

Decisions of Interest

Insurer Has Right To Examination Under Oath

In *Thomas v. Response Insurance*, CV-08-6000662-S, (2009, Gilardi, J.) plaintiff objected to defendant's request for an Examination Under Oath (EUO) in an underinsured motorist case (UIM) on the ground that defendant should be required to take the testimony by deposition as the matter was in suit and therefore controlled by the Practice Book. Plaintiff alleged that: the EUO process was oppressive; it did not provide for objections to questions; and it would allow for questions that were irrelevant. This office persuaded the Court that the UIM claim was a quasi-contractual claim and was governed by the contract/policy. Furthermore, the Examination Under Oath process would allow the examination to be resumed if reasonably necessary in the future should the need arise. The argument was consistent with this office's argument in *Gifford v. Connecticut Life and Casualty Insurance Co.*, CV-02-0470859-S where this office successfully convinced the Court to require claimant to submit to a

medical examination with a doctor of the defendant's choice pursuant to the policy. The *Thomas* Court held that the contract language controlled and that an Examination Under Oath was not oppressive as claimed.

Insanity/Emotional Distress

In *Merrimack Mutual Fire Insurance v. Ramsey*, 117 Conn. App. 769 (2009) the Court held that a policy exclusion for "physical abuse" prevented a claim wherein the injured party was stabbed by the insured. In the underlying criminal case, the victim disputed that the assailant was "insane" and the assailant thereafter pled guilty. The victim then brought a civil action that this office defended claiming that the assailant was, in fact, "insane" and therefore could not form the requisite intent to commit an intentional act. The carrier then brought the declaratory judgment action alleging that the insured's mental state was irrelevant for purposes of the "physical abuse" exclusion. The Court agreed with the carrier finding that there was no coverage and therefore no obligation to defend or indemnify.

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In a similar matter, of *USAA Casualty Insurance Co. v. Edington*, CV-07-5010522-S, (2009, Arnold, J.) involving a well publicized crime, the defendant who was an attorney, thought that his neighbor sexually assaulted his child based on information supplied by his wife. Defendant then stabbed and killed the neighbor. Following institution of the claim for compensation, the (continued)

tortfeasor's carrier filed a declaratory judgment action arguing that there was no coverage as the action was intentional. Plaintiff alleged that the tortfeasor, while not criminally insane, was acting under extreme emotional distress and therefore lacked the appreciation of the wrongful conduct. The Court found that the guilty plea in the underlying matter included an element of intent to cause serious physical injury thereby establishing that the act was intentional and therefore eliminated coverage.

Large Verdict Doesn't Shock Conscience

In the most recent case challenging large verdicts, the Court refused to reduce a verdict with a non-economic damage award of \$800,000 for a cervical

fusion. *Fu v. Lin*, CV-08-5013493-S (2009, Rush, JTR). The Court held that a verdict should only be disturbed when the evidence was "most persuasive character" that the verdict shocked the conscience of the Court. Although the award was large, it was a significant surgery and did not shock the Court's conscience.

Destruction of Information

In *Reid v. Mashantucket Pequot Gaming Enterprise*, CV-PI-2008-106 (2009, Londregan, J.) the Casino had video showing an individual falling. The video included 2 minutes of events prior to the fall and all relevant time thereafter. Plaintiff argued that: the destruction of the video prior to the 2 minutes was an intentional destruction and prevented plaintiff from proving notice; and that the Court

should sanction the defendant by eliminating the necessity to prove notice. The Court held that failure to retain the prior video was part of the normal process of the defendant by recording over older video and was therefore not done "intentionally" to adversely affect plaintiff by destroying information. Also, there was no timely request to retain additional prior coverage. Accordingly, the Court denied the request for an adverse inference and found for defendant. In *Ciacciarella v. Bronko* No.: 3:07 cv1241 (2009, Kravitz, J.) plaintiff alleged that defendant intentionally deleted recordings of conversations that she had with another party and requested an adverse inference from the jury. The Court allowed the adverse inference but ruled that the Jury was not required to hold the conduct against the defendant.

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