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DIANA CURLEY *v.* THE PHOENIX INSURANCE COMPANY (AC 45054)

Bright, C. J., and Moll and Seeley, Js.

Syllabus

Pursuant to statute (§ 38a-336 (a) (2)), an automobile liability insurance policy must "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."

Pursuant further to statute (§ 38a-336 (f)), "an employee of a named insured injured while occupying a covered motor vehicle in the course of employment shall be covered by such insured's otherwise applicable uninsured and underinsured motorist coverage."

The plaintiff, who suffered injuries when a motor vehicle driven by a nonparty tortfeasor struck a rental vehicle she was operating in the course of her employment, sought to recover underinsured motorist benefits in connection with insurance coverage provided by the defendant insurance company to U Co., the plaintiff's employer. The trial court granted the defendant's motion for summary judgment, which asserted that the plaintiff was not occupying a "covered auto" under the underinsured motorist endorsement of the policy. The trial court thereafter denied the plaintiff's motion to reargue, which claimed that the court's interpretation of the policy violated § 38a-336 (a) (2) and overlooked the business auto extension endorsement that broadened the definition of insured in the business auto coverage form of the policy. On the plaintiff's appeal to this court, *held*:

1. Contrary to the defendant's argument, the plaintiff's claims regarding the application of § 38a-336 and the business auto extension endorsement were reviewable by this court: although the plaintiff raised these claims for the first time in her motion to reargue, the circumstances of the present case justified a deviation from the general rule that unpreserved claims will not be reviewed, because the minimum, necessary requirements for review were met, as the record was adequate for review and the parties had had an opportunity to be heard on the issues, and, although the defendant objected to this court's review of the plaintiff's unpreserved claims, it addressed the merits of those claims in its appellate brief and did not claim it would be unfairly prejudiced if this court reviewed the claims; moreover, this court's consideration of the plaintiff's arguments did not amount to an ambuscade on the court or the defendant, as the plaintiff relied on the minimum amounts of automobile insurance coverage mandated by statute (§ 14-112) in her opposition to the defendant's motion for summary judgment in arguing that she was an insured under the policy, § 38a-336 (a) (1) (A) specifically references § 14-112, and, although the plaintiff did not reference § 38a-336 in her opposition to the motion for summary judgment, the unpreserved issues were discussed during oral argument before the trial court, it was undisputed that the plaintiff alerted the trial court to the issues in her motion to reargue and the defendant addressed the merits of those claims in its objection to the motion to reargue; furthermore, this court would not ignore a clearly applicable statute and the express provisions of the insurance policy in conducting its plenary review of the court's decision; additionally, the defendant did not claim that the plaintiff failed to raise her arguments as a matter of strategy.

2. The trial court improperly rendered summary judgment for the defendant because the court's construction of the automobile insurance liability policy violated § 38a-336 (a) (2):

   a. This court concluded that the plaintiff was an insured under U Co.'s policy for purposes of liability coverage: although the rental agreement for the vehicle the plaintiff had been driving at the time of her injuries was not included in the summary judgment record and this court did not know whether the vehicle was rented by U Co. or by the plaintiff,

the plaintiff would be an insured for liability coverage under either scenario, a necessary predicate for the plaintiff's claim for underinsured motorist coverage pursuant to § 38a-336.

b. The trial court improperly rendered summary judgment for the defendant, that court having incorrectly concluded that there was no genuine issue of material fact that the plaintiff was not entitled to underinsured motorist benefits: although § 38a-336 limits an employee's right to recover underinsured motorist benefits under an employer's policy by requiring that an employee must be "occupying a covered vehicle" in the course of employment, the plaintiff was operating a covered motor vehicle because, had she caused the accident, it was undisputed that she and U Co. would have been entitled to liability coverage; moreover, the defendant misconstrued § 38a-336 (f) as allowing it, through its policy language, to sever liability coverage from uninsured and underinsured motorist coverage, which § 38a-336 (f) does not allow, rather, § 38a-336 (f) specifically refers to an employer's "otherwise applicable" uninsured and underinsured motorist coverage, which is delineated in § 38a-336 (a), and, thus, the defendant could not rely on § 38a-336 (f) to limit the underinsured motorist coverage in its policy only to injuries arising out of an insured's use of a specified vehicle; furthermore, it was not reasonable to read § 38a-336 (f) as an expansive exception to the express requirements of § 38a-336 (a) that insurers provide equivalent liability and uninsured and underinsured motorist coverage "[n]otwithstanding any provision of this section," which necessarily includes subsection (f), and § 38a-336 (f) clearly and unambiguously requires that the defendant comply with the other provisions of § 38a-336 before reducing the limits of uninsured and underinsured coverage to an amount less than the limits of liability coverage under the policy and there was no evidence establishing that U Co. expressly waived the statutorily mandated coverage.

Argued February 1—officially released August 1, 2023

Procedural History

Action to recover underinsured motorist benefits allegedly due under a commercial automobile liability insurance policy issued by the defendant, brought to the Superior Court in the judicial district of Fairfield, where the court, *Welch*, *J.*, granted the defendant's motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Reversed*; *further proceedings*.

Michael S. Taylor, with whom were *Brendon P. Levesque*, and, on the brief, *Peter C. Bowman*, for the appellant (plaintiff).

James E. Wildes, for the appellee (defendant).

Opinion

BRIGHT, C. J. In this action to recover underinsured motorist benefits, the plaintiff, Diana Curley, appeals from the judgment of the trial court rendering summary judgment for the defendant, The Phoenix Insurance Company. The court concluded that the plaintiff was not an insured within the meaning of the commercial automobile liability insurance policy issued by the defendant to the plaintiff's employer, the University of Bridgeport (university), because she was not occupying a covered vehicle for purposes of the underinsured motorist coverage endorsement. On appeal, the plaintiff claims that the court improperly rendered summary judgment for the defendant because (1) the court's construction of the university's policy violates General Statutes § 38a-336 (a) (2), (2) the plaintiff is entitled to underinsured motorist benefits pursuant to the policy's business auto extension endorsement, and (3) denying the plaintiff underinsured motorist benefits would violate public policy. We agree with the plaintiff's first claim and, therefore, reverse the judgment of the trial court.

