

Decisions of Interest

“Dog Bite” Statute Requires Affirmative Act By Dog

Consistent with *Moulten v. Coffee & More LLC*, CV-10-6006205-S, (Wagner, J.T.R.) (2010) earlier reported by this office, where plaintiff tripped over defendant’s sleeping dog and the Court barred a statutory claim as there needed to be an affirmative act by the dog in order to recover under the ‘dog bite’ statute, the Court in *Atkinson v. Santore*, CV-10-6002701-S (Cobb, J.) granted Summary Judgment for defendant where his dog did nothing to actively cause an injury. Plaintiff, who was babysitting defendant’s children, saw defendant’s dog near a raccoon that later tested positive for rabies. The dog did not bite, scratch or actively injure the plaintiff. She claimed that the dog being in close contact to the raccoon and then being near her caused her to undergo rabies injections. The Court found that even though the dog bite statute allows for recovery for “any damage” to the body of another person that plaintiff must prove an affirmative act that was vicious, mischievous or that the act actually caused an injury.

Insurer Required To Defend Sexual Assault Claim

In *New London County Mutual Insurance Co. v. Lyon*, CV-09-5012978-S (2011) (Cosgrove, J.), an individual was allegedly sexually assaulted at defendant’s home. The carrier filed a declaratory judgment action seeking to enforce the “sexual molestation, corporal punishment or physical or mental abuse” exclusion. Defendant argued that the only claim against him was for negligent supervision of a party that occurred when he was not home. The Court held that it was reasonable for a homeowner to expect that an insurer will defend the homeowner if there are any injuries as a result from the alleged conduct of individuals who visit the homeowner’s property. The Court, citing *Amica Mutual Insurance Co. v. Wetmore*, (Radcliff, J.) (2009) held that the exclusion did not apply when the insured did not commit the sexual assault. This office secured Summary Judgment for a homeowner where the claimant initially stayed before going to the party on the theory that there was no evidence that the original homeowner knew or should have

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known that the minor child was going to sneak out of the house and go to the party.

Single Accident/Occurrence

In *Sukhrani v. Johnson*, CV-07-0701223-S (2011) (Dooley, J.), plaintiff vehicle was rear-ended on two occasions in a single chain-reaction accident. Plaintiff sustained significant injuries and argued that there were two separate accidents triggering two separate policy limits. The Court held that although the (continued)

insurance policy does not define the term “accident” that the controlling question was whether the collisions were part of the same “causal continuum.” Finding that they were, the Court found that plaintiff had access to only one policy limit.

Athletic Activity Exclusion Upheld

In *Community Renewal Team, Inc. v. United States Liability Insurance Company*, AC-31317, the Appellate Court upheld a Trial court decision finding that the exclusion barred coverage. Plaintiff was injured while engaging in a freefall activity with a rope where a city employee was to have caught the defendant before striking the ground. The policy contained an “athletic activity or sports participants” exclusion. Plaintiff argued that the term was ambiguous and that the activity in question was not a

specifically defined act. The Court held that it would not torture the normal definition of the word “athletic” and that it was clear that the activity in question was athletic.

Questionable Juror Conduct

In the you never know what a jury will do category, in *Foster v. Delman*, CV-06-50012506 (2011) (Ozalis, J.) not involving this office, plaintiff prevailed and defendant moved to set aside the verdict due to juror misconduct. The foreperson provided an affidavit that she was pressured to vote for plaintiff as the remaining jurors intimidated her and called her “stupid”. The Court denied the motion finding that despite juror “irregularities” that defendant failed to establish that the misconduct caused an unfair or prejudicial result .

Practice Book Revisions

Effective January 1, 2012, Connecticut will mirror the procedure in all Federal Courts and most state courts, that each party to a deposition must pay for their transcripts. Presently, the person taking the deposition must pay for the copy for all “adverse” parties. While it remains to be seen what the court reporters will charge “attendees,” it is hoped that this change will significantly lower the cost of depositions for the party noticing the deposition, particularly defendants, as more depositions are noticed by defendants than plaintiffs. The downside of the rule change is that litigation will become more expensive for plaintiffs as they will need to purchase more transcripts or forgo obtaining copies until trial approaches.

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