). Court may order additur or remittitur if verdict is unreasonably inadequate or excessive. Conn. Gen. Stat. §52-216a. When ruling on motion for remittitur, trial court is required to view evidence in light most favorable to sustaining jury verdict. *Berry v. Loiseau*, 223 Conn. 786, 614 A.2d 414 (1992).

Personal Injury. Damages include fair and adequate compensation for both past and future economic and non-economic damages, including medical expenses, lost wages, impairment of earning capacity, physical impairment and pain and suffering. Conn. Gen. Stat. §52-572h. Plaintiff may recover in personal injury action for pain and suffering even when such pain and suffering is evidenced exclusively by plaintiff's subjective complaints. *Delott v. Roraback*, 179 Conn. 406, 426 A.2d 791 (1980). Plaintiff must produce evidence which establishes with reasonable probability that injury found was produced by accident and that any claimed losses more probably than not resulted from that injury. *Mazzucco v. Krall Coal & Oil Co.*, 172 Conn. 355, 374 A.2d 1047 (1977). Injured person is bound to minimize damages as far as practicable by using reasonable care to promote recovery and prevent any aggravation or in-

crease of injuries. *Preston v. Keith*, 217 Conn. 12, 584 A.2d 439 (1991).

Contract Actions. General rule in breach of contract cases is that award of damages is designed to place injured party in same position as if contract had been performed. *Beckman v. Jalich Homes, Inc.*, 190 Conn. 299, 460 A.2d 488 (1983). Damages which may reasonably be considered to have been within contemplation of parties at the time of contracting may be recovered. *West Haven Sound Dev. Corp. v. West Haven*, 201 Conn. 305, 514 A.2d 734 (1986). Lost profits from breach of contract must be ascertainable and directly attributable to breach. *Burr v. Lichtenheim*, 190 Conn. 351, 460 A.2d 1290 (1983). Liquidated damages clauses are invalid in conjunction with recovery of actual damages; but may be allowed in breach of contract cases where: 1) damages are uncertain or difficult to assess; 2) there is intent by parties to liquidate in advance; and 3) amount stipulated was reasonable. *Hanson Dev. Co. v. East Great Plains Shopping Center, Inc.*, 195 Conn. 60, 485 A.2d 1296 (1985). Punitive damages are not ordinarily allowed for breach of contract but may be awarded if defendant's actions are also tortious. *Triangle Sheet Metal Works, Inc. v. Silver*, 154 Conn. 116, 222 A.2d 220 (1966); *But see Barry v. Posi-Seal International*, 40 Conn. App. 577, 672 A.2d 514, *cert. denied*, 237 Conn. 917, 676 A.2d 1373 (1996) (Where there is no allegation or proof that termination of employment is violative of important public policy, punitive damages cannot be recovered on claim that termination constituted breach of implied covenant of good faith and fair dealing contained in employment contract.)

Property Damage. Measure of damages for property damage is resulting diminution in value, or, if property has been almost or completely destroyed, its fair market value at time of accident. *Ferri v. Pyramid Constr. Co.*, 186 Conn. 682, 443 A.2d 478 (1982). Diminution in value may be determined by cost of repairing damages provided that cost does not exceed fair market value of property and does not enhance value of property over what it was before damage. *Willow Springs Condo. Assoc., Inc. v. Seventh BRT Devel. Corp.*, 245 Conn. 1, 717 A.2d 77 (1998).

Attorney fees and litigation expenses are generally not recoverable unless such recovery is allowed by statute or contract. *ACMAT Corp. v. Greater New York Mut. Ins. Co.*, 282 Conn. 576, 923 A.2d 697 (2007); *Buccino v. Cable Technology, Inc.*, 25 Conn. App. 676, 595 A.2d 376 (1991).

Comparative Negligence. Connecticut law regarding comparative negligence is codified at Conn. Gen. Stat. §52-572h. If a plaintiff's negligence is greater than combined negligence of all defendants, any recovery is

barred; otherwise, plaintiff's recovery is reduced in proportion to his percentage of negligence. Conn. Gen. Stat. §52-572h.

Collateral Source Rule. In a personal injury or wrongful death action, there may be a reduction in economic damages for collateral source payments received by claimant. Conn. Gen. Stat. §52-225a. To extent that plaintiff's recovery of economic damages is reduced due to comparative negligence, collateral source reduction may be lessened or nullified. *Id.* In addition, any amounts paid by or on behalf of plaintiff to secure collateral source benefits are deducted from amount by which award is reduced. *Id.* Types of payments which typically come within collateral source rule include insurance proceeds, medical benefits and payments made pursuant to any contract or agreement of any group or corporation, which provide, pay for or reimburse cost of hospital, medical, dental or other health care services. Conn. Gen. Stat. §52-225b; *Fleming v. Garnett*, 231 Conn. 77, 80, 646 A.2d 1308 (1994). Excluded as collateral sources are life insurance benefits, whether purchased by claimant or provided by others. Conn. Gen. Stat. §52-225b. Also, there shall be no collateral source reduction where a right of subrogation exists. Conn. Gen. Stat. §52-225a(a); *Smith v. SAFECO*, 225 Conn. 566, 624 A.2d 892 (1993). In addition, amounts received from settlements with other entities are not considered collateral sources. Conn. Gen. Stat. §52-225b; *Bovat v. City of Waterbury*, 258 Conn. 574, 783 A.2d 1001 (2001).

Contribution and Indemnity. Under Connecticut law, ordinarily there is no right to contribution among joint tortfeasors, except for any amounts reapportioned to liable defendants pursuant to Conn. Gen. Stat. §52-572h(h). Contribution is also allowed under Connecticut Products Liability Act. Conn. Gen. Stat. §52-572o(e).

Where one party's negligence is active, that party can be required to indemnify a party whose liability is based on passive negligence; a claim for indemnity can likewise be based on a contractual agreement. *Kaplan v. Merberg Wrecking Corp.*, 152 Conn. 405, 207 A.2d 732 (1965); *ATC P'ship v. Coats North America Consol., Inc.*, 284 Conn. 537, 935 A.2d 115 (2007). Where a party, vicariously liable for tort of another, has paid damages to a third party, that party may recover amount paid in an indemnification action against actual tortfeasor. *Reilly v. DiBianco*, 6 Conn. App. 556, 507 A.2d 106, *cert. den.*, 200 Conn. 804, 510 A.2d 192 (1986).

Governmental Immunity. State is immune from suit unless by appropriate legislation it consents to be sued. Conn. Gen. Stat. §§4-141 to 4-165b, 13a-144.

Parents' Liability for Torts of Minor. Parent or guardian of unemancipated minor who willfully or maliciously causes damage to any property or injury to any person is jointly and severally liable up to \$5,000. Minor is not relieved from personal liability for such damage or injury. Conn. Gen. Stat. §52-572.

Punitive Damages. Under Connecticut law, common law punitive damages are limited to amount of plaintiff's actual litigation expenses, including attorneys' fees. *Waterbury Petroleum Products, Inc. v. Canaan Oil & Fuel Co.*, 193 Conn. 208, 477 A.2d 988 (1984). In tort actions, punitive damages may be awarded when evidence shows a reckless indifference to rights of others or an intentional and wanton violation of those rights. *Collens v. New Canaan Water Co.*, 155 Conn. 477, 234 A.2d 825 (1967). Actual intention to do harm need not be proven for a punitive damage award to be upheld. *Id.*

Double or treble damages may be awarded in automobile accident cases under statutorily defined circumstances. Conn. Gen. Stat. §14-295.

No statutory limit for punitive damages available for violations of Connecticut Unfair Trade Practices Act. Conn. Gen. Stat. §42-110g.

Wrongful Death. Damages for death are allowed as compensation for destruction of decedent's capacity to carry on life's activities, including his capacity to earn money. They are assessed on basis of loss to decedent had he lived, and, except in that sense, not on basis of loss to his estate. In many respects they are assessed in same way as in a nonfatal case involving total and permanent destruction of capacity to carry on life's activities. Conn. Gen. Stat. §52-555; *Floyd v. Fruit Industries, Inc.*, 144 Conn. 659, 136 A.2d 918 (1957). Damages may include damages for pain and suffering before death. *Butler v. Steck*, 146 Conn. 114, 148 A.2d 246 (1959).

Periodic Payment of Damages. Conn. Gen. Stat. §52-225d provides that when a jury has rendered a verdict in excess of \$200,000, trial court shall enter a lump sum judgment for all amounts up to \$200,000. Parties are then given 60 days within which to agree to a payment plan of that portion of verdict in excess of \$200,000. In absence of such an agreement, court will enter an amended judgment to provide for payment of such damages in a lump sum.

DEATH

Unexplained Absence/Presumed Death. A person is presumed dead if absent and unheard of for seven years, and his estate may be settled and distributed. Conn. Gen. Stat. §45a-329.

Autopsies. Any state's attorney or assistant state's attorney has right to require an autopsy in any case in which there is suspicion that death resulted from a criminal act. Conn. Gen. Stat. §19a-406(b). Chief medical examiner may also require an autopsy depending on apparent cause of death. Conn. Gen. Stat. §19a-406(a). If an autopsy has not been ordered pursuant to §19a-406(b), no physician may conduct an autopsy without first obtaining consent of person assuming custody of body for purpose of burial. Conn. Gen. Stat. §19a-286. Exhumation of bodies addressed in Conn. Gen. Stat. §19a-413.

Wrongful Death Actions. A wrongful death action may be brought by decedent's personal representative. Action must be commenced within two years from date of death, and no more than five years from date of act or omission complained of. Conn. Gen. Stat. §52-555. Action for spousal loss of consortium is independent from any action brought by decedent's representative, but shall be brought with or joined with that action. Conn. Gen. Stat. §§52-555a and 52-555b.

Survival Actions. A cause of action survives death of any person, and survives in favor of executor or administrator of decedent. Conn. Gen. Stat. §52-599(a).

Death Certificates. A death certificate can be obtained from Registrar of Vital Statistics for town in which death occurred; if place of death is unknown, death certificate can be obtained from town in which body was found. Conn. Gen. Stat. §7-62b.

Anatomical Gift. Donation of bodies for anatomical purposes, see Conn. Gen. Stat. §§19a-270, 19a-279a through 19a-279l.

Brain Death Act. For purposes of making a determination concerning continuation or removal of any life support system, an individual who has sustained either 1) irreversible cessation of circulatory and respiratory functions, or 2) irreversible cessation of all functions of entire brain, including brain stem, is dead. Conn. Gen. Stat. §19a-504a(b).

DISABILITY

Physical disability is not defined by decision or statute other than in workers' compensation act which considers following described injuries as causing total incapacity: total and permanent loss of sight in both eyes or reduction to one-tenth or less of normal vision; loss of both feet at or above ankle; loss of both hands at or above wrist; loss of one foot at or above ankle and one hand at or above wrist; permanent or complete paralysis of legs or arms or one leg and one arm; incurable imbecility or mental illness. Conn. Gen. Stat. §31-307(c). Compensation for partial incapacity, Conn. Gen. Stat.

§31-308. Additional benefits for partial permanent disability, Conn. Gen. Stat. §31-308a. Rule against double compensation prohibits concurrent payment of specific indemnity benefits for permanent partial impairment under Conn. Gen. Stat. §31-308(b) and benefits for total incapacity under Conn. Gen. Stat. §31-307 arising out of same incident. *Paternostro v. Edward Coon Co.*, 217 Conn. 42, 583 A.2d 1293 (1991). *But see McCurdy v. State*, 227 Conn. 261, 630 A.2d 64 (1993). Worker can be at once temporarily totally disabled and permanently partially disabled, *Osterlund v. State*, 129 Conn. 591, 30 A.2d 393 (1943), although he cannot collect for both at same time. *Cappellino v. Cheshire*, 226 Conn. 569, 628 A.2d 595 (1993).

Fact that insured is able to perform some trivial or inconsequential duties connected with his usual employment does not preclude recovery under occupational total disability clause. *Solberg v. Aetna Life Ins. Co.*, 151 Conn. 637, 201 A.2d 465 (1964). Benefits are calculated on wages on date of incapacity to work rather than date of injury. *Stevens v. Raymark Corporation/Raybestos Manhattan*, 28 Conn. App. 226, 610 A.2d 710, *cert. den.*, 223 Conn. 921, 614 A.2d 830 (1992). Benefits for total disability under Conn. Gen. Stat. §31-307 and permanent scarring and disfigurement under §31-308(d) are recoverable contemporaneously. *Scalora v. Dattco, Inc.*, 39 Conn. Supp. 449, 466 A.2d 334 (1983).

FINANCIAL RESPONSIBILITY LAW

See Law Digest Tables.

FIRE INSURANCE

Arson. Prima facie case of arson for purposes of denying coverage requires proof, by fair preponderance of evidence, that fire was incendiary, that insured had opportunity to cause fire. *Travelers Ins. Co. v. Namerow*, 261 Conn. 784, 807 A.2d 467 (2002). Motive is not essential element of civil arson defense. *Id.* Special defense of arson, like defense based upon concealment or misrepresentation, requires proof by fair preponderance of evidence. *Verrastro v. Middlesex Ins. Co.*, 207 Conn. 179, 540 A.2d 693 (1988). No practical reason to apply two different standards of proof to arson defense and concealment or misrepresentation defense. *Rego v. Connecticut Ins. Placement Facility*, 219 Conn. 339, 593 A.2d 491 (1991). Although all elements may be proven by circumstantial evidence, evidence which creates mere suspicion or conjecture is insufficient. *Verrastro v. Middlesex Ins. Co.*, *supra*.

Appraisal. Appraisal clause contained in standard form fire insurance policy set forth in Conn. Gen. Stat. §38a-307 is equivalent to an agreement to arbitrate governed by Connecticut's arbitration statutes, Conn. Gen.

Stat. §§52-408 through 52-424. *Steiner v. Middlesex Mut. Assur. Co.*, 44 Conn. App. 415, 689 A.2d 1154 (1997). Participation in appraisal may be judicially compelled. *Fishman v. Middlesex Mut. Assurance Co.*, 4 Conn. App. 339, 494 A.2d 606, *cert. den.*, 197 Conn. 806, 499 A.2d 57 (1985). Scope of appraisers' powers limited by terms of policy, provisions of Conn. Gen. Stat. §38a-307 and judicial precedent solely to determination of amount of actual cash value of fire loss, and this determination is ordinarily a question of fact. *Sullivan v. Liberty Mut. Fire Ins. Co.*, 174 Conn. 229, 384 A.2d 384 (1978). Standard form fire policy provides for appraisal in event parties cannot agree as to actual cash value or amount of loss. On written demand of either insured or insurer, each party to select appraiser, and appraisers to select umpire. Following selection of umpire, appraisers shall appraise loss and submit differences only to umpire. Upon failure of appraisers to agree within fifteen (15) days to selection of umpire, either party may request selection of umpire by judge of court of record in state where property is located. Conn. Gen. Stat. §38a-307. Where one party fails initially to select appraiser, there can be no failure of appraisers to agree to umpire, and provision for judicial selection of umpire not applicable. *Covenant Ins. Co. v. Banks*, 177 Conn. 273, 413 A.2d 862 (1979). Provisions of Conn. Gen. Stat. §§52-410 and 52-411, which govern arbitration proceedings, can be invoked by either party to compel appraisal proceedings, or to resolve issues relating to coverage and applicability of policy's appraisal provision. *Covenant Ins. Co. v. Banks, Supra*. Insured who elects to proceed to jury trial on issues for which appraisal procedure is available is deemed to have waived rights under policy's appraisal provision. *Giulietti v. Connecticut Ins. Placement Facility*, 205 Conn. 424, 534 A.2d 213 (1987). Appraisers neither authorized nor competent to decide issues of law. *Sullivan v. Liberty Mut. Fire Ins. Co.*, 174 Conn. 229, 384 A.2d 384 (1978).