The record reveals the following undisputed facts, viewed in the light most favorable to the plaintiff, and procedural history. On November 16, 2017, the plaintiff was operating a rental vehicle on Route 15 in Trumbull on her way to an off campus event as part of her duties for the university when her vehicle was struck from behind by a vehicle operated by Jennifer N. Sandoval-Giannone (tortfeasor). The plaintiff suffered various injuries due to the collision and received $250,000 from the tortfeasor, which exhausted the tortfeasor's liability coverage under the tortfeasor's automobile insurance policy. At the time of the accident, the university's insurance policy provided underinsured motorist coverage with a limit of $1 million per person.[1]

In 2020, the plaintiff initiated the underlying action against the defendant pursuant to § 38a-336, seeking underinsured motorist benefits pursuant to the university's insurance policy.[2] The plaintiff alleged that the vehicle she was operating at the time of the accident was covered under the university's policy. The defendant moved for summary judgment on the plaintiff's complaint, asserting that the plaintiff was not occupying a "covered 'auto' " within the meaning of the "CONNECTICUT UNINSURED AND UNDERINSURED MOTORISTS COVERAGE" endorsement (underinsured motorist endorsement) to the university's policy. The underinsured motorist endorsement defines an insured differently depending on whether the named insured is an individual or a corporation. The defendant noted in its motion for summary judgment that, because the university is a corporation, an insured is defined as "[a]nyone 'occupying' a covered 'auto' or a temporary substitute for a covered 'auto.' The covered 'auto' must

be out of service because of its breakdown, repair, servicing, 'loss' or destruction." The defendant argued that "the vehicle the plaintiff was in was not a covered automobile under the policy and the covered vehicles were not out of service." In support of its motion, the defendant submitted an affidavit from Cheryl Nyarady, an employee in the university's human resources department, in which she averred that the plaintiff was operating a rental vehicle at the time of the accident, that the university neither owned nor leased the vehicle occupied by the plaintiff, and that the vehicles owned or leased by the university were not out of service.[3]

In the plaintiff's objection to the defendant's summary judgment motion, she asserted that she was an insured under the university's policy. She relied on the "LESSOR—ADDITIONAL INSURED AND LOSS PAYEE" endorsement (lessor endorsement), which modifies the insurance coverage provided under the "AUTO DEALERS COVERAGE FORM," the "BUSINESS AUTO COVERAGE FORM," and the "MOTOR CARRIER COVERAGE FORM," which are among the forms included in the policy. The coverage section of the lessor endorsement provides that "[a]ny 'leased auto' designated or described in the Schedule will be considered a covered 'auto' [the university] own[s] and not a covered 'auto' [the university] hire[s] or borrow[s]." Paragraph E of the lessor endorsement, titled "Additional Definition," provides: "As used in this endorsement: 'Leased auto' means an 'auto' leased or rented to [the university], including any substitute, replacement or extra 'auto' needed to meet seasonal or other needs, under a leasing or rental agreement that requires [the university] to provide direct primary insurance for the lessor." The plaintiff asserted in her objection that (1) she was an insured under the policy because the university had authorized her to rent the vehicle for use in performing her job duties, (2) allowing an employer and insurer to conspire to deny employees statutorily required coverage would violate public policy, and (3) because General Statutes § 14-112 requires a driver to maintain minimum amounts of liability insurance for any vehicle, including rental vehicles,[4] the university's policy, by its terms, provides coverage for the rental vehicle in the present case.

In its reply memorandum to the plaintiff's objection to its motion for summary judgment, the defendant noted that, although the lessor endorsement states that it modifies the insurance coverage provided under three specific forms, it does not state that it modifies the insurance coverage provided under the underinsured motorist endorsement. Therefore, according to the defendant, the lessor endorsement was irrelevant to whether the plaintiff was an insured for the purposes of making a claim for underinsured motorist coverage. The defendant maintained that the underinsured motorist endorsement is unambiguous and that the plaintiff

is not an insured thereunder.

Following oral argument on the defendant's motion, the court, on May 28, 2021, rendered summary judgment for the defendant. After setting forth the parties' respective positions, the court reasoned "that the language of the insurance policy as to the issues raised in this case is clear and unambiguous. The insurance policy is titled 'Commercial Automobile.' The declaration provides that '[t]he Commercial Automobile Coverage Consists of these Declarations and the Business Auto Coverage Form shown below.' The declaration further identifies the form of business of the insured as a 'Corporation.' The declaration and 'Business Auto Coverage Form' provide that uninsured and underinsured motorist coverage is provided to 'Owned "Autos" Only: only those "autos" [the university] own[s] . . . .'

"The [underinsured motorist] endorsement provides that 'this endorsement modifies insurance provided under the following . . . BUSINESS AUTO COVERAGE FORM . . . . With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.' The endorsement modifies the uninsured and underinsured [motorist] coverage described above as follows: where the named insured is a corporation, the insured is '[a]nyone "occupying" a covered "auto" or a temporary substitute for a covered "auto." The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.'

"The plaintiff's reliance on the [lessor] endorsement to support the argument that the insurance policy provided insurance to the plaintiff based upon the facts of this case is misplaced. The court finds that the language of this endorsement is plain and unambiguous. The endorsement specifically provides that '[w]ith respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.' The endorsement does not modify the uninsured and underinsured [motorist] coverage.

"Based upon the clear and unambiguous language of the insurance policy, the plaintiff was not an insured and is not entitled to make a claim for underinsured motorist benefits from the defendant." (Footnotes omitted.)

On June 17, 2021, the plaintiff filed a motion seeking reargument and reconsideration pursuant to Practice Book § 11-12 (motion to reargue). In that motion, the plaintiff claimed that the court's interpretation of the policy violated § 38a-336 (a) (2), which requires that an automobile liability insurance policy "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," and overlooked the "BUSINESS

AUTO EXTENSION ENDORSEMENT," which broadens the definition of insured in the business auto coverage form.[5]

The defendant filed an objection to the motion to reargue, arguing that the plaintiff failed to raise her arguments in her objection to its motion for summary judgment and that she should not be permitted to raise them for the first time in a motion to reargue. Alternatively, the defendant argued that both of the plaintiff's arguments failed on the merits. On July 16, 2021, the court denied the plaintiff's motion to reargue without comment and sustained the defendant's objection.[6] This appeal followed.[7]

On appeal, the plaintiff claims that the court erred in rendering summary judgment for the defendant because (1) the court's interpretation of the university's policy violates § 38a-336, (2) the court failed to consider the business auto extension endorsement, and (3) allowing an employer to provide liability coverage for its employees but not underinsured motorist coverage would violate public policy.[8]

Before turning to the parties' arguments, we first set forth the applicable standard of review. "In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. . . . Although the party seeking summary judgment has the burden of showing the nonexistence of any material fact . . . a party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue. . . .

"Summary judgment shall be granted 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. . . . A fact is material when it will make a difference in the outcome of a case. . . . The party moving for summary judgment bears the burden of demonstrating the absence of any genuine issue of material fact. . . . The trial court must view the evidence in the light most favorable to the nonmoving party. . . .

"Appellate review of the trial court's decision to grant summary judgment is plenary. . . . [W]e must [therefore] decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record." (Citation omitted; internal quotation marks omitted.) *Puente* v. *Progressive Northwestern Ins. Co.*, 181 Conn. App. 852, 856–57, 188 A.3d 773, cert. denied, 329 Conn. 913, 186 A.3d 1170 (2018).

In addition, because this appeal involves the construction of both an insurance policy and a statute, we set forth the standard of review for those issues. When, as in the present case, the insurance policy is unambiguous; see part II A of this opinion; "[t]he construction

of an insurance policy presents a question of law that we review de novo. . . . When construing an insurance policy, we look at the [policy] as a whole, consider all relevant portions together and, if possible, give operative effect to every provision in order to reach a reasonable overall result." (Citation omitted; internal quotation marks omitted.) *Kling* v. *Hartford Casualty Ins. Co.*, 211 Conn. App. 708, 712–13, 273 A.3d 717, cert. denied, 343 Conn. 926, 275 A.3d 627 (2022). Likewise, the construction of a statute presents a question of law subject to de novo review. See *Aldin Associates Ltd. Partnership* v. *State*, 209 Conn. App. 741, 767, 269 A.3d 790 (2022).

