BISHOP, J. dissenting. The issue in this appeal is whether the automobile insurance policy (policy) issued by the defendant Nationwide Mutual Insurance Company to the plaintiff, Margaret Jacaruso, provides for a reduction of the monetary limits of her uninsured-underinsured motorist coverage for amounts paid to a third party under the same policy's liability coverage. Although such a reduction is permissible pursuant to § 38a-334-6 (d) (1) (C) of the Regulations of Connecticut State Agencies, I do not believe that the language of the policy issued by the defendant provides for such a reduction. Accordingly, I respectfully dissent.

As indicated in the majority opinion, Richard F. Lebski's motor vehicle collided with the plaintiff's vehicle, causing both the plaintiff and her passenger, Beatrice Picone, to sustain physical injuries. Both the plaintiff and Picone filed legal actions against Lebski, who was insured by Geico at the time of the accident. Geico paid the plaintiff and Picone $50,000 each, thereby exhausting Lebski's liability insurance coverage. Picone had also named the plaintiff as a defendant in her legal action. At the time of the accident, the plaintiff was insured by the defendant, who paid to Picone the sum of $400,000, $300,000 from the plaintiff's automobile liability policy and $100,000 from an umbrella policy.

The plaintiff also sought recovery under her uninsured-underinsured policy, which had a limit of $300,000. The court concluded that the defendant was not liable to the plaintiff for uninsured-underinsured motorist benefits on the basis of its reasoning that the $300,000 uninsured-underinsured policy limit was reduced to zero by the $100,000 in combined payments Geico had made to Picone and the plaintiff, as well as the $400,000 the defendant had paid to Picone to settle her negligence claim against the plaintiff. The court concluded that such reductions were allowable under § 38a-334-6 (d) (1) (A) and (C)[1] of the Regulations of Connecticut State Agencies and that the language of the policy provides for those reductions.

On appeal, the plaintiff claims that the court improperly concluded that both subparagraphs (A) and (C) authorize a reduction in coverage by virtue of settlement payments made by the defendant under the liability section of the insured's policy. The plaintiff also contends that the reduction in uninsured-underinsured motorist benefits claimed by the defendant, namely, that authorized by subparagraph (C), is not provided for in the policy. I agree with the plaintiff.

I begin my analysis with a review of the applicable statutory and regulatory scheme. Pursuant to General

Statutes § 38a-336 (a),[2] all automobile liability policies must provide a minimum level of uninsured motorist coverage for the protection of persons insured thereunder. Pursuant to § 38-336 (b), "[a]n insurance company shall be obligated to make payment to its insured up to the limits of the policy's uninsured and underinsured motorist coverage after the limits of liability under all bodily injury liability bonds or insurance policies applicable at the time of the accident have been exhausted by payment of judgments or settlements, but in no event shall the total amount of recovery from all policies, including any amount recovered under the insured's uninsured and underinsured motorist coverage, exceed the limits of the insured's uninsured and underinsured motorist coverage. . . ."

Our Supreme Court has explained that § 38a-336, formerly § 38-175c, "does not require that [under]insured motorist coverage be made available when the insured has been otherwise protected . . . . Nor does the statute provide that the [under]insured motorist coverage shall stand as an independent source of recovery for the insured, or that the coverage limits shall not be reduced under appropriate circumstances. The statute merely requires that a certain minimum level of protection be provided for those insured under automobile liability insurance policies; the insurance commissioner has been left with the task of defining those terms and conditions which will suffice to satisfy the requirement of protection." (Internal quotation marks omitted.) *Orkney* v. *Hanover Ins. Co.*, 248 Conn. 195, 205, 727 A.2d 700 (1999).

"The public policy established by the [uninsured-underinsured] motorist statute is to ensure that an insured recovers damages he or she would have been able to recover if the uninsured [or underinsured] motorist had maintained a policy of liability insurance . . . and . . . the amount of overall benefits available to a plaintiff be equal to the amount of *coverage* available from a tortfeasor with an equivalent policy." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Garcia* v. *ITT Hartford Ins. Co.*, 72 Conn. App. 588, 594, 805 A.2d 779 (2002). In other words, underinsured motorist coverage provides protection for the risk that the damages sustained by insureds will not be adequately indemnified by the liability coverage carried by a negligent insured motorist. The remedial purpose of underinsured motorist coverage is to protect and to make whole a person injured at the hands of an uninsured-underinsured motorist.

General Statutes § 38a-334 (a) directs the commissioner to "adopt regulations with respect to minimum provisions to be included in automobile liability insurance policies" and provides that "[s]uch regulations shall relate to the insuring agreements, exclusions, conditions and other terms applicable to the bodily injury

liability, property damage liability, medical payments and uninsured motorists coverages . . . ."