Assignment. Standard form of policy provides that assignment not valid except with written consent of insurer. Conn. Gen. Stat. §38a-307. Original holder of policy had no interest in insured property at time when loss occurred, and no recovery was allowed to assignee whose assignment was prior to loss and who held attachment on insured property made subsequent to date of assignment. *Birdsey v. City Fire Ins. Co.*, 26 Conn. 165 (1857). Assignment subsequent to occurrence of loss by insured property owner to mortgagee named in open mortgage clause gives mortgagee right to sue in his own name. *Collinsville Sav. Soc. v. Boston Ins. Co.*, 77 Conn. 676, 60 A. 647 (1905). Where right to recover policy proceeds assigned to mortgagee, mortgagee is third party beneficiary of contract of insurance. *Pavano v. Western Nat'l Ins. Co.*, 139 Conn. 645, 96 A.2d 470 (1953).



Liens. Before paying claim, insurer must request list of liens from town clerk on damaged realty, and where insurer complies with statutory requirements, it is not liable to insured for proceeds paid to municipality in satisfaction of tax liens. Conn. Gen. Stat. §§49-73d and 49-73g; *Tucker v. Connecticut Ins. Placement Facility*, 192 Conn. 653, 473 A.2d 1210 (1984).

Ownership. Where policy provides that change in title renders it void, change must be substantial, not merely colorable one which in fact works no alteration in situation. *Wiley v. London & Lancashire Fire Ins. Co.*, 89 Conn. 35, 92 A. 678 (1914). Oral agreement by agent of insurer that title can be changed is enough. *Chauser v. Niagara Fire Ins. Co.*, 123 Conn. 413, 196 A. 137 (1937); *Charles H. Dresser & Son, Inc. v. Allemannia Fire Ins. Co.*, 101 Conn. 626, 126 A. 912 (1924). Sale by one insured tenant in common to another insured tenant in common will not void policy. *Lockwood v. Middlesex Mut. Assurance Co.*, 47 Conn. 553 (1880).

Mobile homeowners. Where conditions of permanency met, mobile homeowner eligible for homeowner's fire insurance policy. Conn. Gen. Stat. §38a-317.

Binder. Binders or other contracts for temporary insurance may be made orally or in writing for period not to exceed sixty days and shall be deemed to include terms of standard form of policy and any applicable endorsement approved by Commissioner that are designated in contract. Cancellation clause and clause specifying hour for commencement of insurance in standard form may be superseded by express terms of any such contract of temporary insurance. Conn. Gen. Stat. §38a-309.

Cancellation. Policy shall be canceled at any time upon request of insured. Policy may be canceled at any time by insurer upon thirty days' written notice to insured accompanied by reason for cancellation. Where cancellation for nonpayment of premium, at least ten days' written notice required. Conn. Gen. Stat. §38a-307. Written notice of cancellation of fire insurance policy must be given to designated mortgagee not named in policy as insured. Conn. Gen. Stat. §38a-307; *Hallas v. Boehmke and Dobsz, Inc.*, 239 Conn. 658, 686 A.2d 491 (1997).

Mortgage Clause. "Standard" or "union" mortgage loss payable clause, in contradistinction to "open" loss payable clause, creates a direct contractual relationship between mortgagee and insurer. *Burritt Mut. Sav. Bank v. Transamerica Ins. Co.*, 180 Conn. 71, 428 A.2d 333 (1980). Where there is "open mortgage clause," mortgagee is merely conditional appointee of owner, entitled to receive so much of any sum as might become due, not to exceed mortgage interest. Insertion of "open mortgage

clause" whereby loss becomes payable to specified mortgagee as his mortgage interest may appear does not make him party to contract or entitle him to participate in adjustment proceedings between insurer and owner. Where there is "union mortgage clause," mortgagee's right of recovery cannot be defeated by act of assured after loss has occurred. Upon loss, defendant's liability became fixed and mortgagee had acquired rights in cause of action which declarations of mortgagor could not affect or change. *Collinsville Sav. Soc. v. Boston Ins. Co.*, 77 Conn. 676, 60 A. 647 (1905). Mortgagee stands in position of assured and is subject to conditions of policy to which assured would be subject, as well as any defenses which might be interposed against insured; loss payee is permitted to sue in his own name. *Pavano v. Western Nat'l Ins. Co.*, 139 Conn. 645, 96 A.2d 470 (1953). Written notice of cancellation of fire insurance policy must be given to designated mortgagee not named in policy as insured. Conn. Gen. Stat. §38a-307; *Hallas v. Boehmke and Dobsz, Inc.*, 239 Conn. 658, 686 A.2d 491 (1997).

Reformation. Reformation of insurance contract available in cases of mutual mistake or mistake of one party coupled with fraud or inequitable conduct on part of other party. *Harlach v. Metropolitan Prop. & Liab. Ins. Co.*, 221 Conn. 185, 602 A.2d 1007 (1992).

Conditions. No condition contained in a policy of fire insurance shall be valid and enforceable unless stated in body of policy. Conn. Gen. Stat. §38a-314.

Exclusions. Burden on insurer to plead and prove that loss falls within exclusionary clause of policy. *G & R Tire Distributors, Inc. v. Allstate Ins. Co.*, 177 Conn. 58, 411 A.2d 31 (1979). Where loss results from a concurrence of two causes, loss will be covered provided efficient proximate cause of loss is a covered cause of loss. *Frontis v. Milwaukee Ins. Co.*, 156 Conn. 492, 242 A.2d 749 (1968). Burden of proving applicability of exception to exclusion rests with insured. *Schilberg Integrated Metals Corp. v. Continental Cas. Co.*, 263 Conn. 245, 819 A.2d 773 (2003).

Standard Provisions. Form of policy of fire insurance set forth in Conn. Gen. Stat. §38a-307 is designated as "The Standard Fire Insurance Policy of the State of Connecticut," Conn. Gen. Stat. §38a-306, and no policy of fire insurance shall be issued in state unless it conforms to all provisions of standard form. Conn. Gen. Stat. §38a-308. Policies varying from standard form shall be binding on company issuing such policies to same extent and on same conditions as if in standard form. Conn. Gen. Stat. §38a-306. Agent who makes, issues or delivers non-standard form policy subject to maximum fine of \$200 for each offense. Conn. Gen. Stat. §38a-306. Standard form includes provisions relat-

ing to: valuation; assignment; concealment and fraud; uninsurable and excepted property; perils excluded; other insurance; conditions suspending, or restricting, insurance; other perils or subjects which must be included by written endorsement in order to be covered; inclusion of provisions not inconsistent with standard form; waiver; cancellation; mortgagee interests and obligations; pro rata liability; requirements in case loss occurs; appraisal; insurer's options; abandonment; time within which loss is payable (sixty days after ascertainment of loss by agreement or by award); suit limitation; and right of insurer to require subrogation to extent of payment made. Conn. Gen. Stat. §38a-307.

Concealment, Misrepresentation, Fraud. Standard policy provision provides policy shall be void if, before or after loss, insured wilfully conceals or misrepresents material fact concerning insurance or subject thereof, or in case of fraud or false swearing. Conn. Gen. Stat. §38a-307. Policy rendered void for willfully concealing or misrepresenting any material facts or circumstances concerning insurance, subject thereof, or interest of insured therein, or for fraud or false swearing, whether before or after loss. Conn. Gen. Stat. §38a-307; *Rego v. Connecticut Ins. Placement Facility*, 219 Conn. 339, 593 A.2d 491 (1991). Material misrepresentations relied upon by company and known by insured to be false or untrue when made will invalidate policy. *Middlesex Mut. Assurance Co. v. Walsh*, 218 Conn. 681, 590 A.2d 957 (1991). Misrepresentation as to improvements to property considered material, and renders policy void. *Lomartira v. American Auto Ins. Co.*, 245 F. Supp. 124 (D. Conn. 1965), *aff'd*, 371 F.2d 550 (2nd Cir. 1967). Material misrepresentation in proof of loss renders policy null and void. *Allstate v. Priga*, 810 F. Supp. 373 (D. Conn. 1992). Presentation of false claim of loss by insured is fraud upon insurer within meaning of provision of contract that policy shall be void in case of fraud or false swearing by insured touching any matter relating to insurance or subject thereof, and voids contract. *Davis Scofield Co. v. Reliance Ins. Co.*, 109 Conn. 686, 145 A. 42 (1929). Where no intent to mislead insurer policy not void merely because named insured was not legal corporation. *Castoldi v. Hartford County Mut. Fire Ins. Co.*, 21 Conn. Supp. 265, 154 A.2d 247 (1959). Insurer defending on grounds of concealment or misrepresentation must prove defense by fair preponderance of evidence, whereas defense of fraud must be established by clear and convincing evidence. *Rego v. Connecticut Ins. Placement Facility*, 219 Conn. 339, 593 A.2d 491 (1991). Insurer's rescission of automobile insurance policy for material misrepresentations made by insured did not void contract *ab initio* as to innocent third parties. *Munroe v. Great American Ins. Co.*, 234 Conn. 182, 661 A.2d 581 (1995).

Suit Limitation Provision. Standard policy provision bars suit or action on policy unless all requirements of policy complied with, and unless commenced within twelve months next after inception of loss. Conn. Gen. Stat. §38a-307. One-year suit limitation provision requiring suit to be brought within one year after inception of loss is a valid contractual obligation, and failure to comply with provision is defense to action on policy, unless provision waived or there exists valid excuse for nonperformance. *Monteiro v. American Home*, 177 Conn. 281, 416 A.2d 1189 (1979). Continuing negotiations concerning adjustment of loss beyond policy-imposed suit limitation period may constitute waiver by insurer of right to enforce suit limitation condition. *Roy v. Metropolitan Prop. & Cas. Ins. Co.*, 98 Conn. App. 528, 909 A.2d 980 (2006). Accidental failure of suit statute, Conn. Gen. Stat. §52-592, does not operate to save action not brought within period of suit limitation condition. *Bocchino v. Nationwide Mut.*, 246 Conn. 378, 716 A.2d 883 (1998). Where insurer engages in conduct which might mislead insured, nonwaiver provision of Conn. Gen. Stat. §38a-307 may not preclude estoppel argument by insured. *Boyce v. Allstate Ins. Co.*, 236 Conn. 375, 673 A.2d 77 (1996). One-year suit limitation provision incorporated into binder enforceable, and insurer's subrogation action, brought more than one year following loss, held barred. *Hanover Ins. Co. v. Fireman's Fund Ins. Co.*, 217 Conn. 340, 586 A.2d 567 (1991). One-year suit limitation provision does not govern insured's statutory claims under Connecticut's Unfair Insurance Practices Act and Unfair Trade Practices Act because insurer's duty under Acts stem from statute, not from contract of insurance, and therefore statutory claims do not constitute actions "on the policy." *Lees v. Middlesex Ins. Co.*, 219 Conn. 644, 594 A.2d 952 (1991).

Damages. Policy of fire insurance is contract of indemnity insofar as direct loss or damage is concerned. *Finch v. Great Am. Ins. Co.*, 101 Conn. 332, 125 A. 628 (1924). Standard policy insures against direct loss caused by specified perils to property described in policy. Loss by fire within policy's coverage not limited to actual fire damage but includes all losses proximately caused by fire or combustion. *Frontis v. Milwaukee Ins. Co.*, 156 Conn. 492, 242 A.2d 749 (1968). Three tests used in ascertaining amount of loss: 1) Market value; 2) Replacement cost; and 3) Broad evidence rule. *Sullivan v. Liberty Mut. Fire Ins. Co.*, 174 Conn. 229, 384 A.2d 384 (1978).

Excepted Risks.

Land. Recovery under policy for damage to land caused by fuel oil, which was held to be pollutant, disallowed where coverage was limited to damage to buildings, spilled oil did not constitute debris for purposes of



debris removal provision and pollutant clean up provision inapplicable. *Bell Power Systems, Inc. v. Hartford Fire Ins. Co.*, 1995 WL 81430 (Conn. Super. 1995). Where extended coverage provision of fire policy covered direct loss or damage by vehicle to plaintiff's building, but expressly excluded loss caused by "any vehicle owned or operated by insured or by any tenant of described premises," loss caused by vehicle operated by employee or agent of insured was not within exclusion. *Scranton v. Hartford Fire Ins. Co.*, 141 Conn. 313, 105 A.2d 780 (1954).

Collapse. Term "collapse" encompasses catastrophic breakdown as well as breakdown or loss of structural strength. *Beach v. Middlesex Mut. Assurance Co.*, 205 Conn. 246, 532 A.2d 1297 (1987).

Fixtures. Underground oil tank not a "lawn fixture," and therefore, tank did not meet policy definition of "building" which included "flagpoles, fences and other lawn fixtures." *Bell Power Systems, Inc. v. Hartford Fire Ins. Co.*, *supra*.

Friendly Fires. Friendly fires not within contemplation of contract of insurance, and where fire originated and was confined to oil-burning furnace and caused extensive damage by smoke and soot, loss was not within terms of standard policy covering direct loss or damage by fire. Loss is not covered unless caused by "hostile fire," and friendly fire which escapes from place in which it is intended to be may become hostile fire such that resulting damage covered. *Spare v. Glen Falls Ins. Co.*, 137 Conn. 105, 75 A.2d 64 (1950).

Proof of Loss. Standard policy provision requires that insured give immediate notice of loss to insurer. Where insurer establishes that notice is late, burden is upon insured to establish that late notice did not result in prejudice to insurer. *Aetna Cas. & Sur. Co. v. Murphy*, 206 Conn. 409, 538 A.2d 219 (1988). Policy typically provides that where loss due to theft, police be notified. Standard provisions mandate filing of signed and sworn proof of loss within sixty (60) days after loss, unless time is extended in writing by insurer, which proof must be signed and sworn to, state knowledge and belief of insured as to time and origin of loss, interest of insured and all others in property, actual cash value of each item and amount of loss thereto, all encumbrances, all other contracts of insurance, valid or not, copies of all descriptions and schedules, changes in title, use occupation, location, possession or exposures since issuance of policy, occupants and use at time of fire, whether building stood on leased ground, and, if required, specifications of buildings, fixtures and machinery destroyed or damaged. Insured is required within reason to exhibit to any person designated by insurer all that remains of property, and to submit to examinations under oath by any person

named by insurer and to subscribe same and within reason to produce for examination books of accounts, bills, invoices and other vouchers at reasonable time and place. Conn. Gen. Stat. §38a-307. Standard form further provides, as to mortgagee interests, that if insured fails to render proof of loss mortgagee, upon notice, must render proof of loss in form provided therein within sixty (60) days thereafter and is subject to provisions of standard form as to appraisal, time of payment, and of bringing suit. If insurer claims no liability as to mortgagor or owner it is, to extent of payment of loss to mortgagee, subrogated to mortgagee's right of recovery without impairment of mortgagee's right to sue or it may pay off mortgage debt and require assignment of mortgage. Conn. Gen. Stat. §38a-307.