I

As an initial matter, the defendant contends that this court should not consider the plaintiff's claims regarding the application of § 38a-336 and the business auto extension endorsement because the plaintiff raised those claims for the first time in her motion to reargue, the denial of which she does not challenge on appeal. According to the defendant, the plaintiff improperly sought a second bite at the proverbial apple when she filed a motion to reargue asserting claims that she could have raised in her opposition to the defendant's motion for summary judgment.

The plaintiff responds that her claims are within the scope of the issue raised before the trial court. She argues that "the trial court . . . was required to construe the policy as a matter of law, and to do so within the framework of our established [underinsured motorist] statutes and public policy, including the requirements imposed by . . . §§ 38a-336 and 14-112, and [§] 38a-334-6 of the Regulations of Connecticut State Agencies. This court should not affirm a decision that is in conflict with the law the trial court was required to apply simply because the plaintiff may not have addressed every possible argument in support of the issue raised." The plaintiff also notes that she asserted her statutory argument expressly in her motion to reargue "when the trial court still had an opportunity to address the issues the plaintiff claimed it had overlooked" and that "there is no prejudice to the defendant, as it has had the opportunity to brief the issue on the merits." We conclude that the plaintiff's claims are reviewable.

We begin with the governing legal principles. This "court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial." Practice Book § 60-5. Accordingly, "appellate review generally is limited to issues that were distinctly raised at trial. . . . Only in [the] most exceptional circumstances can and will this court consider a claim, constitutional or otherwise, that has not been raised and decided in the trial court. . . . The reason for the rule is obvious: to permit a party to raise a claim on

appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party. . . .

"It is equally well settled, however, that a reviewing court, although not *bound* to consider a claim that was not raised to the trial court, may do so at its discretion. . . . We are unaware of any statutory or procedural rule limiting that discretion." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Leilah W.*, 166 Conn. App. 48, 59, 141 A.3d 1000 (2016); see also *Blumberg Associates Worldwide, Inc.* v. *Brown & Brown of Connecticut, Inc.*, 311 Conn. 123, 143, 84 A.3d 840 (2014) (reviewing court's authority to consider unpreserved claims "is limited neither by statute nor by procedural rules"); *Imperial Casualty & Indemnity Co.* v. *State*, 246 Conn. 313, 321, 714 A.2d 1230 (1998) ("The application of [Practice Book] § 60-5 is discretionary . . . and in exceptional circumstances, even claims not properly raised below will be considered. . . . [I]n some instances we may overlook the procedural error and consider a question not properly raised below, not by reason of the appellant's right to have [the claim] determined but because, in our opinion, in the interest of the public welfare or of justice between the parties, the question ought to be considered." (Citation omitted; internal quotation marks omitted.)); *Persico* v. *Maher*, 191 Conn. 384, 403, 465 A.2d 308 (1983) ("[w]hile we are not bound to consider such claims of error, and do not ordinarily do so, we have upon occasion considered a question which was not so raised . . . because in our opinion in the interest of public welfare or of justice between individuals it ought to be done" (internal quotation marks omitted)).

Our Supreme Court has explained that there is a difference between a claim and an argument in support of a claim for purposes of our rules of preservation: "[O]rdinarily, [a reviewing court] will decline to address only a *claim* that is raised for the first time on appeal. . . . [A] claim is an entirely new legal issue, whereas, [g]enerally speaking, an argument is a point or line of reasoning made in support of or in opposition to a particular claim. . . . Because [o]ur rules of preservation apply to claims . . . [and not] to legal arguments . . . [w]e may . . . review legal arguments that differ from those raised below if they are subsumed within or intertwined with arguments related to the legal claim before the court." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Markley* v. *State Elections Enforcement Commission*, 339 Conn. 96, 104–105 n.9, 259 A.3d 1064 (2021).

In the present case, the plaintiff claims that the court's construction of the university's policy is legally incorrect because it violates § 38a-336 and fails to apply the

business auto extension endorsement. In her opposition to the defendant's motion for summary judgment, however, she neither cited nor discussed § 38a-336 or the business auto extension endorsement. Instead, she raised these arguments distinctly for the first time in her motion to reargue the court's decision, which generally does not preserve an issue for appellate review. Compare *White* v. *Mazda Motor of America, Inc.*, 313 Conn. 610, 634, 99 A.3d 1079 (2014) ("[r]aising an issue for the first time in a motion to reargue will not preserve that issue for appellate review"), with *Twin Oaks Condominium Assn., Inc.* v. *Jones*, 132 Conn. App. 8, 15 n.5, 30 A.3d 7 (2011) (plaintiff preserved its challenge to court's award of damages because court set forth damages calculation in memorandum of decision and plaintiff filed motion to reargue), cert. denied, 305 Conn. 901, 43 A.3d 663 (2012). The plaintiff contends, however, that these are not new claims but, rather, are new arguments in support of the sole legal claim she raised in opposition to the defendant's motion for summary judgment.

We need not decide whether the plaintiff's arguments properly are classified as new claims or legal arguments because, assuming without deciding that they are unpreserved legal claims, the circumstances of the present case "justify a deviation from the general rule that unpreserved claims will not be reviewed." *Blumberg Associates Worldwide, Inc.* v. *Brown & Brown of Connecticut, Inc.*, supra, 311 Conn. 161.

Our Supreme Court has explained that "the minimal requirements for review of an unpreserved claim are that the record must be adequate for review, such that there is no need for additional trial court proceedings or factual findings, and all parties must have had an opportunity to be heard on the issue. . . . In addition, review of an unpreserved claim generally is inappropriate if it results in unfair prejudice to any party. Prejudice may be found, for example, when a party demonstrates that it would have presented additional evidence or that it otherwise would have proceeded differently if the claim had been raised at trial. . . . Moreover, because it may be difficult for a party to prove definitively that it would have proceeded in a different manner and, as a result, would suffer unfair prejudice if the reviewing court were to consider the unpreserved issue, once that party makes a colorable claim of such prejudice, the burden shifts to the other party to establish that the first party will not be prejudiced by the reviewing court's consideration of the issue. . . .

"[A]lthough these conditions are *necessary* for the review of unpreserved claims, they are not alone *sufficient*. Review of an unpreserved claim may be appropriate, however, when the minimal requirements for review are met *and* (1) the party that did not raise the claim does not object to review . . . or (2) the party

who raised the unpreserved claim cannot prevail. . . . [I]f either of these additional conditions are met, the reviewing court has broad discretion to review the claim or, alternatively, to decline to do so . . . .

