MARGARET JACARUSO *v.* RICHARD F. LEBSKI
(AC 30150)

Bishop, Harper and Foti, Js.

Argued September 2—officially released December 1, 2009

(Appeal from Superior Court, judicial district of Fairfield, Arnold, J.)

Harold L. Rosnick, for the appellant (plaintiff).

Miles N. Esty, with whom, on the brief, was *Robert N. Reed*, for the appellee (defendant Nationwide Mutual Insurance Company).

Opinion

FOTI, J. This appeal arises from an action seeking recovery pursuant to the uninsured-underinsured motorist provisions of an automobile insurance policy (policy) issued by the defendant Nationwide Mutual Insurance Company[1] to the plaintiff, Margaret Jacaruso. Jacaruso appeals from the judgment of the trial court granting the defendant's motion for summary judgment and denying her cross motion for summary judgment. The court concluded that there were no genuine issues of material fact and that the defendant was entitled to judgment as a matter of law because under the clear and unambiguous language of the policy, there were no uninsured-underinsured motorist benefits available to Jacaruso under the circumstances. On appeal, Jacaruso contends that the court improperly determined that the monetary limits of the uninsured-underinsured motorist coverage had been reduced by amounts paid to a third party under the same policy's liability and umbrella coverage. We affirm the judgment of the trial court.

The following stipulated facts and procedural history are relevant to our resolution of Jacaruso's appeal. On March 13, 2004, a vehicle operated by Richard F. Lebski collided with a vehicle operated by Jacaruso. Beatrice Picone was a passenger in Jacaruso's vehicle. Both Picone and Jacaruso sustained physical injuries and other damages as a result of the accident. Both Picone and Jacaruso also filed legal actions against Lebski, each alleging that Lebski's negligence caused their injuries. At the time of the collision, Lebski was insured under a liability policy with Geico. That policy had recovery limits for bodily injury of $50,000 per person and $100,000 per occurrence. Geico paid both Jacaruso and Picone $50,000 each and thereby exhausted the limits of Lebski's insurance coverage.

In her legal action against Lebski, Picone also named Jacaruso in this appeal as a defendant. Picone alleged that Jacaruso's negligence was the cause of Picone's injuries. See *Picone* v. *Lebski*, Superior Court, judicial district of Fairfield, Docket No. CV-04-4001685-S (August 3, 2005) (39 Conn. L. Rptr. 735). Jacaruso, at the time of the accident, was insured under an automobile liability policy issued by the defendant in this appeal. The defendant paid $400,000 to Picone to settle her claim against Jacaruso. That payment was made partially under the liability portion and partially under the umbrella insurance coverage of Jacaruso's automobile insurance policy. Jacaruso then successfully filed a motion to implead the defendant in her action against Lebski, seeking to recover uninsured-underinsured benefits pursuant to her policy. That policy had uninsured-underinsured motorist coverage limits of $300,000.

The parties filed cross motions for summary judg-

ment. On July 7, 2008, the court issued a memorandum of decision granting the defendant's motion for summary judgment and denying Jacaruso's cross motion. The court concluded that the defendant was not liable to Jacaruso for uninsured-underinsured motorist benefits because the $300,000 policy limit was reduced to zero by the $100,000 in combined payments Geico had made to Picone and Jacaruso, as well as the $400,000 the defendant had paid to Picone to settle her negligence claim against Jacaruso.[2] The court further concluded that § 38a-334-6 (d) (1) (A) and (C) of the Regulations of Connecticut State Agencies allowed for such a reduction.

Subsequently, Jacaruso filed this appeal, claiming that the court improperly rendered summary judgment in favor of the defendant and denied her motion for summary judgment.[3] Specifically, Jacaruso claims that the court improperly interpreted the language of the insurance policy and the requirements set forth in § 38a-334-6 (d) (1) (A) and (C) to allow for a reduction in uninsured-underinsured benefits.