Repair. Standard form requires that insured protect property from further damage, and policy imposes upon insured duty to repair if necessary to protect from further damage. *Id.*

Replacement Value - Actual Cash Value. Standard policy provides for limitation of liability to actual cash value of property at time of loss, not to exceed cost of repair or replacement in reasonable time, without allowance for increased cost by reason of ordinance or law regulating construction or repair, and without compensation for loss due to interruption of business. *Id.* Actual cash value policy is pure indemnity contract the purpose of which is to make insured whole but never to benefit him because a fire occurred. *Northrop v. Allstate Ins. Co.*, 247 Conn. 242, 246, 720 A.2d 879 (1998). *Steiner v. Middlesex Mut. Assur. Co.*, 44 Conn. App. 415, 689 A.2d 1154 (1997). Standard provisions do not foreclose insured from obtaining replacement cost insurance. Conn. Gen. Stat. §38a-313. Actual cash value is cost of repair less depreciation. *Northrop v. Allstate Ins. Co.*, 247 Conn. 242, 720 A.2d 879 (1998). Determination of amount of actual cash value of loss is question of fact which can be resolved by appraisers and umpire based upon their own experience and judgment. *Sullivan v. Liberty Mut. Fire Ins. Co.*, 174 Conn. 229, 384 A.2d 384 (1978). Application of "broad evidence rule." *Giulietti v. Conn. Ins. Placement Facility*, 205 Conn. 424, 534 A.2d 213 (1987).

Multiple Policies.

Contribution Between Companies. Standard policy provides for contribution by provision in writing added thereto, and company not liable for greater portion of loss than amount of policy bears to whole insurance on property against peril involved. Conn. Gen. Stat. §38a-307. Where loss is covered by both blanket and specific policies, each containing provisions for prorating, loss is adjusted by dividing entire property into items mentioned in specific policies and taking items up in order of

their greatest loss, full amount of blanket policy to be applied to first item. *Schmaelzle v. London & Lancashire Fire Ins. Co.*, 75 Conn. 397, 53 A. 863 (1903); *Hartford Steam Boiler Inspection & Ins. Co. v. Firemen's Mut. Ins. Co.*, 110 Conn. 332, 148 A. 135 (1930). Policy which singles out for particular insurance certain article or property of restricted class falling within general description contained in blanket policy covering all property of insured as to same risk is specific though it does not specify definite amount of protection for each article. *Gottesman v. Aetna Ins. Co.*, 177 Conn. 631, 418 A.2d 944 (1979).

FRAUD

See "FIRE INSURANCE."

GUEST CASES

See "AUTOMOBILES."

HOSPITALS

Inspection and Subpoena of Hospital Records. Each hospital shall permit a patient or his physician or authorized attorney to examine and/or copy hospital's records regarding that patient. If any such hospital, society or corporation is served with a subpoena directing production of such hospital records in connection with any court proceedings, hospital may, except where such records pertain to a mentally ill patient, deliver such records to clerk of such court. No such records shall be open to inspection by any person except upon order of a judge of court concerned, and any such record or copy shall at all times be subject to order of such judge. Any and all parts of any such records, if not otherwise inadmissible, shall be admitted in evidence without any preliminary testimony, if there is attached an affidavit stating records meet the "business records" exception to hearsay evidence rule. Conn. Gen. Stat. §4-104.

Liens. Any hospital exempt from state taxation, any ambulance owner, operator, association, partnership or corporation, or any hospital owned and operated by municipality or state, which furnished medical or other service or materials to any patient injured by reason of any accident not covered by Workers' Compensation Act may assert a lien on proceeds of any accident and liability insurance policy, which proceeds may be due to such patient, to extent of actual cost of such service and materials, provided such interested party gives insurer written notice (for in-state companies), or serves written notice upon insurance commissioner (for out-of-state companies) prior to insurer's payment of such proceeds. Conn. Gen. Stat. §49-73.

Beneficiary of insurance proceeds may assign rights thereto to doctor or hospital providing medical treatment. State shall have a lien on any insurance proceeds for reimbursement of any state rendered services, state-administered general assistance program or Medicaid program. Conn. Gen. Stat. §38a-472.

Immunity. Common law defense of charitable immunity abolished. Conn. Gen. Stat. §52-557d.

General. Hospital service corporations, definition, powers, exemptions from insurance laws. Conn. Gen. Stat. §38a-199; non-profit medical service corporations, definition, powers, exemptions from insurance laws. Conn. Gen. Stat. §38a-214.

HUSBAND AND WIFE

Property. Disposition of marital property upon death of a married individual is controlled by Connecticut Uniform Disposition of Community Property Rights at Death Act. Conn. Gen. Stat. §§45a-458 through 45a-466. Each spouse has an insurable interest in the other.

In dissolution action, workers' compensation benefits not automatically excluded from consideration as income for purposes of support order. *Tyc v. Tyc*, 40 Conn. App. 562, 672 A.2d 526 (1996).

Immunity. Spouses may sue each other in contract or tort. *Wolozin v. Wolozin*, 149 Conn. 739, 182 A.2d 8 (1962). Spousal immunity has been abolished in Connecticut. *Dzenutis v. Dzenutis*, 200 Conn. 290, 512 A.2d 130 (1986). Conn. Gen. Stat. §46b-36.

Loss of Consortium. A spouse has a claim for loss of consortium shown to arise from personal injury or death to other spouse caused by negligence of a third person. *Hopson v. St. Mary's Hospital*, 176 Conn. 485, 408 A.2d 260 (1979). Action for loss of consortium is derivative of injured spouse's cause of action, except in instances of death. *Conn. Ins. Guaranty Assoc. v. Fontaine*, 278 Conn. 779, 900 A.2d 18 (2006); Conn. Gen. Stat. §52-555a. Claim for post-mortem loss of consortium permitted. Conn. Gen. Stat. §52-555b.

See Law Digest Tables.

INFANTS

See "AUTOMOBILES"; "NEGLIGENCE."

Unless otherwise provided by statute, any person under the age of 18 years is a minor. Conn. Gen. Stat. §1-1d. Under liquor control statutes, any person under the age of 21 years is a minor. Conn. Gen. Stat. §30-1(12). For purposes of applying strict liability upon those who fail to securely store a firearm, a minor is any person below the age of 16 years. Conn. Gen. Stat. §52-

571g. To contract for life, health and accident insurance, an individual must be 15 years or older. Conn. Gen. Stat. §38a-284.

Contracts. Law does not forbid an infant to contract but, for his protection, gives him privilege of avoiding contracts which are injurious to him and rescinding all others, whether fair or not and whether executed or executory, excepting from operation of privilege only contracts for necessities, contracts which he may be compelled in equity to execute and, in some cases, executed contracts where he has enjoyed benefit of them and cannot restore other party to his original position. *Saccavino v. Gambardella*, 22 Conn. Supp. 168, 164 A.2d 304 (1960).

Torts. In negligence cases, degree of care required of children is that which may reasonably be expected of children of similar age, judgment and experience. *Colucci v. Pinette*, 185 Conn. 483, 441 A.2d 574 (1981). Violation of a statute by a party who was under 16 years of age does not constitute negligence per se, but goes toward question of whether that party acted with due care. Conn. Gen. Stat. §52-217; *Mahon v. Heim*, 165 Conn. 251, 332 A.2d 69 (1973).

Parental Immunity. Doctrine of parental immunity bars suits by unemancipated minor for personal injuries caused by parent. *Ascuitto v. Farricielli*, 244 Conn. 692, 711 A.2d 708 (1998). Doctrine insulates non-custodial parent. *Ascuitto v. Farricielli*, 244 Conn. 692, 711 A.2d 708 (1998). Doctrine also bars third party claims for apportionment, contribution or indemnity against parent. *Crotta v. Home Depot, Inc.*, 249 Conn. 634, 732 A.2d 767 (1999). However, doctrine does not apply where parent's negligent conduct arose out of the parent's operation of a business outside home, *Ascuitto v. Farricielli*, 244 Conn. 692, 711 A.2d 708 (1998); to claims of sexual abuse, sexual assault or sexual exploitation, *Henderson v. Woolley*, 230 Conn. 472, 644 A.2d 1303 (1994); or to claims of negligent operation of a motor vehicle, aircraft or watercraft. Conn. Gen. Stat. §52-572c.

In addition to any other liability which may exist, parent or guardian of any unemancipated minor, which minor has willfully or maliciously caused damage to any property or injury to any person, or who has taken a motor vehicle without permission of owner and has caused damage to vehicle, shall be jointly and severally liable with minor for damage or injury in an amount not to exceed \$5,000. Conn. Gen. Stat. §52-572.

Loss of Consortium. Connecticut does not recognize derivative cause of action for loss of parental or filial consortium. *Mendillo v. Board of Ed.*, 246 Conn. 456, 717 A.2d 1177 (1998).

INLAND MARINE

Connecticut does not have an independent body of law addressing inland marine policies.

LIABILITY INSURANCE

Legislation. Regulation of rates for personal and commercial risk insurance. Conn. Gen. Stat. §§38a-663 to 38a-696. Requirements for cancellation notices and nonrenewal notices. Conn. Gen. Stat. §§38a-323 to 38a-326. Language in insurance policies required to be "readable." Insurance Plain Language Act Conn. Gen. Stat. §§38a-295 to 38a-300. Insurance Commissioner as agent for service of process on foreign and alien insurance companies authorized to do business in the state. Conn. Gen. Stat. §38a-25. Liability of insurer under liability policy (direct action statute) - each company issuing policy insuring against loss or damage to person or property for which insured is legally responsible becomes absolutely liable and payment of such loss does not depend upon satisfaction by assured of final judgment. No contract shall be canceled or annulled by any agreement between insurance company and assured after assured becomes responsible for loss or damage. Such cancellation or annulment shall be void. Conn. Gen. Stat. §38a-321. If judgment remains unsatisfied 30 days after rendered, judgment creditor subrogated to rights of insured to same extent as insured and shall have cause of action directly against insurer. *Id.* See, "SUBROGATION."

Insurance practices are subject to concurrent regulation under Connecticut Unfair Trade Practices Act (CUTPA), Conn. Gen. Stat. §42-110a *et seq.*; and Connecticut Unfair Insurance Practices Act (CUIPA), Conn. Gen. Stat. §38a-815 *et seq.* Note "general business practice" requirement for CUIPA claims predicated on allegedly unfair insurance claims practices. *Lees v. Middlesex Ins. Co.*, 229 Conn. 842, 643 A.2d 1282 (1994). Connecticut trial courts are split as to whether a private action exists under CUIPA. *H&L Chevrolet v. Berkley Ins. Co.*, 110 Conn. App. 428, 955 A.2d 565 (2008).

Cancellation. *See*, Conn. Gen. Stat. §§38a-323 to 38a-326 and §§38a-341 to 38a-344. Connecticut compulsory automobile insurance statutes, Conn. Gen. Stat. §38a-334, *et seq.*, read as a whole, abrogate right of an insurer to rescind automobile liability insurance ab initio so as to deny recovery to an innocent third-party. *Munroe v. Great Am. Ins. Co.*, 234 Conn. 182, 661 A.2d 581 (1995). Notice of cancellation not required where insured exercises automatic termination clause. *DiBello v. Barnes Page Wire Products, Inc.*, 67 Conn. App. 361, 786 A.2d 1234 (2001). After expiration of six month policy and in absence of automatic renewal clause, failure to insure because of non-payment of premium not



considered non-renewal/cancellation and does not trigger notice of cancellation/non-renewal requirement in statute. *Kane v. American Ins. Co.*, 52 Conn. App. 497, 725 A.2d 1000 (1999).

Compromise of Claims. Insurer has sole right to settle claims against insured, within limits of policy, and therefore, insurer is obligated to exercise that right in a reasonable and prudent manner. *General Acc. Group v. Gagliardi*, 593 F. Supp. 1080, *aff'd*, 767 F.2d 907 (2nd Cir. 1985). Insurer which fails to exercise due care or good faith with regard to settling claims within policy limits is subject to direct statutory right of action by judgment creditor of insured. *Id.*

Cooperation of Insured. In absence of waiver or other excuse, cooperation by insured is a condition the breach of which brings an end to insurer's obligation. *O'Leary v. Lumberman's Mutual Casualty Co.*, 178 Conn. 32, 420 A.2d 888 (1979). Lack of cooperation must be substantial or material. *Curran v. Connecticut Indem. Co.*, 127 Conn. 692, 20 A.2d 87 (1941). In absence of prejudice to insurer, breach of cooperation condition does not put an end to the insurer's obligation. However, insured has duty to establish that lack of cooperation did not prejudice insurer. *Taricani v. Nationwide Mut. Ins. Co.*, 77 Conn. App. 139, 822 A.2d 341 (2003).

Policy. Insurance policies are contracts and thus subject to basic rules of contract interpretation. *Buell Industries, Inc. v. Greater New York Mutual Insurance Co.*, 259 Conn. 527, 791 A.2d 489 (2002). Policies must be construed as a whole and all relevant provisions given effect and considered in conjunction with one another. *R.T. Vanderbilt Co., Inc. v. Continental Casualty Co.*, 273 Conn. 448, 870 A.2d 1048 (2005). Policy language is to be construed as laymen would understand it. *Florestal v. Gov't Employees Ins. Co.*, 236 Conn. 299, 673 A.2d 474 (1996). If terms of policy are clear and unambiguous, language is to be given its natural and ordinary meaning. *Travelers Ins. Co. v. Namerow*, 261 Conn. 784, 807 A.2d 467 (2002). However, if terms of a policy are ambiguous, those terms will be construed in favor of insured. *Enviro Express, Inc. v. AIU Insurance Co.*, 279 Conn. 194, 901 A.2d 666 (2006). Lost policy may be proven by secondary evidence. *ACMAT v. Greater New York Mut.*, 88 Conn. App. 471, 869 A.2d 1254 (2005), *cert. denied*, 274 Conn. 903, 876 A.2d 11 (2005).

Coverage Disputes. Declaratory judgment action is a suitable vehicle to test rights and liabilities of parties under an insurance contract. *St. Paul Fire & Marine Ins. Co. v. Shernow*, 22 Conn. App. 377, 577 A.2d 1093 (1990), *aff'd*, 222 Conn. 823, 610 A.2d 1281 (1992). But note potential problems regarding stay of proceedings raised by *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). When presented with a request for defense

which raises coverage questions, insurer must exercise discretion and either refuse to defend or defend under a reservation of rights. *Missionaries of the Company of Mary, Inc. v. Aetna Cas. & Sur.*, 155 Conn. 104, 230 A.2d 21 (1967).