"As we have indicated, there also are circumstances that militate in favor of reviewing unpreserved claims even over the objection of a party. [Our Supreme Court] has reviewed unpreserved claims pursuant to its supervisory power when the claim was of a *public character* . . . when there was an intervening change in the law . . . when there was a newly established, undisputed fact on which both parties relied . . . when the trial court's evidentiary ruling was correct but for the wrong reason . . . and when the claim involves judicial bias. . . . This list is not intended to be exhaustive, and, indeed, it would be impossible to catalogue all of the circumstances under which review of an unpreserved claim might be appropriate. It is clear, however, that these are exceptional cases, in which the interests of justice, fairness, integrity of the courts and consistency of the law significantly outweigh the interest in enforcing procedural rules governing the preservation of claims. [For this reason], [our Supreme Court has] emphasize[d] that a general statement by a reviewing court that the review of an unpreserved claim is warranted in the interests of justice between the parties or because no party will be prejudiced is not alone sufficient. Rather, unless all parties agree to review of the unpreserved claim or the party raising the claim cannot prevail, the reviewing court should provide specific reasons, based on the exceptional circumstances of the case, to justify a deviation from the general rule that unpreserved claims will not be reviewed." (Citations omitted; emphasis in original; footnotes omitted; internal quotation marks omitted.) Id., 155–61.

Initially, we note that the minimum, necessary requirements for review are met in the present case—the record is adequate for review, as there is no need for additional trial court proceedings or factual findings, and the parties have had an opportunity to be heard on the issues. See id., 155–56. Also, although the defendant objects to our consideration of these issues, it addressed the merits of the plaintiff's claims in its appellate brief and has not claimed that it would be unfairly prejudiced if we review the claims. See id., 156. The typical additional conditions for review of an unpreserved claim, however, are not met in the present case, because the defendant objects to our review of the plaintiff's unpreserved claims and because the plaintiff will prevail on her statutory claim. Nevertheless, we conclude that "the interests of justice, fairness, integrity of the courts and consistency of the law significantly outweigh the interest in enforcing procedural rules governing the preservation of claims."[9] Id., 160. We reach this conclusion for several reasons.

First, our consideration of the plaintiff's arguments would not amount to ambuscade on the trial court or the opposing party. The plaintiff relied on the statutorily mandated minimum amounts of automobile insurance coverage under § 14-112 in her opposition to summary judgment in arguing that, pursuant to the statute and the express terms of the policy, the plaintiff was an insured under the policy. Section 38a-336 (a) (1) (A) specifically references § 14-112, providing that "[e]ach automobile liability insurance policy shall provide . . . underinsured motorist coverage . . . with limits for bodily injury or death not less than those specified in subsection (a) of section 14-112 . . . ." In addition, although the plaintiff failed to reference § 38a-336 specifically in her opposition to the defendant's motion for summary judgment, counsel for the plaintiff, after arguing that the university's policy clearly provided coverage, further argued that "there are other arguments in which insurance coverage is required [in] the state of Connecticut. And, so, if you accept [the defendant's] argument, that means there's a fleet of vehicles from the [u]niversity . . . driving around the roads of Connecticut without insurance coverage. Clearly, there was insurance coverage on this vehicle. It's the policy that [the university] had. It [is] set forth by both the affidavits of the [university] as well as the representative from [the defendant], and as such, we think . . . there is coverage on this loss . . . ." Indeed, the exchange between the court and counsel for the defendant that immediately followed the argument by the plaintiff's counsel indicates that they understood that argument to be that the defendant's assertion would mean that some motor vehicles could be operated in the state without the statutorily required minimum amount of uninsured and underinsured motorist coverage:

"The Court: [I]f I understand the argument [of the plaintiff's counsel, it] is that . . . an employee of the [u]niversity . . . doing work on behalf of the university . . . rents a car to go to a [u]niversity . . . function or provides the declaration or the insured—it's insured under this policy. And, the argument being that anybody then who rents a car in this type of situation is, to [the plaintiff's] point, driving without any . . . underinsured [motorist] coverage. Is that—am I missing anything there?

"[The Defendant's Counsel]: That's easily what he's arguing, but I don't know that there's no underinsured motorist coverage. It says no underinsured motorist coverage provided through this policy; [the rental car company] may very well have provided underinsured motorist coverage. They may have had an obligation to do that. All I know is that the [u]niversity . . . didn't purchase underinsured motorist coverage for this particular situation because the policy doesn't provide for [it]." As this exchange reflects, the substance of the

plaintiff's statutory argument was understood by the court and the defendant's counsel during oral argument.

Furthermore, although the plaintiff failed to raise these issues distinctly until after the court rendered summary judgment for the defendant, there is no dispute that she alerted the court to the issues that she raises on appeal in her motion to reargue and that the defendant addressed the merits of these claims in its objection to the plaintiff's motion to reargue. In her motion to reargue, the plaintiff claimed that the court had overlooked § 38a-336 and the business auto extension endorsement and that the statute dictated a different result. Alerting the trial court to matters that the court may have overlooked is the proper use of a motion to reargue. See, e.g., *Hudson Valley Bank* v. *Kissel*, 303 Conn. 614, 625, 35 A.3d 260 (2012) (concluding that defendant "relied on the motion to reargue for a proper purpose—to call to the attention of the court the controlling principle of law that [it] had failed to apply"); *Intercity Development, LLC* v. *Andrade*, 286 Conn. 177, 189, 942 A.2d 1028 (2008) (concluding that defendants failed to preserve their challenge to calculation of amount of mechanic's lien and noting that "defendants could have filed a motion to reargue pursuant to Practice Book § 11-12 specifically detailing their dispute regarding calculation of the mechanic's lien before the trial court"); *Parnoff* v. *Aquarion Water Co. of Connecticut*, 188 Conn. App. 145, 152 n.3, 204 A.3d 712 (2019) (declining to review plaintiff's unpreserved claim and noting that plaintiff "never filed a motion for articulation or a motion for reargument with the trial court, which he could have filed if he believed that the court failed to address his purported excessive force argument"); *Hall* v. *Gulaid*, 165 Conn. App. 857, 865, 140 A.3d 396 (2016) (noting that plaintiff could have filed motion to reargue and thereby "alerted the court that it had overlooked the applicability of [General Statutes] § 52-593"). Thus, although the plaintiff should have raised her arguments more clearly prior to the rendition of judgment, there is precedent supporting the plaintiff's use of a motion to reargue to bring to the attention of the court that a statute or issue has been overlooked.

Accordingly, under these circumstances, in which the unpreserved issues were discussed during oral argument before the trial court and raised distinctly in the plaintiff's motion to reargue the court's decision, our review of the issues in the present case would not amount to the type of ambush of the trial court and the opposing party that we routinely avoid by declining to review unpreserved claims. See, e.g., *In re Brayden E.-H.*, 309 Conn. 642, 655–56, 72 A.3d 1083 (2013) (although respondent raised constitutional claim for first time in motion to reargue, because petitioner addressed merits in objection to motion to reargue and because trial court rejected claim on merits, "the dual concerns underlying the rules of preservation, fair notice to the

trial court and opposing counsel . . . were satisfied" (citations omitted)); see also *Overley* v. *Overley*, 209 Conn. App. 504, 513, 268 A.3d 691 (2021) ("[t]he purpose of our preservation requirements is to ensure fair notice of a party's claims to both the trial court and opposing parties" (internal quotation marks omitted)), cert. denied, 343 Conn. 901, 272 A.3d 657 (2022); *Wiltzius* v. *Zoning Board of Appeals*, 106 Conn. App. 1, 15–16, 940 A.2d 892 (although plaintiff raised res judicata issue for first time in motions for reargument and reconsideration after court issued decision, issue was reviewable because parties had addressed it and because trial court considered it before rendering final judgment), cert. denied, 287 Conn. 906, 950 A.2d 1283 (2008), cert. denied, 287 Conn. 906, 950 A.2d 1283 (2008), and cert. denied, 287 Conn. 907, 950 A.2d 1284 (2008); cf. *White* v. *Mazda Motor of America, Inc.*, supra, 313 Conn. 631–34 (noting that passing comment during oral argument before trial court and reference in motion to reargue were inadequate to introduce alternative theory of liability not alleged in complaint); *Taylor* v. *Zoning Board of Appeals*, 65 Conn. App. 687, 696–97, 783 A.2d 526 (2001) (declining to review plaintiffs' unpreserved claim because "claim was not raised by the plaintiffs before the trial court, either in the original complaint or in any subsequent filings, including their motion to reargue the trial court's decision").