"It is clear that one of the purposes of the regulatory reductions is to prevent a double recovery by the claimant. . . . The regulation goes further than just the prevention of double recovery [however] and extends to reduce an insurer's coverage obligation with an expectation that this coverage reduction would have some effect in the form of reduced rates for such coverage." (Citations omitted; internal quotation marks omitted.) J. Berk & M. Jainchill, Connecticut Law of Uninsured and Underinsured Motorist Coverage (3d Ed. 2004) § 6.1, p. 422.

"The regulations, however, must carry into effect the purpose and intent of the statute pursuant to which they are enacted. . . . [A] limitation of liability on uninsured or underinsured motorist coverage must be construed most strongly against the insurer. . . . The regulatory language . . . must be read, therefore, in light of this principle as well as the language and intent of [§ 38a-336]." (Citations omitted.) *American Universal Ins. Co.* v. *DelGreco*, 205 Conn. 178, 196–97, 530 A.2d 171 (1987).

In examining the regulations, our rules of statutory construction apply. See *Vitti* v. *Allstate Ins. Co.*, 245 Conn. 169, 178, 713 A.2d 1269 (1998). "It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous. . . . Because [e]very word and phrase [of a statute] is presumed to have meaning . . . [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Internal quotation marks omitted.) *PJM & Associates, LC* v. *Bridgeport*, 292 Conn. 125, 138, 971 A.2d 24 (2009). "Elementary rules of statutory construction require the presumption that the legislature [does] not intend to enact superfluous legislation. . . . Where . . . more than one [provision] is involved, we presume that the legislature intended them to be read together to create a harmonious body of law . . . and we construe the [provisions], if possible, to avoid conflict between them. (Citations omitted; internal quotation marks omitted.) *Dodd* v. *Middlesex Mutual Assurance Co.*, 242 Conn. 375, 388, 698 A.2d 859 (1997). 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).

Section 38a-334-6 (d) (1)[3] of the Regulations of Connecticut State Agencies authorizes an insurer to reduce coverage limits "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." I believe, respectfully, that the majority conflates these two provisions. It is clear that, by listing these two exceptions separately and in the disjunctive, the commissioner intended them to be two different possible reductions. To read subparagraph (A) as including payments from the insured's liability policy would render subparagraph (C) meaningless or superfluous. Thus, in examining the entire regulatory scheme regarding permissible reductions, it is evident that subparagraph (A) contemplates payments only from *third party* sources. See J. Berk & M. Jainchill, supra, § 6.2.1.A, p. 436 n.22 ("Section 6 (d) (1) (A) of the insurance regulations applies generally to third-party liability payments. Section 6 (d) (1) (B) applies generally to first-party payments received from workers' compensation. Section 6 (d) (1) (C) and 6 (d) (2) apply generally to payments made under the subject policy.").

Turning to the policy issued by the defendant in this case, I note that "[t]he Connecticut rule of construction of insurance policies is well settled. If the terms of an insurance policy are of doubtful meaning, that permissible construction which is most favorable to the insured is to be adopted; but if they are plain and unambiguous the established rules for the construction of contracts apply, the language, from which the intention of the parties is to be deduced, must be accorded its natural and ordinary meaning, and the courts cannot indulge in a forced construction ignoring provisions or so distorting them as to accord a meaning other than that evidently intended by the parties." (Internal quotation marks omitted.) *Vitti* v. *Allstate Ins. Co.*, supra, 245 Conn. 176.

"[A]n insurer may not, by contract, reduce its liability for such uninsured or underinsured motorist coverage except as 38-175a-6 of the Regulations of Connecticut State Agencies expressly authorizes." *Allstate Ins. Co.* v. *Ferrante*, 201 Conn. 478, 483, 518 A.2d 373 (1986). "If an insurer wishes to reduce its payment obligation as set forth in the regulations, it must provide for the reductions by the appropriate policy language." J. Berk & M. Jainchill, supra, § 6.1, p. 421; *Stephan* v. *Pennsylvania General Ins. Co.*, 224 Conn. 758, 763, 621 A.2d 258 (1993). "[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*, 98 Conn. App. 837, 844, 912 A.2d 1037 (2006).

The provision of the policy at issue here provides in

relevant part: "The limits of [the 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." The plaintiff asserts that the language of the policy essentially mirrors subparagraph (A) and does not implicate subparagraph (C). I agree. If the defendant had wanted to reduce coverage by the amount it paid out under the insured's liability policy, it could have done so by expressly using policy language tracking subparagraph (C).