Duty to Defend. Duty to defend is broader than duty to indemnify and rests solely on whether allegations of complaint bring claim within scope of policy. Insurer may not refuse to defend unless a comparison of policy with complaint shows on its face that there is no potential for coverage. Moreover, in determining duty to defend, insurer may not look beyond four-corners of complaint to underlying facts. Rule applies even where suit is meritless or lacks factual basis. *Imperial Cas. & Indem. Co. v. State*, 246 Conn. 313, 714 A.2d 1230 (1998). However, the four-corners rule does not apply to insurer's determination that defendant is insured under its liability policy. In that context, the insurer is required to provide a defense where it has actual knowledge of facts establishing a reasonable possibility of coverage. *Hartford Cas. Ins. Co. v. Litchfield Mut. Fire Ins. Co.*, 274 Conn. 457, 876 A.2d 1139 (2005). If complaint alleges liability which policy does not cover, insurer is not required to defend. *QSP, Inc. v. Aetna Cas. & Surety Co.*, 256 Conn. 343, 773 A.2d 906 (2001). If insurer breaches duty to defend, insurer will be liable for total amount of any judgment rendered, up to limits of policy, in addition to costs reasonably incurred in defense of action. *R.T. Vanderbilt Co. v. Continental Casualty Co.*, 273 Conn. 448, 870 A.2d 1048 (2005). The breach will be considered a waiver of the insurer's right to defend under a reservation of rights, and, thus, a waiver of the insurer's opportunity to lodge a post-verdict challenge to the duty to indemnify. *Missionaries of the Company of Mary, Inc. v. Aetna Cas. & Sur. Co.*, 155 Conn. 104, 230 A.2d 21 (1967).

Duty to Indemnify. Unlike duty to defend, duty to indemnify is measured by a comparison of underlying facts of case with coverage provided by policy. *DaCruz v. State Farm*, 268 Conn. 675, 846 A.2d 849 (2004).

Notice. Absent waiver, an unexcused, unreasonable delay in notification constitutes a failure of a condition that entirely discharges an insurance carrier from any further liability on its insurance contract. *National Publishing Co. v. Hartford Fire Insurance Co.*, 287 Conn. 664, 949 A.2d 1203 (2008). Court will determine whether notice was given within a reasonable period of time. *West Haven v. U.S. Fidelity Co.*, 174 Conn. 392, 389 A.2d 741 (1978). Where notice is not given in a timely manner, coverage will be denied unless insured meets burden of proving no prejudice to insurer as result of delay. *Aetna Cas. & Sur. Co. v. Murphy*, 206 Conn.

409, 538 A.2d 219 (1988); *National Publishing Co. v. Hartford Fire*, 287 Conn. 664, 949 A.2d 1203 (2008).

Bad Faith. Insurer may be liable for extra-contractual damages under tort theory of breach of implied covenant of good faith and fair dealing if plaintiff shows motive and intent. *L.F. Pace & Son, Inc. v. Travelers Ins. Co.*, 9 Conn. App. 30, 514 A.2d 766, cert. denied, 201 Conn. 811 (1986). Claim must rise above mere negligence, to level of wanton or malicious injury, involving a dishonest purpose. *Buckman v. People Exp., Inc.*, 205 Conn. 166, 530 A.2d 597 (1987); *Habetz v. Condon*, 224 Conn. 231, 618 A.2d 501 (1992).

LIMITATION OF TIME FOR COMMENCEMENT OF ACTION

See Law Digest Tables.

Limitations in Contract.

Written, Simple or Implied Contracts (exclusive of any contract governed by UCC): 6 years, although any person legally incapable of bringing such action when right of action accrues may sue within 3 years of becoming legally capable. Conn. Gen. Stat. §52-576.

Oral Contract (exclusive of any contract governed by UCC): 3 years. Conn. Gen. Stat. §52-581.

Accrual. A breach of contract action accrues at time legal injury is inflicted, whether or not injured party is aware of damage. *Amoco Oil Co. v. Liberty Auto & Electric Co.*, 262 Conn. 142, 810 A.2d 259 (2002). A continuing course of conduct can delay accrual of a right of action, thereby tolling the statute of limitations, until course of conduct comes to an end. *Sherwood v. Danbury Hosp.*, 252 Conn. 193, 746 A.2d 730 (2000).

Discovery Rule. Discovery of fact that injury has occurred is not required for a contract right of action to accrue. *Amoco Oil Co. v. Liberty Auto & Electric Co.*, 262 Conn. 142, 810 A. 2d 259 (2002).

Fraud. Fraudulent concealment of a cause of action will toll running of statute of limitations and such cause of action will be deemed to accrue when existence of that cause of action is first discovered. Conn. Gen. Stat. §52-595.

Tolling. There is a tolling provision in statute of limitations applicable to written contracts, for benefit of individuals legally incapable of bringing such an action. Conn. Gen. Stat. §52-576. Such an individual has three years from the time he becomes capable of bringing the action to do so. *Id.* Statute of limitations is also tolled for that period that a defendant is outside State, except that period so excluded shall not exceed 7 years. Conn. Gen. Stat. §52-590.

Waiver. A statute of limitations defense must be specially pleaded. Conn. Practice Book §10-50. Where the right of action exists independently of the statute in which the limitation is found, such a limitation is considered personal and procedural, and it is deemed waived unless it is specially pleaded. *Avon Meadow Condominium Ass'n, Inc. v. Bank of Boston Connecticut*, 50 Conn. App. 688, 719 A.2d 66 (1998). However, where the statute giving rise to the cause of action also defines the time limitation for that cause of action, absent of clear legislative intent to the contrary, such a limitation will directly implicate a court's subject matter jurisdiction and can not be waived. However, in light of presumption in favor of jurisdiction, court requires strong showing of legislative intent to create time limitation that, in the event of noncompliance, acts as a subject matter jurisdictional bar. *Williams v. CHRO*, 257 Conn. 258, 777 A.2d 645 (2001).

Statutes of Limitations for Non-Contract Actions.

Architect, Professional Engineer, or Land Surveyor, Action Against: 7 years from substantial completion of project, unless injury or damage occurs during 7th year, in which case action in tort may be brought within 1 year of occurrence. Conn. Gen. Stat. §52-584a.

Connecticut Unfair Trade Practices Act: 3 years: Conn. Gen. Stat. §42-110g(f).

Crimes.

Capital Felony, Class A Felony, Escape in the First Degree, or Arson Murder: no limitation. Conn. Gen. Stat. §54-193(a).

Offenses Punishable by Imprisonment in Excess of One Year, Except Capital Felony, Class A Felony or Arson Murder: 5 years. Conn. Gen. Stat. §54-193(b).

Any Other Offense: 1 year. Conn. Gen. Stat. §54-193(b).

Criminal Prosecution for Sexual Abuse, Sexual Exploitation or Sexual Assault of a Minor. 30 years from date victim attained majority or within five years of notice to police or States' Attorney of offense, whichever is earlier. Conn. Gen. Stat. §54-193a.

Indemnification, Action For: 3 years from date of determination, either by judgment or settlement, of underlying action against party seeking indemnification. Conn. Gen. Stat. §52-598a.

Judgment for Money Damages.

Execution to Enforce Judgment: 20 years from entry of judgment. Conn. Gen. Stat. §52-598(a).

Action Based on Judgment: 25 years from entry of judgment. Conn. Gen. Stat. §52-598(a).

Execution to Enforce Judgment Rendered in Small Claims Court: 10 years from entry of judgment. Conn. Gen. Stat. §52-598(b).

Action Based on Judgment Rendered in Small Claims Court: 15 years from entry of judgment. Conn. Gen. Stat. §52-598(b).

Libel or Slander: 2 years. Conn. Gen. Stat. §52-597.

Medical Malpractice: 2 years from date when injury is first sustained or discovered or in exercise of reasonable care should have been discovered, except that no such action may be brought more than 3 years from date of act or omission complained of. Conn. Gen. Stat. §52-584.

Municipalities, Action Against.

Damage for Injuries Caused by Defective Roads and Bridges: 2 years (written notice must be filed within 90 days). Conn. Gen. Stat. §13a-149.

Suit Against Municipality for Damages Caused by Employee: 2 years (written notice must be filed within 6 months). Conn. Gen. Stat. §7-465(a).

Negligence Actions in General: 2 years from date when injury is first sustained or discovered or in exercise of reasonable care should have been discovered, except that no such action may be brought more than 3 years from date of act or omission complained of. Conn. Gen. Stat. §52-584.

Products Liability: generally, three years from the date when injury is first sustained or discovered or, in the exercise of reasonable care, should have been discovered, with various statutory exceptions (see discussion under "PRODUCTS LIABILITY" section). Conn. Gen. Stat. §52-577a.

Products Liability Action for Exposure to Asbestos: 60 years for personal injury; 30 years for property damage. Conn. Gen. Stat. §52-577a(e).

Seller of Alcohol (Dram Shop Act): 1 year (written notice must be filed within 120 days of injury or, in the case of death or incapacity, within 180 days). Conn. Gen. Stat. §30-102, amended by Public Act No. 07-165, eff. 10/1/07.

Civil action for Sexual Abuse, Exploitation or Assault of a Minor: 30 years from date such person attains age of majority. Conn. Gen. Stat. §52-577d.

Action on a judgment rendered in a civil action brought to recover damages for personal injury caused by sexual assault, or the party legally at fault for such injury was convicted of either first degree sexual assault or aggravated sexual assault: no limitation. Conn. Gen. Stat. §52-598.

State, Actions Against.

Claims Against State Presented to Claims Commissioner: 1 year from when damage or injury is sustained or discovered or in exercise of reasonable care should have been discovered, provided no claim shall be presented more than 3 years from date of act or event complained of. Conn. Gen. Stat. §4-148(a).

Defective Highway, Bridge or Sidewalk: 2 years (written notice must be filed within 90 days of injury). Conn. Gen. Stat. §13a-144.

Tort Actions In General, Exclusive of Actions Specifically Governed by Another Statute of Limitation: 3 years from date of act or omission complained of. Conn. Gen. Stat. §52-577.

Wrongful Death: 2 years from date of death and no more than 5 years from date of act or omission complained of. Conn. Gen. Stat. §52-555.

Absence From Jurisdiction. In computing applicable period of limitation, time during which party against whom there may be any cause of action is without state shall be excluded from computation, except that time so excluded shall not exceed 7 years. Conn. Gen. Stat. §52-590.

MALPRACTICE

Medical. Statute of Limitations is two years from date injury is first sustained or discovered or in exercise of reasonable care should have been discovered except no action can be brought more than three years from act or omission complained of. Conn. Gen. Stat. §52-584. NOTE: A certificate of reasonable inquiry is required before an action, in tort or contract, against a health care provider can be filed. Certificate of reasonable inquiry must accompany complaint and state that attorney or party filing action has made inquiry of a similar health care provider and as a result has a good faith belief that grounds exist for action. A written, signed opinion of a similar health care provider must accompany the Certificate of reasonable inquiry and state that there appears to be medical negligence and a detailed basis for the opinion. Conn. Gen. Stat. §52-190a. Statute provides for a 90 day extension of statute of limitations upon petition to clerk to allow for such an inquiry. Conn. Gen. Stat. §52-190a(b).

Expert testimony is generally required to establish applicable standard of care, any deviation or departure from said standard, and causation. See Conn. Gen. Stat. §52-184c. *Dimmock v. Lawrence & Memorial Hospital, Inc.*, 286 Conn. 789, 945 A.2d 955 (2008). A witness qualified as an expert may testify in form of an opinion concerning scientific, technical or specialized knowl-



edge, if testimony will assist trier of fact. Conn. Code of Evidence, §7-2.

Informed consent requires health care provider to disclose that information which a reasonable patient would consider material to the decision whether or not to undergo the treatment. *Logan v. Greenwich Hosp. Ass'n*, 191 Conn. 282, 465 A.2d 294 (1983).

Prevailing standard of care is that level of care, skill and treatment, which in light of all relevant surrounding circumstances, is recognized as accepted and appropriate by reasonably prudent similar health care providers. Conn. Gen. Stat. §52-184c(a).

Wrongful Birth. Parents may recover for birth of unplanned child when birth results from negligent medical care. *Ochs v. Bovvelli*, 187 Conn. 253, 445 A.2d 883 (1992); *Burns v. Hanson*, 249 Conn. 809, 734 A.2d 964 (1999).

Hospital. Charitable immunity has been abolished. Conn. Gen. Stat. §52-557d.

Damages. See "DAMAGES" section, *supra*.

Informed consent. Hospital and physician can both be found liable for physician's failure to obtain informed consent in accordance with standard hospital policy. *Logan v. Greenwich Hospital Ass'n*, *supra*. See Connecticut Public Health Code §19-13-D3(d)(8).

Standard of care. Same as for providers above. See also *Mather v. Griffin Hosp.*, 207 Conn. 125, 540 A.2d 666 (1988).

Legal. See "ATTORNEYS" section, *supra*.

NEGLIGENCE

See Law Digest Tables.

Age. Standard of care applicable to a minor in determining negligence may be different from that applicable to an adult and is determined by minor's age, experience and state of development. *Grenier v. Glastonbury*, 118 Conn. 477, 173 A. 160 (1934). Doctrine of negligence per se is inapplicable to an individual under 16 years of age. Conn. Gen. Stat. §52-217.

Assumption of Risk, Last Clear Chance. Doctrines abolished in most negligence actions. Conn. Gen. Stat. §52-572h(l). However, assumption of risk applies to skiers relative to hazards inherent to skiing but does not apply to snow tubing. Conn. Gen. Stat. §29-212.

Attractive Nuisance. Traditional doctrine not followed but where a landowner knows or should know that children are likely to use his land upon which he maintains a condition likely to be dangerous to children, landowner may be held liable for harm resulting to chil-

dren from dangerous condition. *Zarembski v. Three Lakes Park*, 177 Conn. 603, 419 A.2d 339 (1979).

Charitable Immunity. Common law defense of charitable immunity has been abolished. Conn. Gen. Stat. §52-557d. Connecticut extends limited immunity to non-compensated officers, directors and trustees of non-profit organizations for acts, errors or omissions done in good faith exercise of their policy or decision-making responsibilities unless damage or injury caused by reckless, willful or wanton misconduct. Conn. Gen. Stat. §52-557m. Persons who donate food for use or distribution by a non-profit organization also enjoy limited civil immunity. Conn. Gen. Stat. §52-557l.

Comparative/Contributory Negligence. Contributory negligence has been replaced by comparative negligence in causes of action based on negligence, with recovery diminished by a plaintiff's percentage of negligence. Recovery is barred if plaintiff's proportionate share of negligence is greater than combined negligence of all persons and parties to whom negligence is apportioned. Conn. Gen. Stat. §52-572h(b).

Damages (compensatory and punitive). See "DAMAGES" section, *supra*.

Limitations on Awards. Court may order a remittitur or additur if verdict is excessive or inadequate as a matter of law and, upon failure of party so ordered to do so, shall set aside verdict and order a new trial. Conn. Gen. Stat. §52-216a.

Good Samaritan Law. There is no liability for certain statutorily designated healthcare providers rendering voluntary, emergency medical assistance unless their actions represent gross, willful, or wanton negligence. Conn. Gen. Stat. §52-557b(a). Similar protection afforded to firemen, policemen, teachers, ski patrollers, lifeguards and railroad employees. Conn. Gen. Stat. §§52-557b(b)-(f).