Second, the plaintiff's arguments on appeal relate to the sole issue decided by the trial court—whether the plaintiff was entitled to underinsured motorist benefits under the university's policy—and are subject to de novo review. See *Kling* v. *Hartford Casualty Ins. Co.*, supra, 211 Conn. App. 712–13 (construction of insurance policy is question of law subject to de novo review); see also *Aldin Associates Ltd. Partnership* v. *State*, supra, 209 Conn. App. 767 (construction of statute is question of law subject to de novo review). Accordingly, in reviewing the trial court's determination that there was no genuine issue of material fact that the plaintiff was not entitled to underinsured motorist benefits under the policy, we must conduct our own review of the policy and apply the applicable law. "In such circumstances, the facts are not in dispute and, because [our] review is de novo, the precise legal analysis undertaken by the trial court is not essential to the reviewing court's consideration of the issue on appeal." *Community Action for Greater Middlesex County, Inc.* v. *American Alliance Ins. Co.*, 254 Conn. 387, 395–96, 757 A.2d 1074 (2000). Under these circumstances, we will not ignore a clearly applicable statute and the express provisions in the policy in conducting our plenary review of the court's decision.[10] See, e.g., *G & H Investment Co.* v. *Raymond*, 113 Conn. 778, 779, 155 A. 497 (1931) ("even though no claim was made to the trial court that the giving of notice of dishonor was waived by the terms of the note, we are not debarred from

considering it, and there is abundant reason to do so where, by oversight, a judgment has entered contrary to the law applicable under the plain terms of the written instruments which lay at the basis of the case and which both parties must be presumed to know, and upon an issue not raised by the pleadings"); *Schmidt* v. *Manchester*, 92 Conn. 551, 555, 103 A. 654 (1918) ("It does not appear that the [applicable statute] was brought to the attention of the Superior Court, nor that it was relied upon by the plaintiff. It was, however, the law of the land, which the parties and the court were conclusively presumed to know." (Internal quotation marks omitted.)); see also *Harlach* v. *Metropolitan Property & Liability Ins. Co.*, 221 Conn. 185, 191–92, 602 A.2d 1007 (1992) ("It is well settled that an insurance contract must be read to include provisions that the law requires be included and to exclude provisions that the law prohibits. . . . Unless the agreement indicates otherwise, [an applicable] statute existing at the time an agreement is executed becomes a part of it and must be read into it just as if an express provision to that effect were inserted therein." (Citation omitted; internal quotation marks omitted.)).

Finally, the defendant does not claim, and there is no indication, that the plaintiff failed to raise these specific arguments as a matter of strategy. Cf. *State* v. *Burke*, 182 Conn. 330, 332 n.3, 438 A.2d 93 (1980) ("[T]he statute in question had been in effect for four months, yet seems to have escaped the attention of the trial court and the state as well as defense counsel. Had there been any indication that defense counsel had made a strategic decision to sit silently at the close of the charge, and then raise this claim of error if the verdict proved unpalatable . . . we would have refused to review the defendant's claim." (Citation omitted.)). Accordingly, assuming that the plaintiff's claims are unpreserved, we exercise our discretion to consider their merits.

II

The plaintiff claims that the court improperly rendered summary judgment for the defendant because the court's construction of the policy violates § 38a-336 (a) (2), which requires that an automobile liability insurance policy "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." Accordingly, the plaintiff argues that, because she is an insured for purposes of liability coverage and because there is no evidence that the university requested a lesser amount of underinsured motorist coverage, § 38a-336 requires that she be insured for underinsured motorist coverage. Thus, as an initial mat-

ter, we consider whether the plaintiff is an insured under the policy for purposes of liability coverage, as that is a necessary predicate to her claim for underinsured motorist coverage pursuant to the statute.

A

We begin with the relevant provisions of the university's policy, which we conclude are unambiguous. See *Ceci* v. *National Indemnity Co.*, 225 Conn. 165, 172, 622 A.2d 545 (1993) (court "must first determine whether the policy provision is ambiguous").

Item one of the "BUSINESS AUTO COVERAGE PART DECLARATIONS" (declarations) provides that "[t]he Commercial Automobile Coverage Part consists of these Declarations and the Business Auto Coverage Form shown below." Item two of the declarations sets forth the coverages and limits of insurance, explaining that "[c]overage applies only to those 'Autos' shown as Covered 'Autos.' 'Autos' are shown as covered 'autos' for the applicable coverages by the entry of one or more of the symbols from Section 1—Covered Autos of the Business Auto Coverage Form next to the name of the coverage [covered auto symbol]." Below that explanation, a table provides that the covered auto symbol for "COVERED AUTOS LIABILITY" is "1" and the covered auto symbol for "UNINSURED AND UNDERINSURED MOTORISTS COVERAGE" is "2."

Section I of the business auto coverage form describes the covered auto symbols and provides that symbol "1" is "Any 'Auto,' " and symbol "2" is "Owned 'Autos' Only," i.e., "Only those 'autos' [the university] own[s] . . . . This includes those 'autos' [the university] acquire[s] ownership of after the policy begins." Section II of the coverage form, titled "COVERED AUTOS LIABILITY COVERAGE," provides that the defendant "will pay all sums an 'insured' legally must pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies, caused by an 'accident' and resulting from the ownership, maintenance or use of a covered 'auto.' " Paragraph A 1 of the section II coverage form provides in relevant part: "The following are 'insureds': a. [The university] for any covered 'auto.' b. Anyone else while using with [the university's] permission a covered 'auto' [the university] own[s], hire[s] or borrow[s] . . . ."

Among the policy endorsements is the business auto extension endorsement, which modifies paragraph A 1 of section II of the business auto coverage form and adds the following provisions: "An 'employee' of [the university] is an 'insured' while operating an 'auto' hired or rented under a contract or agreement in an 'employee's' name, with [the university's] permission, while performing duties related to the conduct of [the university's] business"

We conclude, and the parties agree, that the plaintiff

is an insured for purposes of liability coverage.[11] Although the rental agreement for the plaintiff's vehicle is not included in the summary judgment record and, therefore, we do not know whether the vehicle was rented by the university or by the plaintiff, the plaintiff would be an insured for liability coverage under the policy in either scenario. That is, if the plaintiff's vehicle was rented by the university, the plaintiff would be an insured for purposes of liability coverage because she would have been "using with [the university's] permission a covered 'auto' [the university] own[ed], hire[d] or borrow[ed] . . . ." Likewise, if the plaintiff rented the vehicle in her own name, she would be an insured for liability purposes under the coverage form, as amended by the business auto extension endorsement, because she would have been operating an " 'auto' . . . rented under a contract . . . in an 'employee's' name, with [the university's] permission, while performing duties related to the conduct of [the university's] business."