We begin by setting forth the applicable standard of review. Practice Book § 17-49 provides that summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The court was presented with cross motions for summary judgment that were based on stipulated facts. Therefore, our review is plenary, and we must determine whether the court's conclusions of law are legally and logically correct and find support in the stipulated facts. See *Doucette* v. *Pomes*, 247 Conn. 442, 453, 724 A.2d 481 (1999). Moreover, "[i]nterpretation of an insurance policy, like the interpretation of other written contracts, involves a determination of the intent of the parties as expressed by the language of the policy. . . . Unlike certain other contracts, however, where absent statutory warranty or definitive contract language the intent of the parties and thus the meaning of the contract is a factual question subject to limited appellate review . . . construction of a contract of insurance presents a question of law for the court which this court reviews de novo. . . . Moreover, we have concluded that an insurer may not, by contract, reduce its liability for such uninsured or underinsured motorist coverage except as § 38-175a-6 [now § 38a-334-6] of the Regulations of Connecticut State Agencies expressly authorizes." (Internal quotation marks omitted.) *Nichols* v. *Salem Subway Restaurant*, 98 Conn. App. 837, 841–42, 912 A.2d 1037 (2006). The interpretation of a state regulation is an issue of law over which our review is plenary. See *Executive Services, Inc.* v. *Karwowski*, 80 Conn. App. 124, 126, 832 A.2d 1212 (2003), cert. denied, 268 Conn. 908, 845 A.2d 411 (2004). On appeal, we must determine whether the reduction in benefits at issue is

authorized by the language of the policy and whether that language comports with Regulations of Connecticut State Agencies § 38a-334-6 (d) (1) (A) and (C).

Jacaruso first argues that the reduction in uninsured-underinsured motorist benefits claimed by the defendant is not authorized by the policy. Our analysis begins with the provision of the policy that controls uninsured-underinsured motorist benefits, which provides in relevant part: "The limits of this [uninsured-underinsured motorist] coverage and/or any amounts payable under this coverage, whichever are less, will be reduced by: [a] any amount paid by or for any liable parties." It is axiomatic that an insurance policy may provide for a reduction in the policy's stated limits to the extent that an insured has been compensated from other sources for damages sustained during a compensable accident. *Savoie* v. *Prudential Property & Casualty Ins. Co.*, 84 Conn. App. 594, 600, 854 A.2d 786, cert. denied, 271 Conn. 932, 859 A.2d 930 (2004). "The limit of the insurer's liability may not be less than the applicable limits for bodily injury liability specified in subsection (a) of section 14-112 of the general statutes, except that the policy may provide for the reduction of limits to the extent that damages have been (A) *paid by or on behalf of any person responsible for the injury* . . . (B) paid or are payable under any workers' compensation law, or (C) *paid under the policy in settlement of a liability claim*." (Emphasis added.) Regs., Conn. State Agencies § 38a-334-6 (d) (1).

Jacaruso contends that under the plain language of the policy, the defendant is not entitled to the reduction in uninsured-underinsured motorist coverage for the $400,000 payment to Picone because the policy omits an express provision that allows for moneys "paid under the policy in settlement of a liability claim." Id., § 38a-334-6 (d) (1) (C). Furthermore, Jacaruso argues, because the policy provision tracks only the language of § 38a-334-6 (d) (1) (A) and omits any language tracking § 38a-334-6 (d) (1) (C), it is clearly intended to credit payments made outside of the subject policy by a tortfeasor to the insured and was not intended to credit the defendant for payments made by the defendant under the liability coverage of the policy to a third party. Jacaruso concludes that the defendant chose not to include in the policy language authorized by § 38a-334-6 (d) (1) (C) and, therefore, under a plain reading of the policy, no reduction for the $400,000 payment the defendant made to Picone is authorized. The defendant, on the other hand, argues that pursuant to the plain, unambiguous language of the policy, it is authorized to reduce the available uninsured-underinsured motorist benefits for all payments to *any* injured party and not merely for payments to the insured.