Governmental Immunity. State is not liable in tort unless suit is authorized by statute; *Carrubba v. Moskowitz*, 81 Conn. App. 382, 840 A.2d 557 (2004); authorized by a special act of General Assembly; *Chotkowski v. State*, 240 Conn. 246, 690 A.2d 368 (1996); or authorized by Claims Commissioner. *Id.* Municipalities are not protected from suit by sovereign immunity although they have limited immunity from suit when acting in performance of a governmental duty. *Vejseli v. Pasha*, 282 Conn. 561, 923 A.2d 688 (2007). A municipality can be subject to suit for breach of a ministerial, governmental duty. See *Evon v. Andrews*, 211 Conn. 501, 559 A.2d 1131 (1989).

Imputed Negligence. Negligence of an employee is imputed to his employer when done within scope, and in

furtherance of, employment. *A-G Foods, Inc. v. Pepperidge Farm, Inc.*, 216 Conn. 200, 579 A.2d 69 (1990). Negligence of one member of a joint enterprise is imputed to others involved in that joint enterprise. *Dolan v. Dolan*, 107 Conn. 342, 140 A.745 (1928). Negligence of a driver of a car is generally not imputed to a passenger unless control is maintained by passenger. *Reetz v. Mansfield*, 119 Conn. 563, 178 A.53 (1935). There is a statutory presumption that an operator of a motor vehicle is agent and servant of vehicle's owner, and that he is operating that vehicle in course of his employment. Conn. Gen. Stat. §52-183. One who operates a motor vehicle or motorboat, if husband, wife, father, mother, son, or daughter of owner, is presumed to do so with general authority of owner, thereby imputing liability to owner. Conn. Gen. Stat. §52-182. Both of these presumptions are rebuttable. Conn. Gen. Stat. §§52-182 and 52-183. Any person who rents or leases to another a motor vehicle owned by him is liable for any injury or damage to any person or property caused by operation of that motor vehicle while rented or leased, to same extent as operator would have been liable if he had also been owner. Conn. Gen. Stat. §14-154a. Leases of one year or more are exempted if the leased auto carries \$100,000/\$300,000 in bodily injury coverage. *Id.* This statute does not impose liability on lessor or renter for tortious operation of a motor vehicle by a person who is not an authorized driver under terms of lease or rental agreement. *Moncrease v. Chase Manhattan Auto Finance Corp.*, 98 Conn. App. 665, 911 A.2d 315 (2006). Note that 49 U.S.C. §30106 substantially nullifies vicarious liability provisions of Conn. Gen. Stat. §14-154a for any legal action filed after August 10, 2005. See discussion of this federal statute under "AUTOMOBILES." Acts of independent contractor are not imputed to employer; *Wright v. Coe & Anderson, Inc.*, 156 Conn. 145, 239 A.2d 493 (1968); unless employer assumes control of contractor; *Pelletier v. Sordoni/Skanska*, 286 Conn. 563, 945 A.2d 388 (2008); or a non-delegable duty applies. See *Smith v. Town of Greenwich*, 278 Conn. 428, 899 A.2d 563 (2006).

Joint and Several Liability. Doctrine abolished in negligence actions. Conn. Gen. Stat. §52-572h. Partial reallocation of any portion of an award that is unrecoverable is permitted. Conn. Gen. Stat. §52-572h(g).

Last Clear Chance. Doctrine abolished by statute. Conn. Gen. Stat. §52-572h(1).

Liability of Parents. Parents are liable up to amount of \$5,000 for willful and malicious acts of, or damages caused to a motor vehicle taken without permission by, unemancipated minors. Conn. Gen. Stat. §52-572.

Liquor Liability/Dram Shop Act. One who sells alcoholic beverages to intoxicated person may be liable up

to the amount of \$250,000 per person/\$250,000 aggregate for damages or injuries caused by such intoxicated person to another. Written notice must be given to seller within 120 days or within 180 days in the case of death or incapacity, and any action must be brought within 1 year from date of act or omission complained of. Conn. Gen. Stat. §30-102. Common law actions for negligent service to minors are recognized. *Bohan v. Last*, 236 Conn. 670, 674 A.2d 839 (1996). Common law actions were allowed for negligent service of alcohol to adults for the first time as of February 4, 2003, *Craig v. Driscoll*, 262 Conn. 312, 812 A.2d 1003 (2003) until the legislature abrogated *Craig* by statute effective June 3, 2003. Conn. Gen. Stat. §30-102. Statute provides that injured person "shall have no cause of action against such seller for negligence in the sale of alcoholic liquor to a person twenty-one years of age or older." At least one superior court judge has read this limiting amendment involving adults to apply only to "sellers" of alcohol, leaving *Craig* intact as to "social host." *Raymond v. Duffy*, 2005 WL 407655 (Conn. Super. 1/13/05). Notwithstanding the foregoing, provider of alcohol can be held liable if conduct is reckless and wanton. *Kowal v. Hofher*, 181 Conn. 355, 436 A.2d 1 (1980).

Negligence per se. Violation of a statute designed for protection of public is negligence per se. *Coburn v. Lenox Homes, Inc.*, 186 Conn. 370, 441 A.2d 620 (1982). Inapplicable to an individual under the age of 16 years. Conn. Gen. Stat. §52-217.

Premises Liability. Common law distinctions regarding increasing standards of care owed to trespassers, licensees and invitees are recognized. *Kurti v. Becker*, 54 Conn. App. 335, 733 A.2d 916, cert. denied, 251 Conn. 909, 739 A.2d 1248 (1999). A social invitee is entitled to same standard of care as a business invitee. Conn. Gen. Stat. §52-557a. An individual's status is generally a question of fact. *Moonan v. Clark Wellpoint Corp.*, 159 Conn. 178, 268 A.2d 384 (1970). Statutory immunity is afforded to possessor of land or premises made available for recreational use. Conn. Gen. Stat. §52-557g. (See exceptions: Conn. Gen. Stat. §52-557h.)

Proximate Cause. Rule for determining proximate cause is that defendant's action must have been a substantial factor in producing alleged damage. *Wagner v. Clark Equipment Co.*, 243 Conn. 168, 700 A.2d 38 (1997); see also *Archambault v. Sonoco/Northeastern, Inc.*, 287 Conn. 20, 946 A.2d 839 (2008). Proximate cause is a question of fact unless there is no causal relationship between negligence of a defendant and plaintiff's injuries. *Ferndale Dairy, Inc. v. Geiger*, 167 Conn. 533, 356 A.2d 91 (1975).

Res Ipsa Loquitur. Doctrine allows for inference of negligence to be drawn if injury-producing event would

not have occurred in absence of someone's negligence and defendant's inferred negligence was more probably than not cause of injury. *Giles v. New Haven*, 228 Conn. 441, 636 A.2d 1335 (1994).

Sudden Emergency. When defendant is confronted with emergency not of his or her own making, defense permissible as to whether defendant exercised due care under circumstances. *Mei v. Alterman Transport Lines, Inc.*, 159 Conn. 307, 268 A.2d 639 (1970).

NO-FAULT

Connecticut's no-fault automobile insurance law was repealed effective January 1, 1994.

PENALTY AND ATTORNEYS' FEES

Conn. Gen. Stat. §§38a-815, *et seq.*, the Connecticut Unfair Insurance Practices Act (CUIPA), governs first and third-party claims settlement practices in Connecticut. An insurer's unreasonable denial of benefits under a policy may constitute a violation of CUIPA. Although CUIPA is generally held not to create a private right of action per se, a CUIPA violation may be shown to constitute a violation of Conn. Gen. Stat. §§42-110a, *et seq.*, The Connecticut Unfair Trade Practices Act (CUTPA). *Mead v. Burns*, 199 Conn. 651, 509 A.2d 11 (1986). CUTPA provides in §42-110g that a court may award attorneys' fees and costs for a violation of CUTPA. Consequently, because an unreasonable refusal to pay policy benefits violates CUIPA, and a violation of CUIPA is a violation of CUTPA, where an insurer unreasonably fails to pay policy benefits, it can be held liable for attorneys' fees and costs in connection with enforcement of insured's rights to benefits under policy.

There is no exception under Connecticut law to the American Rule to allow recovery of attorneys' fees for insureds that prevail in a declaratory judgment action to establish insurer's obligation to provide coverage under an insurance policy. Connecticut does recognize a bad faith exception to the American Rule, which permits court to award attorneys' fees to prevailing party on basis of bad faith conduct of other party or other party's attorney. Accordingly, even without authorizing contractual or statutory provision, court may award attorneys' fees to policyholder that has prevailed in a declaratory judgment action against its insurer only if policyholder can prove that insurer has engaged in bad faith conduct prior to or in the course of litigation. *ACMAT Corp. v. Greater New York Mut. Ins. Co.*, 282 Conn. 576, 923 A.2d 694 (2007).

PRIVILEGED COMMUNICATIONS

Husband/Wife. Confidential communications between spouses are privileged unless privilege is waived. *State v. Christian*, 267 Conn. 710, 841 A.2d 1158 (2004). Confidential communication privilege is distinct from marital privilege against adverse spousal testimony. *Id.* Marital privilege is inapplicable in spousal support and child support matters. Conn. Gen. Stat. §46b-213a(h). In contrast to confidential communication privilege, marital privilege applies only to those married at time of testimony. *State v. Christian*, 267 Conn. 710, 841 A.2d 1158 (2004).

Clergy. Confidential communications made to a member of clergy in that individual's professional capacity are privileged unless person making confidential communication waives such privilege. Conn. Gen. Stat. §52-146b. Statement is privileged if made by person seeking religious or spiritual advice or comfort. *State v. Paluga*, 171 Conn. 586, 370 A.2d 1049 (1976). Privilege is appropriately applied only to communications involving religious or spiritual advice, aid or comfort; conversations and communications involving more mundane matters such as requests for money, reports and plans are more like communications to any employer and privilege ought not to be expanded beyond its spiritual dimension. *Hethcote v. Norwich Roman Catholic Diocesan Corp.*, 2007 WL 1121361 (Conn. Super. 2007).

Healthcare and Mental Health Professionals. Without a patient's authorization, a physician, surgeon or other licensed healthcare provider may not disclose any communication made by, or any information obtained from, a patient, or any information obtained by personal examination of a patient, except in cases of known or suspected child abuse, abuse of an elderly individual, or abuse of individuals who are mentally or physically handicapped. Conn. Gen. Stat. §52-146o. *See also* Health Insurance Portability and Accountability Act (HIPAA) Privacy Regulations, 45 C.F.R. §164.524 (2002) (setting strict standards for consent to disclosure of medical information). Disclosure is permitted by a physician, surgeon or other licensed healthcare provider, to an attorney or insurer if a claim has been filed against him or there is reasonable belief that such a claim will be made. Conn. Gen. Stat. §52-146o. Similar rules exist regarding confidential communications between a patient and psychologist (Conn. Gen. Stat. §52-146c), psychiatrist (Conn. Gen. Stat. §52-146d & 52-146e), battered women's or sexual abuse counselor (Conn. Gen. Stat. §52-146k), marital or family therapist (Conn. Gen. Stat. §52-146p), and social worker (Conn. Gen. Stat. §52-146q).

Attorney/Client. Communications by a client to an attorney, if made in confidence when seeking legal ad-

vice, are privileged unless privilege is waived by client. *Cox v. Burdick*, 98 Conn. App. 167, 907 A.2d 1282 (2006). Privilege applies to statements to third parties, such as investigators and experts, retained to aid in case preparation and also to attorney acting as legal advisor. Attorney-client privilege is not disrupted by presence of certain third parties who are agents or employees of attorney or client when third party is necessary to consultation. *Olson v. Accessory Controls & Equipment Corp.*, 254 Conn. 145, 757 A.2d 14 (2000). Exception to privilege exists where legal advice is integral to outcome of legal claims, *i.e.* where attorney/client relationship is placed at issue in litigation, *Breton v. Commissioner of Correction*, 49 Conn. Supp. 592, 899 A.2d 747 (2006), and where communications at issue were made to further criminal or fraudulent purpose. *Olson v. Accessory Controls & Equip. Corp.*, 254 Conn. 145, 757 A.2d 14 (2000).

Journalists. Connecticut has never formally adopted a privilege allowing journalists to protect confidential sources. *But see Connecticut State Bd. of Labor Relations v. Fagin*, 33 Conn. Supp. 204, 370 A.2d 1095 (1976), in which a trial court recognized a de facto qualified privilege in that regard. In *Harp v. King*, 2000 WL 327429 (Conn. Super. Mar. 15, 2000), court went a step further and recognized a journalistic privilege not to reveal identity of a confidential source and held that any waiver of that privilege must constitute “intentional relinquishment or abandonment of a known right or privilege.” At *3.

Insurer/Insured. Connecticut does not recognize privilege which attaches to communications simply between an insured and insurer. *Stanley Works v. New Britain Redevelopment Agency*, 155 Conn. 86, 230 A.2d 9 (1967). Nevertheless, the Superior Court has recognized attorney-client privilege continues to protect confidentiality of communications between attorney and client in the presence of insurer. *Royal Indemnity Co. v. Terra Firma, Inc.*, 2007 Conn. Super. LEXIS 315; *but see Hutchinson v. Farm Family Cas. Ins. Co.*, 273 Conn. 33, 867 A.2d 1 (2005) (limiting the scope of attorney-client privilege in bad faith actions brought by insured against insurer).

PRODUCTS LIABILITY

General. Connecticut Products Liability Act is codified by Conn. Gen. Stat. §52-572m, *et seq.* This Act encompasses “all claims or actions brought for personal injury, death or property damage caused by the manufacture, construction, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging or labeling of any product.” Conn. Gen. Stat. §52-572m(b). A “product liability claim” includes,

but is not limited to, all actions based on the theories of strict liability in tort, negligence, breach of warranty (express or implied), breach of or failure to discharge a duty to warn or instruct (whether negligent or innocent), and misrepresentation or nondisclosure (whether negligent or innocent). Conn. Gen. Stat. §52-572m(b). If a product liability claim is alleged, that claim is in lieu of “all other claims against product sellers, including actions of negligence, strict liability and warranty, for harm caused by a product.” Conn. Gen. Stat. §52-572n(a); *see Gerrity v. R.J. Reynolds Tobacco Co.*, 263 Conn. 120, 818 A.2d 769 (2003). Connecticut appellate courts have not yet addressed issue of whether statutory claims such as CUTPA may be included in product liability complaint, and trial courts have differed in their opinions on the subject. *See Barry v. Quality Steel Prods., Inc.*, 1999 WL 1013234 (Conn. Super. Ct. Oct. 29, 1999).

Duty to Warn. A product may be defective due to lack of adequate warnings. If a product has unreasonably dangerous propensities, a failure to warn by itself constitutes a defect. *Moran v. Eastern Equipment Sales, Inc.*, 76 Conn. App. 137, 818 A.2d 848 (2003). A claimant must prove that lack of adequate warning proximately caused harm. Conn. Gen. Stat. §52-572q(c); *Haesche v. Kissner*, 229 Conn. 213, 640 A.2d 89 (1994).