Accordingly, having determined that the plaintiff is an insured under the policy for purposes of liability coverage, we turn to the plaintiff's claim that, in the absence of a waiver by the university, § 38a-336 mandates that she also be insured for underinsured motorist coverage.

B

We begin with the relevant legal principles regarding underinsured motorist coverage.[12] "Our state law requires all motor vehicle owners to maintain a minimum amount of automobile liability insurance coverage. General Statutes § 38a-335 (a). The legislature understood that some motorists will not comply with this law, however. Thus, to protect properly insured motorists from the negligence of financially irresponsible motorists, our state law expressly provides that every automobile insurance policy must provide its insured with a minimum amount of uninsured and underinsured motorist coverage as provided for in § 14-112 (a)." *Tannone* v. *Amica Mutual Ins. Co.*, 329 Conn. 665, 672, 189 A.3d 99 (2018).

Specifically, § 38a-336 (a) provides in relevant part: "(1) (A) 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 because of bodily injury, including death resulting therefrom, 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. . . .

"(2) Notwithstanding any provision of this section, 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. . . ."

Section 38a-334-6 of the Regulations of Connecticut State Agencies sets forth the minimum provisions for underinsured motorist coverage and the permitted exclusions and reductions to such coverage. The regulation provides that an insurer shall provide uninsured or underinsured motorist coverage for "the occupants of every motor vehicle to which the bodily injury liability coverage applies"; Regs., Conn. State Agencies § 38a-334-6 (a); and that "[t]he 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." Regs., Conn. State Agencies § 38a-334-6 (d) (1). Pursuant to the regulation, "[t]he insurer's obligations to pay may be made inapplicable: (1) To any claim which has been settled with the uninsured motorist without the consent of the insurer; (2) if the uninsured or underinsured motor vehicle is owned by (A) the named insured or any relative who is a resident of the same household or is furnished for the regular use of any of the foregoing, (B) a self insurer under any motor vehicle law, or (C) any government or agency thereof; (3) to pay or reimburse for workers' compensation or disability benefits." Regs., Conn. State Agencies § 38a-334-6 (c).

"Thus, by its terms, § 38a-336 (a) (1) requires that each automobile liability policy provide uninsured and underinsured motorist coverage to a class of persons that is coextensive with that insured under the liability section of the policy." *Gomes* v. *Massachusetts Bay Ins. Co.*, 87 Conn. App. 416, 425–26, 866 A.2d 704, cert. denied, 273 Conn. 925, 871 A.2d 1031 (2005); see also *Gormbard* v. *Zurich Ins. Co.*, 279 Conn. 808, 823, 904 A.2d 198 (2006) (noting that there is "no better example of an attempt to limit otherwise mandated uninsured motorist coverage than a definition in an insurance policy that purports to limit uninsured motorist coverage to injuries arising out of the insured's use of a specified vehicle"); *Middlesex Ins. Co.* v. *Quinn*, 225 Conn. 257, 268, 622 A.2d 572 (1993) ("insurer cannot limit otherwise mandated underinsured motorist coverage by labeling a forbidden exclusion as a definition");

Platcow v. *Yasuda Fire & Marine Ins. Co. of America*, 59 Conn. App. 47, 56 n.16, 755 A.3d 356 (2000) ("[i]t is undisputed that, in this state, mandatory uninsured motorist coverage operates in parity with liability insurance coverage"); *Bailey* v. *Peerless Ins. Co.*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-08-50085155-S (September 15, 2009) (48 Conn. L. Rptr. 514, 516) (The trial court held that the plaintiffs' "right to pursue underinsured motorist benefits cannot be restricted to the use of particular vehicles. To allow the distinction contained within the [defendant's insurance policy] would be to ratify a disparity between coverage for liability purposes and coverage for purposes of underinsured motorist benefits. [Our] Supreme Court, in *Quinn* and *Gormbard*, has specifically rejected any such distinction, as a violation of public policy.").

"Our state has consistently maintained a strong public policy favoring uninsured motorist coverage . . . since 1967 . . . . Specifically, that public policy dictates that every insured is entitled to recover for the damages he or she would have been able to recover if the uninsured motorist [responsible for the insured's injury] had maintained a policy of liability insurance. . . . In short, the legislature and [our Supreme Court] have a well established and deliberate policy in favor of insuring the risk of loss resulting from the negligence of uninsured and underinsured motorists.

"The rationale behind this policy is to reward those who obtain insurance coverage for the benefit of those they might injure. . . . We have supported coverage arrangements that have *furthered* the important public policy goals of the uninsured motorist statute. . . . And in support of the broad, remedial purpose of the uninsured motorist statute . . . [our Supreme Court has] stated that an insurer may [not] circumvent th[at] public policy . . . ." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Tannone* v. *Amica Mutual Ins. Co.*, supra, 329 Conn. 673.

In the present case, the plaintiff claims that the court's construction of the university's policy "would provide liability coverage of $1 million and [underinsured motorist coverage] of $0, for the same accident. . . . There is no dispute that [the] plaintiff would be an insured for purposes of liability coverage. The defendant claims instead that, while liability coverage is available, [underinsured motorist] coverage is not. This position does not comport with the statute." (Citation omitted; emphasis omitted.) The plaintiff further claims that the court's construction of the policy would violate Connecticut's statutory minimum coverage requirements under § 14-112.

In arguing to the contrary, the defendant does not dispute that the plaintiff would be an insured for purposes of liability coverage under the policy. See foot-

note 11 of this opinion. Instead, the defendant relies on § 38a-336 (f), which provides: "Notwithstanding subsection (a) of section 31-284, an employee of a named insured injured while occupying a covered motor vehicle in the course of employment shall be covered by such insured's otherwise applicable uninsured and underinsured motorist coverage." General Statutes § 31-284 (a), the workers' compensation exclusivity provision, provides that the Workers' Compensation Act (act), General Statutes § 31-275 et seq., is the exclusive remedy for an employee injured or killed in the course of her employment. According to the defendant, § 38a-336 (f) "supports [its] position that the plaintiff was not a covered person for the purposes of . . . underinsured motorist claims. The plaintiff does not meet the definitional requirements under the policy . . . ." We are not persuaded by the defendant's argument.

The defendant relies on this court's decisions in *Gomes* v. *Massachusetts Bay Ins. Co.*, supra, 87 Conn. App. 418–19, and *Ludemann* v. *Specialty National Ins. Co.*, 117 Conn. App. 656, 980 A.2d 343, cert. denied, 294 Conn. 917, 983 A.2d 851 (2009), as support for its position. In *Gomes*, a plaintiff was working as a volunteer fire policeman directing traffic when he was struck from behind by a vehicle driven by a tortfeasor. *Gomes* v. *Massachusetts Bay Ins. Co.*, supra, 418. The plaintiff received workers' compensation benefits for his injuries and, after exhausting the limits of liability coverage under the tortfeasor's insurance policy, brought an action against his employer's insurer for underinsured motorist benefits. Id., 419. The trial court rendered summary judgment for the insurer, concluding "that the exception to the workers' compensation exclusivity provision provided by § 38a-336 (f) was not applicable because the plaintiff was in the middle of an intersection directing traffic when struck and was not occupying a covered vehicle as defined by the policy to mean in, upon, getting in, on, out or off." (Internal quotation marks omitted.) Id., 420.