The defendant does not contend that both subparagraphs (A) and (C) permit a reduction for amounts paid under an insured's liability policy. Rather, the defendant claims that the broad language of the policy constitutes a combination of the provisions of subparagraphs (A) and (C). In support of its argument, the defendant relies on *Nichols* v. *Salem Subway Restaurant*, supra, 98 Conn. App. 837, and *Allstate Ins. Co.* v. *Lenda*, 34 Conn. App. 444, 642 A.2d 22, cert. denied, 231 Conn. 906, 648 A.2d 149 (1994). Both cases, however, are distinguishable from the case at hand because the policies in both *Nichols* and *Allstate Ins. Co.* explicitly referred to a reduction that was based on payments made pursuant to an insured's liability policy. In *Nichols*, the policy provided: "Any amount payable under this coverage shall be reduced by any amount . . . paid to or for the insured for bodily injury under the liability coverage . . . ." *Nichols* v. *Salem Subway Restaurant*, supra, 842. In *Allstate Ins. Co.*, the policy provided that the limits of coverage "will be reduced by: (1) all amounts paid by the owner or operator of the uninsured auto or anyone else responsible. This includes all sums paid under the bodily injury liability coverage of this or any other policy." (Internal quotation marks omitted.) *Allstate Ins. Co.* v. *Lenda*, supra, 452. I believe that both *Nichols* and *Allstate Ins. Co.* are consistent with the plaintiff's view because the policies involved in those cases expressly provided for reductions in uninsured-underinsured coverage for payments made under the liability portions of the insureds' policies. This factual difference between the *Nichols* and *Allstate Ins. Co.* policies and the policy at hand is pivotal.

Here, the uninsured-undersinsured portion of the policy is devoid of any mention of the liability provision of the insured's policy. Because there is not a substantial congruence between the language of subparagraph (C) and the language of the policy, I cannot conclude that the policy offers the level of protection permitted by subparagraph (C). Thus, I would conclude that the policy does not provide for the reduction of the amount paid under the plaintiff's liability coverage. Accordingly, I would reverse the judgment and remand the matter with direction to render judgment in favor of the plaintiff.

[1] For ease of reference, I refer to § 38a-334-6 (d) (1) (A) as subparagraph

(A) and to § 38a-334-6 (d) (1) (C) as subparagraph (C).

[2] General Statutes § 38a-336 (a) provides: "(1) Each automobile liability insurance policy shall provide insurance, herein called uninsured and underinsured motorist coverage, in accordance with the regulations adopted pursuant to section 38a-334, with limits for bodily injury or death not less than those specified in subsection (a) of section 14-112, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and underinsured motor vehicles and insured motor vehicles, the insurer of which becomes insolvent prior to payment of such damages, because of bodily injury, including death resulting therefrom. Each insurer licensed to write automobile liability insurance in this state shall provide uninsured and underinsured motorists coverage with limits requested by any named insured upon payment of the appropriate premium, provided each such insurer shall offer such coverage with limits that are twice the limits of the bodily injury coverage of the policy issued to the named insured. The insured's selection of uninsured and underinsured motorist coverage shall apply to all subsequent renewals of coverage and to all policies or endorsements which extend, change, supersede or replace an existing policy issued to the named insured, unless changed in writing by any named insured. No insurer shall be required to provide uninsured and underinsured motorist coverage to (A) a named insured or relatives residing in his household when occupying, or struck as a pedestrian by, an uninsured or underinsured motor vehicle or a motorcycle that is owned by the named insured, or (B) any insured occupying an uninsured or underinsured motor vehicle or motorcycle that is owned by such insured.

"(2) Notwithstanding any provision of this section to the contrary, each automobile liability insurance policy issued or renewed on and after January 1, 1994, shall provide uninsured and underinsured motorist coverage with limits for bodily injury and death equal to those purchased to protect against loss resulting from the liability imposed by law unless any named insured requests in writing a lesser amount, but not less than the limits specified in subsection (a) of section 14-112. Such written request shall apply to all subsequent renewals of coverage and to all policies or endorsements which extend, change, supersede or replace an existing policy issued to the named insured, unless changed in writing by any named insured. No such written request for a lesser amount shall be effective unless any named insured has signed an informed consent form which shall contain: (A) An explanation of uninsured and underinsured motorist insurance approved by the commissioner; (B) a list of uninsured and underinsured motorist coverage options available from the insurer; and (C) the premium cost for each of the coverage options available from the insurer. Such informed consent form shall contain a heading in twelve-point type and shall state: "WHEN YOU SIGN THIS FORM, YOU ARE CHOOSING A REDUCED PREMIUM, BUT YOU ARE ALSO CHOOSING NOT TO PURCHASE CERTAIN VALUABLE COVERAGE WHICH PROTECTS YOU AND YOUR FAMILY. IF YOU ARE UNCERTAIN ABOUT HOW THIS DECISION WILL AFFECT YOU, YOU SHOULD GET ADVICE FROM YOUR INSURANCE AGENT OR ANOTHER QUALIFIED ADVISER."

[3] Section 38a-334-6 (d) (1) of the Regulations of Connecticut State Agencies provides: "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."