Statute of Limitations. A product liability action must be brought within 3 years from date when injury, death or property damage is first sustained or discovered or in exercise of reasonable care should have been discovered, except that no action may be brought against any party more than 10 years from date that such party last parted with possession or control of product. Conn. Gen. Stat. §52-577a(a). There are, however, exceptions to this 10-year limitation. Pursuant to Conn. Gen. Stat. §52-577a(c), a plaintiff who is not entitled to workers’ compensation benefits may bring an action if alleged harm occurred within the “useful safe life” of product, which is a question of fact. Additionally, pursuant to Conn. Gen. Stat. §52-577a(d), 10-year limitations period is extended pursuant to terms of any written warranties and does not preclude an action against a product seller who intentionally misrepresents or fraudulently conceals information about product (provided that misrepresentation or fraudulent concealment proximately caused harm to plaintiff). Lastly, pursuant to Conn. Gen. Stat. §52-577a(e), 10-year limitation is inapplicable to asbestos claims.

Comparative Responsibility. Connecticut’s Product Liability Act provides for pure comparative fault. While comparative responsibility of plaintiff does not bar recovery, compensatory damages are reduced by plaintiff’s proportionate share of fault. Conn. Gen. Stat. §52-



572o(a). As part of rendering a verdict in favor of a plaintiff in a product liability action, trier of fact may answer special interrogatories specifying proportionate liability of each party, as well as amount of damages each claimant would receive if comparative negligence were disregarded. Conn. Gen. Stat. §52-572o(b). Court then determines award for each claimant according to these findings, and enters judgment against liable parties on basis of common law doctrine of joint and several liability. Conn. Gen. Stat. §52-572o(d). As such, a successful plaintiff has option of obtaining full satisfaction of an award from a single tortfeasor.

Contribution between Joint Tortfeasors. Contribution between joint tortfeasors is permitted as long as an action for contribution is brought within 1 year after judgment becomes final. Conn. Gen. Stat. §52-572o(e). If no judgment is rendered (*i.e.*, an out-of-court settlement), person bringing action for contribution must have either 1) discharged by payment common liability within period of statute of limitations applicable to right of action against him, and commenced action for contribution within 1 year after payment, or 2) agreed while action was pending to discharge common liability and, within 1 year of agreement, paid liability and brought action for contribution. Conn. Gen. Stat. §52-572o(e).

Defenses to a Products Liability Claim. A product seller is not liable for harm caused by alteration or modification of a product by a third party unless alteration or modification was in accordance with instructions or specifications of product seller, was made with consent of product seller, or was result of conduct that reasonably should have been anticipated by product seller. Conn. Gen. Stat. §52-572p; *See also Potter v. Chicago Pneumatic Tool Co.*, 241 Conn. 199, 694 A.2d 1319 (1997). Defense that a product was misused, or that it was knowingly used in a defective condition, may also be asserted in an action based on strict tort liability. Conn. Gen. Stat. §52-572l. State-of-the-art evidence is relevant to determining adequacy of product's design, but compliance with state-of-the-art is not an affirmative defense. *Potter v. Chicago Pneumatic Tool Co.*, *supra*. Assumption of risk, a negligence-based defense, is inapplicable to product liability claims in strict tort, Conn. Gen. Stat. §52-572l; but is available in actions under Connecticut Products Liability Act. *Elliot v. Sears Roebuck & Co.*, 30 Conn. App. 664, A.2d 1371 (1993), *aff'd on other grounds*, 229 Conn. 500, 642 A.2d 709 (1994). Lack of privity of contract is not a defense. Because product liability actions sound in tort, no privity of contract is required before an injured user may bring an action against manufacturer based upon strict tort liability. *Potter v. Chicago Pneumatic Tool Co.*, 241 Conn. 199, 694 A.2d 1319 (1997). Learned Intermediary or Sophisticated User Doctrine is not an absolute defense. How-

ever, user's product knowledge is a factor in determining necessity or adequacy of warnings. *Sharp v. Wyatt, Inc.*, 31 Conn. App. 824, 627 A.2d 1347 (1993).

Punitive Damages. Conn. Gen. Stat. §52-240b allows trier of fact to determine whether punitive damages should be awarded in a products liability action. Punitive damages are allowed if claimant proves that harm suffered was a result of product seller's reckless disregard for safety of product users, consumers or others who were injured by product. *Wagner v. Clark Equip. Co.*, 243 Conn. 168, 700 A.2d 38 (1997). Upon such a finding, punitive damages may be awarded in an amount not to exceed twice the compensatory damages awarded. Conn. Gen. Stat. §52-240b.

Indemnification. A passively negligent party may seek common law indemnification by way of a cross-claim from an actively negligent party in a product liability action. *Malerba v. Cessna Aircraft*, 210 Conn. 189, 554 A.2d 287 (1989). Except in context of a workers' compensation claim, a tortfeasor seeking indemnity need not establish existence of an independent legal relationship between himself and joint tortfeasor from whom indemnity is sought. *Skuzinski v. Bouchard Fuels, Inc.*, 240 Conn. 694, 694 A.2d 788 (1997). *See also Kyrtatas v. Stop & Shop, Inc.*, 205 Conn. 694, 535 A.2d 357 (1988) (noting that where all potential defendants are parties to the suit, common law indemnification is abrogated by doctrine of comparative responsibility as provided in Conn. Gen. Stat. §52-572o). Separate action for indemnification may be brought within three years from date of either judgment or settlement by party seeking indemnity. Conn. Gen. Stat. §52-598a.

Expert Testimony. Connecticut adopts *Daubert* test for determining admissibility of scientific evidence and abandons *Frye* test. *Prentice v. Dalco Electric, Inc.*, 280 Conn. 336, 907 A.2d 1204 (2006); *State v. Porter*, 241 Conn. 57, 698 A.2d 739 (1997) (relying on *Daubert v. Merrell Dow Pharmaceutical, Inc.*, 509 U.S. 579 (1993)). Under *Daubert* test, if methodology underlying a scientific opinion has requisite validity, testimony derived from that methodology meets threshold for admissibility. However, scientific opinion may still be excluded under other evidentiary grounds.

The trial court judges are vested with responsibility of ensuring that expert testimony is both reliable and relevant. In *Daubert*, the United States Supreme Court offers four non-exclusive factors to consider in determining threshold admissibility of scientific opinion: 1) whether theory or technique has been tested; 2) whether theory or technique has been subjected to peer review and publication; 3) known potential rate of error; and 4) whether theory or technique has gained a general acceptance within scientific or relevant community.



In Connecticut, in addition to *Daubert* factors, trial court may also consider following non-exclusive factors: 1) prestige and background of expert; 2) extent to which scientific theory or technique depends on subjective interpretation by expert; 3) whether expert can explain data and methodology in a manner in which trier of fact can reasonably reach his own conclusion; and 4) whether theory or technique is developed solely for in-court use. *State v. Porter, supra.*

In determining a product defect in complex design cases where particular facts do not reasonably permit inference that product did not meet safety expectations of ordinary consumer, Connecticut applies Modified Consumer Expectation Test, otherwise Ordinary Consumer Expectation Test still applies. *Potter v. Chicago Pneumatic Tool Co., supra.* Modified Consumer Expectation Test measures consumer's expectations by balancing utility of product's design with magnitude of its risks. Factors which trier of fact may consider include: 1) usefulness of product; 2) likelihood and severity of danger posed by design; 3) feasibility of an alternative design; 4) financial cost of an improved design; 5) ability to reduce product's danger without impairing usefulness or making it too expensive; and 6) feasibility of spreading loss by increasing product's price. *Id.*

RELEASE

See Law Digest Tables.

Contract Law—General.

Consideration. In order to be valid and binding, a release must contain all requirements of a valid contract. Hence, release must be supported by valid consideration. *Viera v. Cohen*, 283 Conn. 412, 927 A.2d 843 (2007). A release is supported by valid consideration if something of value is received to which recipient had no previous right. *DiMartino v. Hartford*, 636 F. Supp. 1241 (D. Conn. 1986). A bona fide compromise of a disputed claim is sufficient consideration for release of that claim. *Id.*

A release does not become effective until condition stated within a release has been performed and release delivered to releasee. *Halloran v. Fischer*, 126 Conn. 44, 9 A.2d 290 (1939).

Accord and Satisfaction. "An accord is a contract between creditor and debtor for settlement of a claim by some performance other than that which is due. Satisfaction takes place when accord is executed." *Newman Partners, P.C. v. CFC Construction*, 236 Conn. 750, 674 a.2d 1313 (1996). A meeting of the minds or mutual assent is required for a valid accord. *Munroe v. Emhart Corp.*, 46 Conn. App. 37, 699 A.2d 213 (1997). Satisfaction of accord discharges original duty. *Tolland Enter-*

prises v. Scan-Code, Inc., 239 Conn. 326, 684 A.2d 1150 (1996). If obligor breaches accord, obligee may choose to enforce original duty or accord. *Davis v. Forman School*, 54 Conn. App. 841, 738 A.2d 697 (1999).

Joint Tortfeasors. In Connecticut, release of one tortfeasor does not discharge other tortfeasors from liability unless release so provides. Conn. Gen. Stat. §52-572e(b). However, where liability of principal for a tort committed by his agent is predicated solely upon doctrine of respondeat superior, a valid release of agent operates to release principal. *Cunha v. Colon*, 260 Conn. 15, 792 A.2d 832 (2002). Similarly, a release executed in favor of lessee of motor vehicle operates as matter of law to release vehicle's lessor whose claimed liability is solely vicarious. *Id.*

Connecticut has adopted "intent" approach to interpreting general releases. *Sims v. Honda Motor Co.*, 225 Conn. 401, 623 A.2d 995 (1993). A general release which provides for release of any and all other persons, firms and corporations discharges only those joint tortfeasors whom contracting parties actually intended to be released. *Mulligan v. Hall*, 229 Conn. 224, 640 A.2d 108 (1994). Parol evidence rule does not prohibit court from considering extrinsic evidence of parties' intent regarding scope of release, whether language of release is ambiguous or not. *Id.*

Any release shall be voidable at option of releasor if negotiated within fifteen (15) days from date of tortious act. Conn. Gen. Stat. §52-572a.

Release given by both parents or by parent who has legal custody of a minor shall be valid and binding upon minor, if consideration does not exceed \$10,000. Conn. Gen. Stat. §45a-631. If consideration or settlement amount exceeds \$10,000, court must either appoint guardian or such property may be held by custodian pursuant to Conn. Gen. Stat. §§45a-557 through 45a-560b without being so appointed.

Contract engaged in by minor (under age of eighteen) is voidable rather than void. Thus, minor or his guardian has option of voiding or ratifying contract. *Blancato v. Feldspar Corp.*, 203 Conn. 34, 522 A.2d 1235 (1987).

Fraud and Misrepresentation. Fraud vitiates all contracts, including general releases. *Pacelli Bros. Transp., Inc. v. Pacelli*, 189 Conn. 401, 456 A.2d 325 (1983). Rescission of a contract can result from an innocent misrepresentation. *Munroe v. Great American Insurance Co.*, 234 Conn. 182, 661 A.2d 581 (1995). Unintentional failure to disclose a material fact has same effect as an innocent misrepresentation. *Duksa v. City of Middletown*, 173 Conn. 124, 376 A.2d 1099 (1977).

A release must be specially pled. Conn. Prac. Book §10-50; *Lawton v. Weiner*, 91 Conn. App. 698, 882 A.2d 151 (2005).

A release or an agreement with a tortfeasor not to sue may not be introduced into evidence during a jury trial against other tortfeasors. Conn. Gen. Stat. §52-216a. If necessary, scope of a release is to be resolved by trier of fact in a bifurcated trial. *Donner v. Kearse*, 234 Conn. 660, 662 A.2d 1269 (1995).

Although released, an entity may be assessed for its proportionate share of fault as part of any subsequent trial against other negligent tortfeasors. Release discharges that party from all liability for any judgment rendered, and total award of damages is then reduced by released entity's percentage of negligence. Conn. Gen. Stat. §52-572h(n).

REPRESENTATIONS AND WARRANTIES

In insurance application misrepresentation cases, material misrepresentations which insured knows are untrue invalidate insurance policy without proof of conscious design to defraud. *Middlesex Mut. Assurance Co. v. Walsh*, 218 Conn. 681, 590 A.2d 957 (1991). A representation is material when a reasonably careful and intelligent person would find that misrepresented information increases degree or character of risk so as to substantially influence issuance of policy or applicable rate of premium. *Pinette v. Assurance Co. of America*, 52 F.3d 407 (2nd Cir. 1995). In determining whether an application response is false, court will construe question as a layman would understand it; if there is room for two or more reasonable constructions, question will be interpreted against insurer. *Middlesex Mut. Assurance Co., supra*.

In instances of health or life insurance policies which do not require a medical examination, misrepresentations in response to medical inquiries expressly incorporated into policy are material as a matter of law. *State Bank & Trust Co. v. Conn. Gen. Life Ins. Co.*, 109 Conn. 67, 145 A. 565 (1929).

In automobile liability insurance cases brought by third parties, insurer cannot rescind based upon application misrepresentations of insured. Conn. Gen. Stat. §38a-343; *Munroe v. Great Am. Ins. Co.*, 234 Conn. 182, 661 A.2d 581 (1995).

SERVICE OF PROCESS

Civil actions are commenced by legal process consisting of a writ of summons or attachment, accompanied by plaintiff's complaint. Conn. Gen. Stat. §52-45a. In superior court actions, service must be effectuated at least 12 days prior to return date. Conn. Gen. Stat. §52-

46. Notice of service of process must be returned to court at least six days prior to return date except in summary process, paternity and support cases. Conn. Gen. Stat. §52-46a. In all actions other than summary process actions, return date may be any Tuesday of any month. Conn. Gen. Stat. §52-48. Generally, process is served by state marshal, constable, or other proper officer authorized by statute. Conn. Gen. Stat. §52-50(a). Under certain circumstances, service may be made by indifferent person. Conn. Gen. Stat. §52-50(b).

Service of Process upon Individuals within the State. Service is usually effectuated by leaving an attested copy of summons and complaint with defendant or at defendant's usual place of abode (in which case, officer making service must note in return the address at which attested copy is left). Conn. Gen. Stat. §52-57(a) and §52-54. Service can also be made by an officer reading summons and complaint within hearing of defendant. Conn. Gen. Stat. §52-54.

Service of Process without State upon Persons Domiciled or Subject To Jurisdiction of Courts in State. Person domiciled in or subject to jurisdiction of Connecticut courts, or his executor or administrator, may be served with process without state, in same manner as service is made within state, by any person authorized to make service by laws of state, territory, possession, or country in which service is to be made or by any duly qualified attorney, solicitor, barrister, or equivalent in such jurisdiction. Conn. Gen. Stat. §52-57a.

Service of Process upon Municipalities. Process upon a municipality is effectuated as follows: against town—upon its clerk, assistant clerk, manager, or one of its selectmen; against City—upon its clerk or assistant clerk or upon its mayor or manager; against borough—upon its manager, clerk, or assistant clerk, or upon warden or one of its burgesses; against school district—upon its clerk or one of its committee; and against any other municipal or quasi-municipal corporations—upon its clerk or upon its chief presiding officer or managing agent. Conn. Gen. Stat. §52-57(b).