The plaintiff appealed to this court, claiming that the trial court "improperly construed § 38a-336 (f) as limiting underinsured motorist coverage to those employees of a named insured who are injured while 'occupying' a covered motor vehicle, rather than construing it to require such coverage to any person insured under the liability portion of the policy." Id., 423. In rejecting that claim, this court reasoned that, "[p]rior to the enactment of § 38a-336 (f), our Supreme Court held that . . . § 31-284 (a) precluded an employee injured while operating the employer's vehicle in the course of employment from seeking uninsured or underinsured motorist benefits directly from a self-insured employer; *Bouley* v. *Norwich*, 222 Conn. 744, 761, 610 A.2d 1245 (1992); or from the employer's insurance carrier. *CNA Ins. Co.* v. *Colman*, 222 Conn. 769, 773–74, 610 A.2d 1257 (1992). In 1993, the General

Assembly legislatively overruled *Bouley* and *Colman* when it enacted § 38a-336 (f). In *Reliance Ins. Co.* v. *American Casualty Co. of Reading, Pennsylvania*, 238 Conn. 285, 679 A.2d 925 (1996), in holding that § 38a-336 (f) applied retroactively, our Supreme Court stated that the statute was 'intended to be clarifying legislation and, as such, must be accepted as a declaration of the legislature's original intent pertaining to the *interplay* between the uninsured motorist provision of . . . § 38a-336 and the workers' compensation exclusivity provision of § 31-284.' . . .

"Although the plaintiff urges this court to harmonize what he contends to be a continuing conflict between the statutory mandate of uninsured and underinsured coverage and the impact of the workers' compensation exclusivity provision, we decline to do so because we conclude that the legislature appropriately resolved the conflict when it enacted § 38a-336 (f). . . .

"On the basis of the language of § 38a-336 (f), it is apparent that the legislature addressed the *interplay* between the uninsured and underinsured motorist statute and the [act] by providing a *limited* exception to the exclusivity provision. The legislature could have chosen to allow the *Bouley* and *Colman* decisions to stand, or it could have chosen to provide a broader exception to the exclusivity provision. Instead, the legislature chose to harmonize the conflicting statutory schemes by providing an exception, while limiting its applicability to those employees 'injured while *occupying* a covered motor vehicle . . . .' " (Citations omitted; emphasis in original.) Id., 427–29. Accordingly, this court held "that the court properly construed § 38a-336 (f) as limiting underinsured motorist coverage to those employees of a named insured who are injured while 'occupying' a covered motor vehicle." Id., 430.

Similarly, in *Ludemann* v. *Specialty National Ins. Co.*, supra, 117 Conn. App. 657, a plaintiff, who was employed as a police officer, was directing traffic when he was struck and injured by a vehicle operated by a tortfeasor. The plaintiff received workers' compensation benefits for his injuries and, after he exhausted the coverage of the tortfeasor's liability insurance policy, sought underinsured motorist coverage under his employer's automobile insurance policy. Id. The case was submitted to arbitration for the arbitrators "to determine whether [the plaintiff] was barred from receiving underinsured motorist benefits because, at the time he was injured, he was not *occupying* his police cruiser for the purposes of § 38a-336 (f). . . . [T]he arbitration panel rendered an award in favor of the [insurer]. The [plaintiff] filed an application in the trial court, asking the court to vacate the award. The court denied the application to vacate, and the [plaintiff] appealed to this court." (Emphasis in original.) Id.

On appeal, the plaintiff in *Ludemann* claimed, inter

alia, that the court improperly concluded that he was barred from recovering as an insured pursuant to § 38a-336 (f) because he was not occupying a motor vehicle. Id., 657–58. In a per curiam opinion, this court noted that the trial court's decision was "consistent with our applicable statutes and decisional law. See *Gomes* v. *Massachusetts Bay Ins. Co.*, [supra, 87 Conn. App. 416]. We therefore adopt the court's well reasoned decision." *Ludemann* v. *Specialty National Ins. Co.*, supra, 658; see also *Ludemann* v. *Specialty National Ins. Co.*, 51 Conn. Supp. 326, 335, 982 A.2d 659 (2008) (holding that arbitration panel properly relied on *Gomes* in concluding that plaintiff was not " 'occupying' " motor vehicle pursuant to § 38a-336 (f)), aff'd, 117 Conn. App. 656, 980 A.2d 343, cert. denied, 294 Conn. 917, 983 A.2d 851 (2009).

The defendant contends that the present case is analogous to *Gomes* and *Ludemann* and argues that, "under [§] 38a-336 (f), underinsured motorist coverage was not available to the plaintiffs in *Gomes* and *Ludemann*. The Appellate Court in *Gomes* rejected the argument that [§] 38a-336 required that underinsured motorist coverage be afforded to any person insured under the liability portion of the policy. It is a necessary predicate to the plaintiff's argument—that there needed to be a waiver of the underinsured coverage limits in this case—that an insurance policy that provides liability coverage must necessarily provide underinsured motorist coverage. The *Gomes* decision and the text of [§] 38a-336 (f) undermines this predicate. Section 38a-336 (f) by its express terms does not authorize an underinsured motorist claim by the plaintiff because although she was an employee of the [u]niversity . . . she was not occupying a covered motor vehicle."

The plaintiff responds that *Gomes* and *Ludemann* are distinguishable from the present case because neither plaintiff in those cases was operating a motor vehicle when he was injured by an underinsured motorist. In addition, the plaintiff argues that, contrary to the defendant's assertion, the court in *Gomes* reaffirmed the central premise of her argument, namely, that "§ 38a-336 (a) (1) requires that each automobile liability policy provide uninsured and underinsured motorist coverage to a class of persons that is coextensive with that insured under the liability section of the policy." *Gomes* v. *Massachusetts Bay Ins. Co.*, supra, 87 Conn. App. 425–26. We agree with the plaintiff.

The defendant's reliance on § 38a-336 (f), *Gomes*, and *Ludemann* in the present case is misplaced. To be sure, § 38a-336 (f) limits an employee's right to recover uninsured and underinsured motorist coverage under an employer's policy by requiring that an employee must be "occupying a covered motor vehicle in the course of employment . . . ." Neither plaintiff in *Gomes* or *Ludemann*, however, was occupying a covered motor

vehicle when he was injured. Indeed, neither plaintiff was occupying *any* vehicle when he was injured, and that fact was dispositive of both cases. By contrast, in the present case, the plaintiff was operating a covered motor vehicle at the time of the accident, as it is undisputed that, had she caused the accident, she and the university would have been entitled to liability coverage under the university's policy. Thus, we must resolve an issue not addressed in *Gomes* and *Ludemann*—whether, for purposes of § 38a-336 (f), a motor vehicle can be "covered" for purposes of liability coverage and "not covered" for purposes of uninsured and underinsured motorist coverage.