We agree with the defendant that under the unambiguous terms of the policy and the uncontested facts

of this case, it was entitled to reduce the uninsured-underinsured motorist benefits available to Jacaruso by the amount the defendant paid on her behalf to Picone. The policy expressly states that uninsured-underinsured motorist benefits can be reduced by "any amount paid by or for any liable parties." There is no indication that this provision was intended to restrict payments applicable to a reduction in benefits to payments made by tortfeasors outside the policy or to exclude payments made by the defendant to Jacaruso. It is a fundamental principle of insurance policy interpretation that "the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous." (Internal quotation marks omitted.) *Stephan* v. *Pennsylvania General Ins. Co.*, 224 Conn. 758, 764, 621 A.2d 258 (1993). To give the provision the meaning suggested by Jacaruso would be an exercise in formal logic, resulting in this court essentially rewriting the policy. That we cannot do. See *Nichols* v. *Salem Subway Restaurant*, supra, 98 Conn. App. 843.

The relevant language in the policy is plain and unambiguous and, therefore, must be given its natural and ordinary meaning. See *Savoie* v. *Prudential Property & Casualty Ins. Co.*, supra, 84 Conn. App. 601 (insurance policy provisions afforded their natural and ordinary meaning). The term "any amount paid by or for any liable parties" refers to payments made both from within the policy's coverage itself as well as those made by other tortfeasors. Although this provision could have included an express reduction resulting from the amount "paid under the policy in settlement of a liability claim," it need not because the absence of such language alone does not lead to the determination that the provision is ambiguous. The term "any," used to modify both the amount and on whose behalf such payments were made, clearly includes even those amounts paid under the policy by the defendant in settlement of a liability claim. As a result, we conclude that the court properly interpreted the provision of the policy as providing for a reduction in uninsured-underinsured motorist benefits for any payments made in settlement of a liability claim.[4] That conclusion, however, does not end our analysis, as we must now determine whether that deduction is authorized under § 38a-334-6 (d) (1) (A) and (C).

"[I]f the policy comports with the language of the regulation, it will be deemed to provide that same level of protection permitted by the regulation. . . . In order for a policy exclusion to be expressly authorized by [a] statute [or regulation], there must be substantial congruence between the statutory [or regulatory] provision and the policy provision." (Internal quotation marks omitted.) *Nichols* v. *Salem Subway Restaurant*, supra, 98 Conn. App. 844. As noted previously, the applicable regulation allows an insurer to limit its uninsured-

underinsured motorist liability "to the extent that damages have been (A) paid by or on behalf of any person responsible for the injury . . . or . . . (C) paid under the policy in settlement of a liability claim." Regs., Conn. State Agencies § 38a-334-6 (d) (1). Jacaruso essentially argues that because the policy provision that authorized reduction to the uninsured-underinsured motorist benefits tracks only the language of § 38a-334-6 (d) (1) (A) and omits any language tracking § 38a-334-6 (d) (1) (C), it cannot provide that same level of protection permitted by the regulation because there is no substantial congruence between that provision and the regulation. To determine otherwise, Jacaruso contends, this court would have to interpret § 38a-334-6 (d) (1) (A) to include payments made to third parties under the liability provisions of the subject policy thus rendering "void, superfluous, meaningless and insignificant" § 38a-334-6 (d) (1) (C), which would violate basic judicial tenets of statutory construction to which we are bound. See *Vibert* v. *Board of Education*, 260 Conn. 167, 171, 793 A.2d 1076 (2002) ("[w]hen construing a statute, we do not interpret some clauses in a manner that nullifies others, but rather read the statute as a whole and so as to reconcile all parts as far as possible" [internal quotation marks omitted]).