Service of Process upon a Private Corporation Established under Laws of Connecticut. In actions against private corporation, service of process must be made upon president, vice president, assistant vice president, secretary, assistant secretary, treasurer, assistant treasurer, cashier, assistant cashier, teller or assistant teller, general or managing agent, manager, any director resident in Connecticut, any person in charge of business of corporation, or any person in charge of office of corporation in town in which its principal office or place of business is located. Conn. Gen. Stat. §52-57(c). For definition of "managing agent," see *Nelson v. Stop &*

Shop Co., 25 Conn. App. 637, 596 A.2d 4, *cert. denied*, 220 Conn. 924, 598 A.2d 364 (1991).

Service of Process upon Private Corporations Established outside Connecticut. In actions against private corporation established under laws of any other state, foreign country, or United States, service of process can be made on any officers or agents listed in preceding paragraph, or upon agent of corporation appointed pursuant to Conn. Gen. Stat. §33-922. Conn. Gen. Stat. §52-57(c). Where a foreign corporation has neither officers nor an agent for service within state, or has withdrawn from transacting business in state, service of process may be effected by any proper officer or other person lawfully empowered to make service by certified or registered mail directed to secretary of corporation. Conn. Gen. Stat. §33-929(b).

Service of Process upon a Partnership. In actions against partnership, service of process is made by personally serving process within state upon any partner or, if no partner is resident of state, upon secretary of state, provided, prior to return date, officer serving writ shall mail a copy of writ and complaint by registered or certified mail, return receipt requested, to last known address of every partner named in writ but not personally served. A statement of such mailing, and a certified mail receipt, shall be included in officer's return. Conn. Gen. Stat. §52-57(d).

Service of Process upon a Voluntary Association. In actions against voluntary association, service of process may be made upon presiding officer, secretary or treasurer. If none of those officers are residents of state, and voluntary association is doing business, acting or carrying out operations or functions within state, voluntary association shall be deemed to have appointed secretary of state as its attorney and to have agreed that process brought against it may be served upon secretary of state. Conn. Gen. Stat. §52-57(e).

Service of Process upon Nonresident Fiduciaries. Process against non-resident executor, administrator, conservator, guardian or trustee, in representative capacity, or in his individual capacity, in any action founded upon or arising from acts or omissions of such executor, administrator, conservator, guardian or trustee, may be served by leaving true and attested copy of summons and complaint with judge of probate in district where estate is in settlement. Conn. Gen. Stat. §52-61.

Service of Process upon Nonresident in Action for Negligent Operation of Motor Vehicle. Any nonresident of Connecticut who uses or operates motor vehicle upon public highway or elsewhere in Connecticut is deemed to have appointed Commissioner of Motor Vehicles as attorney, and to have agreed that process in civil action

brought in claim for damages resulting from alleged negligence of nonresident, or his agent or servant, may be served upon Commissioner and shall have same validity as if served upon nonresident personally. Conn. Gen. Stat. §52-62(a). Death of such nonresident does not operate to revoke appointment of Commissioner of Motor Vehicles as attorney for service of process. Conn. Gen. Stat. §52-62(b). Procedure for serving process upon Commissioner of Motor Vehicles is specified in Conn. Gen. Stat. §52-62(c).

Service of Process upon Motor Vehicle Operator or Owner Not Found at Recorded Address. Any operator or owner of motor vehicle at time of issuance of license or registration shall be deemed to have appointed Commissioner of Motor Vehicles as attorney, and to have agreed that process in civil action against him for damages resulting from his alleged negligence, or alleged negligence of servant or agent, in operating motor vehicle in Connecticut may be served upon Commissioner, and shall have same validity as if served upon owner or operator personally, even though person may have left state prior to commencement of action or his present whereabouts may be unknown. Conn. Gen. Stat. §52-63(a). Procedure for service of civil process upon owner or operator of motor vehicle under this statute is specified in Conn. Gen. Stat. §52-63(b) and (c).

Service of Process in Action against the State of Connecticut. Service of process in civil action or proceeding against State of Connecticut or against any institution, board, commission, department or administrative tribunal thereof, or against officer, servant, agent or employee of those entities, may be made by a proper officer by leaving true and attested copy of process, including declaration or complaint, with Attorney General or by sending a true and attested copy by certified, return receipt requested, to the Attorney General's office in Hartford. Conn. Gen. Stat. §52-64.

Insurance Commissioner as Agent For Service of Process. Pursuant to Conn. Gen. Stat. §38a-25, Insurance Commissioner is agent for service in actions against 1) foreign and alien insurance companies authorized to do business in Connecticut; 2) fraternal benefit societies authorized to do business within the state; 3) insurance support organizations as defined in Conn. Gen. Stat. §38a-976(m) transacting business outside the state which affects a resident within the state; 4) risk retention groups as defined in Conn. Gen. Stat. §38a-250; 5) purchasing groups designating Insurance Commissioner as agent for service pursuant to Conn. Gen. Stat. §38a-261; 6) eligible surplus lines insurers authorized by Insurance Commissioner to accept surplus lines insurance; 7) except as provided by Conn. Gen. Stat. §38a-273, unauthorized insurers or other persons assisting unauthorized

insurers to transact insurance business as set forth in Conn. Gen. Stat. §38a-271; 8) Connecticut Insurance Guaranty Association and Connecticut Life & Health Insurance Guaranty Association; 9) insurance companies designating Insurance Commissioner as agent for service pursuant to Conn. Gen. Stat. §38a-85(g); 10) non-resident producers and non-resident surplus lines brokers licensed in Connecticut; 11) life settlement providers and life settlement brokers licensed by Insurance Commissioner; 12) Nonresident reinsurance intermediaries designating Commissioner as agent pursuant to Conn. Gen. Stat. §38a-760b; 13) workers' compensation self-insurance groups, as defined in Conn. Gen. Stat. §38a-100l; and 14) persons alleged to have violated any provision of Conn. Gen. Stat. §38a-130. Conn. Gen. Stat. §38a-25. Procedure for service of process upon Insurance Commissioner is contained in Conn. Gen. Stat. §38a-26.

SUBROGATION

In General. Subrogation, as an equitable doctrine invokes matters of policy and fairness. *DiLullo v. Joseph*, 259 Conn. 847, 792 A.2d 819 (2002). Distinction between conventional and legal or equitable subrogation discussed. *Westchester Fire Ins. Co. v. Allstate Ins. Co.*, 236 Conn. 362, 672 A.2d 939 (1996); *see also Wasko v. Manella*, 269 Conn. 527, 849 A.2d 777 (2004). Insurer who has indemnified its insured is subrogated to insured's rights as against third parties, but only to extent it has paid insured's claim. *Conn. Mut. Life v. N.Y. and New Haven RR Co.*, 25 Conn. 265, 65 A. 571 (1856). Judgment creditor is subrogated to all rights of insured judgment debtor and has a right of action against insurer to same extent that insured judgment debtor has such right. Conn. Gen. Stat. §38a-321. This statute is construed not to give judgment creditor any greater rights under policy than those possessed by judgment debtor, nor to deprive insurer of any defenses which would ordinarily be available to it in action by its insured. *Arton v. Liberty Mut. Ins. Co.*, 163 Conn. 127, 302 A.2d 284 (1972). A third party has no recovery against insurer where insured breached policy condition. *Brown v. Employers' Reins.*, 206 Conn. 668, 539 A.2d 138 (1988).

Fire Insurance. In absence of a specific agreement to contrary, a fire insurer of leased premises does not have a right of subrogation against a tenant for negligently causing a fire. *DiLullo v. Joseph*, 259 Conn. 847, 792 A.2d 819 (2002) (holding based on policy consideration that economic waste would result should a tenant be placed in position of having to duplicate landlord's coverage). *Middlesex Mut. Assur. Co. v. Vazil*, 279 Conn. 28, 900 A.2d 513 (2006). Insurer can bring equitable subrogation action against social houseguest who

negligently causes fire that damages insured's property. *Wasko v. Manella*, 269 Conn. 527, 849 A.2d 777 (2004).

Indemnity Insurance. Assured cannot recover from indemnity company money paid in part to avoid publicity. *Bristol Trust Co. v. National Surety Co.*, 97 Conn. 198, 116 A. 251 (1922). Indemnity contract provides insurer subrogation rights in corresponding amount to insured's right of action against person responsible for loss, absent any formal assignment of right or express stipulation to that effect in policy. *Hartford Accident v. Chung*, 37 Conn. Supp. 587, 429 A.2d 158 (1981).

Parties to Action. Defendant in subrogation action may cite in plaintiff's insured to answer counter-claim for negligence on part of insured. *Hartford Fire v. Lewis*, 16 Conn. Supp. 90 (Conn. Super. 1948). An insurer's subrogation action to recoup from a tortfeasor, or liability carrier which denied coverage, benefits paid under an uninsured and underinsured motorist policy is not an assignment of a personal injury action, which would be contrary to public policy. *Westchester Fire Ins. v. Allstate Ins. Co.*, 236 Conn. 362, 672 A.2d 939 (1996). Under Conn. Gen. Stat. §38a-336b, however, no insurer providing underinsured motorist coverage shall have any right of subrogation against owner or operator of underinsured motor vehicle. Also, under Conn. Gen. Stat. §52-225c, an entity is precluded from attempting to recover from any other entity those amounts paid to a claimant which constitute "collateral sources" pursuant to Conn. Gen. Stat. §52-225b, including any health, sickness or accident insurance benefits. Note, however, that this statute may be preempted by federal legislation (*i.e.*, ER-ISA) which permits recoupment of benefits provided.

Surety. Surety who pays debt of principal is subrogated to rights of creditor. Payment of debt is generally required before surety can bring action against principal. *Savings Bank of Manchester v. Kane*, 35 Conn. Supp. 82, 392 A.2d 952 (1978).

Workers' Compensation. Insurer may intervene in employee's third-party action, may bring its own direct action to recover benefits paid to insured's employee, or may simply give written notice of its lien to any third-parties prior to judgment or settlement. Conn. Gen. Stat. §31-293. Insurer has 30 days from notice of suit in which to intervene. Insurer entitled to credit in amount of judgment or settlement against present or future workers' compensation liability if it intervenes in employee's action, brings direct action or gives notice of lien on judgment or settlement. *Libby v. Goodwin Pontiac*, 241 Conn. 170, 795 A.2d 1036 (1997). Lien does not extend to loss of consortium award obtained by spouse of an injured worker from a third-party tortfeasor. *Schiano v. Bliss Exterminating*, 13 Conn. Workers' Comp. Rev. Op. 45 (Dec. 7, 1994).



Uninsured Motorist. Uninsured motorist insurer may maintain equitable subrogation action against liability insurer as equitable subrogation is not equivalent of assignment of personal injury chose in action. *Westchester Fire Ins. Co. v. Allstate Ins. Co.*, 236 Conn. 362, 672 A.2d 939 (1996). Underinsured motorist insurer has no right of subrogation against owner or operator of underinsured motor vehicle. Conn. Gen. Stat. §38a-336b.

See "WORKERS' COMPENSATION."

SUICIDE

Death by suicide is not considered caused by accidental means. *Wojcik v. Metropolitan Life*, 124 Conn. 532, 1 A.2d 131 (1938). Removal of patient from extraordinary mechanical devices is death by natural causes. *McConnell v. Beverly Enterprises*, 209 Conn. 692, 553 A.2d 596 (1989); Conn. Gen. Stat. §§19a-570 to 19a-575. Workers' compensation claims due to suicide or self-inflicted injury are not compensable, unless resulting from mental condition arising out of employment. *Wilder v. Russell Library*, 107 Conn. 56, 139 A. 644 (1927). Whether suicide or self-inflicted injury resulted from mental condition arising out of employment is to be determined by substantial contributing factor test. *Dixon v. United Illuminating Co.*, 57 Conn. App. 51, 748 A.2d 300 (2000).

THEFT

Anyone who steals property of another, or knowingly receives and conceals stolen property of another, shall pay owner treble damages. Conn. Gen. Stat. §52-564. Standard of proof for award of treble damages is clear and convincing evidence. *Suarez-Negrete v. Trotta*, 47 Conn. App. 517, 705 A.2d 215 (1998). When policy permits insurer to return a recovered stolen car, insurer must do so within reasonable time, and recovered car must be in substantially same condition as when stolen; measure of damages where insurer undertakes to pay loss up to certain amount is value of automobile less value of lessor's interest where plaintiff is merely lessee of car. *Martoni v. Massachusetts Fire & Marine Ins. Co.*, 106 Conn. 519, 138 A. 462 (1927). Where policy requires notice of theft, conduct of insurer's agent in taking statement from insured may estop it from claiming defects in notice. *Cupo v. Royal Ins. Co.*, 101 Conn. 586, 126 A. 844 (1924).

WAIVER AND ESTOPPEL

In General. Generally accepted definition of waiver is intentional relinquishment of known right or privilege by possessor of that right or privilege. *Wadia Enterprises, Inc. v. Hirschfeld*, 224 Conn. 240, 618 A.2d 506 (1992). Estoppel rests on misleading conduct of one

party to the prejudice of the other. *W v. W*, 256 Conn. 657, 779 A.2d 716 (2001). Fact that plaintiff pleads in terms of waiver and not estoppel is of no consequence; an estoppel in pais need not be pleaded. *Wolfe v. Wallingford Bank and Trust Co.*, 124 Conn. 507, 1 A.2d 146 (1938). Absence of good faith defeats claim of estoppel. *Novella v. Hartford Accident & Indem. Co.*, 163 Conn. 552, 316 A.2d 394 (1972). Express waiver may be inferred from conduct. *City of New Haven v. Local 884, Council 4, AFSCME*, 237 Conn. 378, 677 A.2d 1350 (1996). Rights once waived cannot be regained by revoking waiver. *Matthew v. Nagy Bros. Constr. Co.*, 88 Conn. App. 787, 871 A.2d 1067 (2005). Once insurance company waived its right to deny coverage in interspousal action, waiver could not be withdrawn even if subsequent events prove right waived to be more valuable than anticipated. *Jenkins v. Indem. Ins. Co.*, 152 Conn. 249, 205 A.2d 780 (1964). Delay by insurer in denying liability until grounds for repudiation are investigated does not constitute waiver where plaintiff not prejudiced. *Arton v. Liberty Mut. Ins. Co.*, 163 Conn. 127, 302 A.2d 284 (1972). While estoppel need not be specially pleaded, Connecticut requires special pleading of waiver. *Del Vecchio v. Del Vecchio*, 146 Conn. 188, 148 A.2d 554 (1959).

Waiver by Agent. Majority of courts hold, except in cases of fraud, knowledge obtained by an agent, acting in scope of his authority, is knowledge of insurer. However, insurer can restrict authority of agent by so providing in policy. *Bahr v. Prudential Ins. Co.*, 5 Conn. Cir. 620, 260 A.2d 422 (1969).

Insurer entitled to credit in amount of judgment or settlement against present or future workers' compensation liability if it intervenes in employee's action, brings direct action or gives notice of lien on judgment or settlement. *Libby v. Goodwin Pontiac-GMC Truck*, 241 Conn. 170, 695 A.2d 1036 (1997).

Failure of insurer's agent to question assured concerning his ownership of automobile does not constitute waiver of breach of condition precedent as to ownership. *Mishiloff v. American Central Ins. Co.*, 102 Conn. 370, 128 A. 33 (1925). However, acceptance or retention of policy premiums with knowledge of its breach or after demand for their return by insured will constitute an implied waiver of claims regarding lack of enforceability. *Id.*

Non-waiver Agreements. Provisions that no forfeiture can be waived except by written agreement does not preclude operation of principle that insurer may not disclaim coverage based on late notice, if insurer was not prejudiced thereby. *Aetna Cas. & Sur. v. Murphy*, 206 Conn. 409, 538 A.2d 219 (1988); *Taricani v. Nationwide Mut. Ins. Co.*, 77 Conn. App. 139, 822 A.2d 341 (2003).

However, insurer's assumption of defense without reservation of rights constitutes waiver of right to deny coverage. *Basta v. U.S. Fidelity & Guar. Co.*, 107 Conn. 446, 140 A. 816 (1928). If insurer conducts self in manner inconsistent with reservation of rights, it may waive its coverage defenses. *West Haven v. Hartford Ins. Co.*, 221 Conn. 149, 602 A.2d 988 (1992). Connecticut courts recognize that insurance policy is not a negotiated contract, there is no meeting of minds, coverage must be purchased in form submitted without alteration, and that policy is usually purchased by someone who does not subject policy to much scrutiny, and therefore has only reasonable expectations concerning coverage. *Bouchard v. Travelers Indem. Co.*, 28 Conn. Supp. 122, 253 A.2d 497 (1969).

Premiums. Receipt and retention of premium with full knowledge of breach of policy condition is treated as waiver or estoppel in pais, but if first knowledge of fact is after loss and after claim is made, retention of premium pending investigation and litigation cannot be regarded as constituting waiver. *O'Connor v. Metropolitan Life Ins. Co.*, 121 Conn. 599, 186 A. 618 (1936). Failure of insured to demand return of unearned premium after cancellation of policy cannot be basis of estoppel in favor of insurer whose duty it was to return such premium without demand. *Bessette v. Fidelity & Cas. Co.*, 111 Conn. 549, 150 A. 706 (1930). Election of insurer to accept premium tendered for policy after having been fully informed by insured of threatened strike by his employees is waiver or estoppel of right to urge forfeiture of policy upon ground that nonexistence of certain facts, as stated in application, was warranty that such condition should continue until time of delivery of policy. *Buffalo Forge Co. v. Mutual Security Co.*, 83 Conn. 393, 76 A. 995 (1910).

Proof of Loss. Acceptance of unsworn proof of loss or insurer's silence respecting defective notice of loss and continuance to treat claim as one properly before it for investigation and settlement, thereby inducing claimant or assured to refrain from amending statement until too late to do so, is such conduct as will estop it from thereafter objecting to such defects. *Cahill v. Royal Ins. Co.*, 94 Conn. 118, 108 A. 544 (1919). Conditions in policy, such as furnishing proof of loss, made for exclusive benefit of insurer, may be waived. *Couch v. City Fire Ins. Co.*, 37 Conn. 248 (1870).

Notice of Claim. Policy requirement concerning prompt written notice is waived where agent acts upon oral notice, makes investigation and undertakes defense of civil action with reservation of insurer's rights. *Di-Francesco v. Zurich Gen'l Acc. & Liab. Ins. Co.*, 105 Conn. 162, 134 A. 789 (1926). Where insured violated terms of policy by not giving insurer prompt notice of

claim, violation was waived when insurer undertook defense of claim for short period without reservation of rights. *Aetna Cas. & Surety Co. v. Murphy*, *supra*. But defending action while specifically reserving all rights under policy does not estop company from denying coverage. *City of West Haven v. Hartford Ins. Co.*, 221 Conn. 149, 602 A.2d 988 (1992); *Basta v. United States Fid. & Guar. Co.*, 107 Conn. 446, 140 A. 816 (1928). Nor will attempt by insurer to adjust case in suit void a clear and unambiguous reservation of rights. *Aronson v. American Employers Ins. Co.*, 12 Conn. Supp. 452 (1944).

Claims-made insurer had no statutory duty to provide non-named insured with written notice of right to purchase extended reporting period coverage; thus its failure to do so did not estop it from denying coverage for claims made beyond the policy's termination. *Am. Home Assur. Co. v. Abrams*, 69 F. Supp. 2d 339 (D. Conn. 1999).

WORKERS' COMPENSATION

Jurisdiction. Workers' Compensation Commission, consisting of sixteen commissioners, has jurisdiction to administer workers' compensation system. Conn. Gen. Stat. §31-276. Commissioners will hear all claims and questions arising under workers' compensation. Conn. Gen. Stat. §31-278. Compensation Review Board reviews appeals of decisions by commissioners. Conn. Gen. Stat. §31-280b. Any party aggrieved may appeal decision of Review Board to Appellate Court. Conn. Gen. Stat. §31-301b.

Benefits. Wages. Average weekly wage is calculated by averaging gross wages for 52-week period immediately preceding week of an accidental injury. Conn. Gen. Stat. §31-310. In case of an occupational disease or an injury from repeated acts, week of injury is deemed to be week employee became totally or partially incapacitated. Conn. Gen. Stat. §31-310c.

Medical. Employers shall furnish competent medical services to injured employee as soon as they have knowledge of injury. Conn. Gen. Stat. §31-294d. Although claimant is permitted to select physician, Conn. Gen. Stat. §31-294d, he may be limited to a provider who participates in employer's health insurance plan. Employee claiming or receiving compensation shall submit, at employer's expense, to an examination by a reputable practicing physician or surgeon upon employer's request or at direction of Commissioner for purpose of evaluating injury and incapacity of employee. Conn. Gen. Stat. §31-294f.

Disability. Employee with total incapacity shall receive 75% of average weekly earnings as of date of in-

jury, reduced by taxes and Federal Insurance Contributions Act. Conn. Gen. Stat. §31-307. Benefits not paid within 35 days of written notice are deemed “unduly delayed” unless a notice to contest is filed. Conn. Gen. Stat. §31-300. Employee with partial incapacity shall receive 75% of difference of wages earned by employee in comparable position as injured employee held before injury and amount employee currently is able to earn, less deduction for taxes and Federal Insurance Contributions Act, except where physician certifies employee unable to perform regular work, but can perform other work, employee willing to perform other work, but no other work available; then employee shall receive full weekly compensation. Conn. Gen. Stat. §31-308. Commissioner may award additional compensation for permanent partial disability, Conn. Gen. Stat. §31-308a, or for disfigurement or scarring of face, head or neck. Conn. Gen. Stat. §31-308(c).

Death. Employee dying on or after October 1, 1988 shall receive \$4,000 for burial expenses. Dependents of deceased shall receive 75% of deceased’s average weekly earnings reduced by taxes and Federal Insurance Contribution Act. For injuries occurring on or after October 1, 1977, weekly compensation amounts shall be adjusted annually to provide for cost-of-living increases. If surviving spouse is sole dependent, compensation shall be paid until death or remarriage. If dependent children living with surviving spouse, compensation paid as if surviving spouse is sole dependent. If there is surviving spouse and dependent children not of spouse and not living with surviving spouse, compensation divided into as many shares as are dependents. If compensation to spouse terminates or no spouse at time of death, compensation to be shared equally among dependent children until children attain 18 years of age or dies before attaining 18 years of age with exceptions due to education and incapacity of child. Conn. Gen. Stat. §31-306.

Employer/Employee Defined. An “employee” includes, inter alia, any person who enters into or works under contract of service or apprenticeship with an employer, whether such contract contemplated performance of duties within or without state. Conn. Gen. Stat. §31-275 (9). A sole proprietor or business partner may elect to be covered under the Act. An independent contractor is not an “employee”; *Bourgeois v. Cacciapuoti*, 138 Conn. 317, 84 A.2d 122 (1951); nor is a so-called “casual employee,” one who is employed for purposes other than employer’s trade or business. Conn. Gen. Stat. §31-275(9)(B)(ii).

Notice of Claim. To recover workers’ comp benefits, employee must give written “Notice of Claim” to employer within one year of date of accident or within

three years from first manifestation or symptom of occupational disease which caused injury. Conn. Gen. Stat. §31-294c. Notice must be served personally or by registered or certified mail. Conn. Gen. Stat. §31-321. Notice requirement is excused if, within the statutory period: 1) employer provides medical treatment; 2) hearing is requested or scheduled; or 3) voluntary agreement between parties is signed and submitted to commissioner for approval. Within 28 days of receipt of notice of claim, employer must file notice of intent to contest claim. Conn. Gen. Stat. §31-294c.

Arising out of and in the Course of Employment. To be compensable, injury must arise out of employment and occur in course of employment. Injury must occur within period of employment, at place where employee may reasonably be, while reasonably fulfilling duties of employment or doing something incidental to employment. *Labadie v. Norwalk Rehab. Svs., Inc.*, 274 Conn. 219, 875 A.2d 485 (2005). Irrebuttable presumption that injury arose during course of employment is created if employer fails to file notice of intent to contest claim within 28 days of receipt of notice of claim. *Harpaz v. Laidlaw Transit, Inc.* 286 Conn. 102, 942 A.2d 396 (2008). Test as to whether incidental activities of employees are within course of employment is whether employer approved of or acquiesced in such activities in past, not whether employer derived benefit therefrom. *McNamara v. Town of Hamden*, 176 Conn. 547, 398 A.2d 1161 (1979). However, absent some frequent activity, endorsed, approved or permitted by the employer, a claimant must demonstrate some benefit to his or her employer in order to satisfy the ‘incident to employment’ requirement. *Brown v. United Technologies Corp.*, 112 Conn. App. 492, 963 A.2d 1027 (2009).

Types of Injuries Covered. Traumatic or “single occurrence” injuries (*i.e.*, heart attacks, strokes, etc.) are fully covered, as long as employee proves injury arose out of and during course of employment. Occupational diseases (*i.e.* sick building syndrome, asbestosis) injuries are also covered, as are repetitive trauma injuries (*i.e.* carpal tunnel syndrome, tennis elbow). Mental or emotional impairments are compensable only if psychiatric or emotional problem arises from compensable physical injury or occupational disease. Conn. Gen. Stat. §31-275(16).

Type of Injuries Not Covered. Injuries arising from voluntary, participation in social or recreational activities, or from any personnel action, including firing, demotion, transfer, are not compensable. Conn. Gen. Stat. §31-275(16)(B)(i) and (iii). Suicides or self-inflicting injuries are generally not compensable, unless they result from mental condition arising out of employment. *Dixon v. United Illuminating Co.*, 57 Conn. App. 51, 748 A.2d

300 (2000). Injuries caused by wilful and serious misconduct of injured employee or his intoxication are not compensable. Conn. Gen. Stat. §31-284(a); however, if such conduct is condoned by employer, it may be compensable. Injury caused to innocent bystander due to misconduct or horseplay is covered if the horseplay may be considered a risk incident to the conditions under which the employment is performed. *Shedlock v. Cudahy Packing Co.*, 134 Conn. 672, 60 A.2d 514 (1948). An accidental injury, disability, or death due to use of alcohol or narcotic drugs shall not be compensable. Conn. Gen. Stat. §31-275(1)(C).

Statutes of Limitations. For traumatic, single event injury, one-year limitation applies. For occupational diseases, limit is three years from manifestation of symptoms. For death cases, limit is two years from date of accident or onset of symptoms of occupational disease, or one year from date of death, whichever is later. Conn. Gen. Stat. §31-294c.

Fellow Employee Rule. No action may be brought against a fellow employee unless wrong was wilful or malicious, or was based on fellow employee's operation of a motor vehicle. Conn. Gen. Stat. §31-293a. An assault by co-employee is generally not compensable, unless assault was incidental to employment (rather than strictly personal), or if existence of employee fighting was known to employer. *Shedlock v. Cudahy Packing Co.*, 134 Conn. 672, 60 A.2d 514 (1948).

Exclusive Remedy. Workers' compensation remedy is generally exclusive; Conn. Gen. Stat. §31-284(a); unless employee can prove wilful and wanton misconduct by employer. *Suarez v. Dickmont Plastics Corp.*, 242 Conn. 255, 698 A.2d 838 (1997); *Morocco v. Rex Lumber*, 72 Conn. App. 516, 805 A.2d 168 (2002). This requires an employee to establish "either that the employer actually intended to injure" the employee or "that the employer intentionally created a dangerous condition that made the [employee's] injuries substantially certain to occur." *Suarez, supra*. Willful violation of OSHA statutes does not fall within willful and wanton misconduct exception to workers' compensation statutes. *Martinez v. Southington Metal Fabricating Co.*, 101 Conn. App. 796, 924 A.2d 150 (2007). Tortfeasor may implead employer for indemnity purposes where independent legal relationship exists. *Skuzinski v. Bouchard Fuels*, 240 Conn. 694, 694 A.2d 788 (1997).

Principal Employer Liability. Connecticut has a limited "principal employer" statute. A principal employer (usually general contractors) can be liable for injuries to subcontractors or their employees if four criteria are met. First, contractor must be hired to perform work for principal employer; second, contractor must be performing work in trade or business of principal employer; third, injury must occur on or about premises under principal employer's control; and fourth, employee's own employer (subcontractor) must not have workers' comp coverage as required by statute. Principal employer is not entitled to exclusive remedy defense unless actual compensation benefits have been paid. Conn. Gen. Stat. §31-291; see *Pelletier v. Sordoni/Skanska Constr. Co.*, 264 Conn. 509, 824 A.2d 72 (2003); *Djeddar v. Rowley Spring Stamping Corp.*, 2008 LEXIS 2475 (Conn. Super. (8/25/08)).

Subrogation Rights of Employer/Insurer. Employer (or insurer) who was obligated to pay compensation to employee may bring direct action against third-party tortfeasors to recover amount paid or obligated to pay, or may intervene in employee's suit against third-party. Conn. Gen. Stat. §31-293. Third party which caused injury to employee, and which is sued by employer, cannot counterclaim against employer unless there is independent legal relationship between third-party and employer. *Mable v. Bass Transportation*, 40 Conn. Supp. 253, 490 A.2d 548 (1983), *aff'd*, 3 Conn. App. 547, 490 A.2d 538 (1985); *Maccarone v. Hawley*, 7 Conn. App. 19, 507 A.2d 506 (1986). Employer who seeks to intervene has 30 days from notice of suit to do so; Conn. Gen. Stat. §31-293; although at least one court refused to toll statute of limitations even when employer did not receive notice until after limitations period expired. *Wonacott v. Northeast Utilities*, 1995 WL 631897 (Conn. Super. 10/18/95). Employer need not intervene for injuries after July 1, 1993, but must only give written notice of lien to third-parties prior to judgment or settlement of employee's third-party claim. Conn. Gen. Stat. §31-293(a).

Pre-existing Injuries. A second injury that occurred before July 1, 1995 may be transferred by employer to Second Injury Fund; fund is closed to second injuries which occurred thereafter. Conn. Gen. Stat. §31-349. Second injury is defined as second disability resulting in a permanent disability caused by both conditions which is materially and substantially greater than that caused by second injury alone. Conn. Gen. Stat. §31-349.