There is no requirement that the policy provision must be identical to the regulation for it to be expressly provided for by statute. The policy language allows for a reduction of uninsured-underinsured motorist benefits for "any amount paid by or for any liable parties." The defendant's payment to Picone was in settlement of a claim of negligence against Jacaruso, the defendant's insured under the policy. We conclude that the policy provision is an attempt to combine the provisions of § 38a-334-6 (d) (1) (A) and (C) and that it does not materially alter the regulation. See *Nichols* v. *Salem Subway Restaurant*, supra, 98 Conn. App. 845. The change in language between the policy and § 38a-334-6 (d) (1) (C) merely reflects that attempt. This determination does not require this court to interpret § 38a-334-6 (d) (1) (A) in a way that renders § 38a-334-6 (d) (1) (C) void, superfluous, meaningless or insignificant because in determining that the provision and the regulations are substantially congruent, we necessarily conclude that § 38a-334-6 (d) (1) (C) and the terms of the provision correspond in all material respects. In other words, to determine that the provision and regulation are substantially congruent, we need not conclude that *only* § 38a-334-6 (d) (1) (A) is represented in the policy language. We can, and do, conclude that the policy provision reflects a *combination* of § 38a-334-6 (d) (1) (A) and (C), not merely one to the exclusion of the other. We conclude, therefore, that § 38a-334-6 (d) (1) (C) and the provision in the policy correspond in all material respects and that there is substantial congruence between the regulatory provisions and the policy

provision. Consequently, because § 38a-334-6 (d) (1) (C) permits a reduction for benefits paid to settle a liability claim, the policy language must be deemed to provide the defendant with a legitimate reduction. See id.; *Vitti* v. *Allstate Ins. Co.*, 245 Conn. 169, 174, 713 A.2d 1269 (1998); *Roy* v. *Centennial Ins. Co.*, 171 Conn. 463, 466, 370 A.2d 1011 (1976).

The judgment is affirmed.

In this opinion HARPER, J., concurred.

[1] Prior to the filing of the motions for summary judgment at issue in this appeal by the plaintiff Margaret Jacaruso, the court, *Doherty, J.*, granted her motion to implead Nationwide Mutual Insurance Company as a defendant. Jacaruso brought her action initially against the defendant Richard F. Lebski; however, because he was not a party to the motions for summary judgment that are the subject of this appeal, we refer in this opinion only to Nationwide Mutual Insurance Company as the defendant.

[2] In the stipulated facts presented to the trial court, Jacaruso conceded that the defendant was entitled under the policy to a credit against the uninsured-underinsured motorist limit *only* for the $50,000 paid by Geico to Picone. In her brief to this court, however, Jacaruso conceded that the defendant was entitled under the policy to a credit against the uninsured-underinsured motorist limit *only* for the $50,000 Geico paid to her. As a result, apparently overlooking the stipulation she made to the trial court, Jacaruso contends on appeal that uninsured-underinsured motorist benefits in the amount of $250,000 remain from the $300,000 available to her under the terms of the policy prior to any further reductions. We disagree.

Because it is well settled that a party is bound by the concessions made during trial by their attorney; *Levine* v. *Levine*, 88 Conn. App. 795, 804, 871 A.2d 1034 (2005); Jacaruso essentially has conceded that the defendant was entitled under the policy to a credit against the uninsured-underinsured motorist limit for *both* payments made by Geico totaling $100,000. Therefore, we conclude that the defendant is entitled to a credit in that amount, leaving $200,000 in coverage remaining prior to any further reductions.

[3] Although the denial of a motion for summary judgment is not a final judgment and is not ordinarily appealable, the rationale for this rule is not applicable when, as here, cross motions for summary judgment have been filed and the court has granted one of them. Accordingly, we may consider both of the summary judgment rulings contested by Jacaruso on appeal. See *CTB Realty Ventures XXII, Inc.* v. *Markoski*, 33 Conn. App. 388, 391 n.3, 636 A.2d 379, cert. granted on other grounds, 228 Conn. 929, 640 A.2d 115 (1994) (appeal withdrawn July 18, 1994).

[4] Jacaruso also claims that at the very least, because the provision in the policy allowing for the reduction of uninsured-underinsured motorist benefits tracks only the language of § 38a-334-6 (d) (1) (A) and omits any language tracking § 38a-334-6 (d) (1) (C), it is ambiguous as to whether the defendant is allowed by the language of the policy to reduce those benefits because of its payment to Picone. Because we hold that the relevant language in the policy is plain and unambiguous and that there is no indication that this provision was intended to restrict payments applicable to a reduction in benefits to payments made by tortfeasors outside the policy or to exclude payments made by the defendant to Jacaruso, this claim has no merit.