We conclude that the plain language of § 38a-336 (f), when read in conjunction with the other provisions of § 38a-336, belies the defendant's argument. As noted previously in this opinion, § 38a-336 (f) provides in relevant part: "[A]n employee of a named insured injured while occupying a covered motor vehicle in the course of employment shall be covered by such insured's otherwise applicable uninsured and underinsured motorist coverage." The defendant misreads this language as allowing it, through its policy language, to sever liability coverage from uninsured and underinsured motorist coverage. The statute does no such thing. All that § 38a-336 (f) does is limit when an employee can bring a claim for benefits under an employer's uninsured and underinsured motorist coverage by requiring that the employee be injured while occupying a covered motor vehicle at the time of the accident. This exception to the act thus limits the class of claimants, but it does not alter in any way the insurer's statutory obligation to provide the "otherwise applicable uninsured and underinsured motorist coverage." There is no indication in § 38a-336 (f) that the legislature intended to distinguish between a covered motor vehicle for liability coverage and a covered motor vehicle for uninsured and underinsured motorist coverage. To the contrary, § 38a-336 (f) specifically refers to the employer's "otherwise applicable uninsured and underinsured motorist coverage." The coverage that is "otherwise applicable" is spelled out in detail in § 38a-336 (a).

First, § 38a-336 (a) (1) (A) requires in relevant part: "Each automobile liability insurance policy shall provide insurance, herein called uninsured and underinsured motorist coverage . . . for the protection of persons insured thereunder who are legally entitled to recover damages because of bodily injury, including death resulting therefrom, from owners or operators of uninsured motor vehicles and underinsured motor vehicles . . . ." Second, § 38a-336 (a) (2) requires that the mandated uninsured and underinsured motorist coverage have limits equal to those purchased for liability coverage and sets forth specific procedures that an insurer must follow when an insured requests to reduce to the statutory minimum the amount of uninsured and

underinsured motorist coverage under an insurance policy. Notably, § 38a-336 (a) (2) makes clear that the requirement to provide equivalent liability and uninsured and underinsured motorist coverage exists "[n]otwithstanding any provision of this section," which necessarily includes subsection (f).

Thus, by the plain language of the statute, the defendant cannot rely on the language of subsection (f) of § 38a-336 to avoid its statutory obligations by, as the defendant has done here, limiting by policy definition "uninsured motorist coverage to injuries arising out of [an] insured's use of a specified vehicle." *Gormbard* v. *Zurich Ins. Co.*, supra, 279 Conn. 823. Indeed, our Supreme Court expressly has held that an insurer may not do so. See *Middlesex Ins. Co.* v. *Quinn*, supra, 225 Conn. 268 ("[a]n insurer cannot limit otherwise mandated underinsured motorist coverage by labeling a forbidden exclusion as a definition").[13] Yet, the defendant's interpretation of § 38a-336 (f) would do just that. In fact, following the defendant's argument to its logical conclusion, an insurer, relying on § 38a-336 (f), could exclude all of an employer's vehicles from its definition of covered motor vehicles in an uninsured and underinsured motorist endorsement and be in full compliance with § 38a-336 (a). That the legislature expressly stated that the requirements of subsection (a) must be met "[n]otwithstanding" any other provision of § 38a-336 precludes such an outcome. Simply put, it is not reasonable to read § 38a-336 (f) as an expansive exception to the clearly expressed policy in § 38a-336 (a). See, e.g., *Gormbard* v. *Zurich Ins. Co.*, supra, 819 ("[i]nsurance companies are powerless to restrict the broad coverage mandated by [§ 38a-336]" (internal quotation marks omitted)).

Moreover, § 38a-336 is a remedial statute intended to promote the "well established and deliberate policy in favor of insuring the risk of loss resulting from the negligence of uninsured and underinsured motorists." *Tannone* v. *Amica Mutual Insurance Co.*, supra, 329 Conn. 673. This policy "requires an insurer to provide uninsured motorist benefits to any insured under the automobile liability policy." *Middlesex Ins. Co.* v. *Quinn*, supra, 225 Conn. 267. Accordingly, we "must apply § 38a-336 (a) (2) consistent with the maxim that remedial statutes should be construed liberally in favor of those whom the law is intended to protect [and that] exceptions to those statutes should be construed narrowly." (Internal quotation marks omitted.) *Russbach* v. *Yanez-Ventura*, 213 Conn. App. 77, 102, 277 A.3d 874, cert. denied, 345 Conn. 902, 282 A.3d 465 (2022). Applying this principle, there simply is no language in § 38a-336 (f) to suggest that the legislature intended to create a broad exception to the express requirements of § 38a-336 (a). The absence of any such language is significant, "as it is a well settled principle of statutory construction that the legislature knows how

to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so." (Citation omitted.) *Scholastic Book Clubs, Inc.* v. *Commissioner of Revenue Services*, 304 Conn. 204, 219, 38 A.3d 1183, cert. denied, 568 U.S. 940, 133 S. Ct. 425, 184 L. Ed. 2d 255 (2012). Indeed, when the legislature has intended to create an exception to the broad coverage mandated by § 38-336 (a), it has done so expressly. See, e.g., General Statutes § 38a-336 (a) (1) (C) ("[n]o insurer shall be required to provide uninsured and underinsured motorist coverage to (i) a named insured or relatives residing in the named insured's 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 (ii) any insured occupying an uninsured or underinsured motor vehicle or motorcycle that is owned by such insured"); Regs., Conn. State Agencies § 38a-334-6 (setting forth minimum provisions for uninsured and underinsured motorist coverage and permissible exclusions); see also *Anastasia* v. *General Casualty Co. of Wisconsin*, 307 Conn. 706, 714, 59 A.3d 207 (2013) ("an insurer may not, by contract, reduce its liability for . . . uninsured or underinsured motorist coverage, except as [§ 38a-334-6] of the Regulations of Connecticut State Agencies expressly authorizes" (internal quotation marks omitted)).

Consequently, reading the statute as a whole, the "otherwise applicable" language of § 38a-336 (f) clearly and unambiguously requires that the defendant comply with the other provisions of § 38a-336 before reducing the limits of uninsured and underinsured coverage to an amount less than the limits of liability coverage under the policy. Therefore, because there is no evidence in the record establishing that the university expressly waived the statutorily mandated coverage, as required by § 38a-336 (a) (2), the court improperly rendered summary judgment for the defendant, as the defendant failed to establish that the plaintiff is not entitled to underinsured motorist benefits.[14]

The judgment is reversed and the case is remanded for further proceedings in accordance with this opinion.

In this opinion the other judges concurred.

[1] General Statutes § 38a-336 (e) provides in relevant part: "[A]n 'underinsured motor vehicle' means a motor vehicle with respect to which the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of liability under the uninsured motorist portion of the policy against which claim is made under subsection (b) of this section."

[2] General Statutes § 38a-336 (b) provides in relevant part: "An 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. . . .''

[3] The defendant also submitted an affidavit from Richard Spring, a claims representative for the defendant, and a certified copy of the university's policy.

[4] General Statutes § 14-112 provides in relevant part: ''(a) To entitle any person to receive or retain a motor vehicle operator's license or a certificate of registration of any motor vehicle . . . the commissioner shall require from such person proof of financial responsibility to satisfy any claim for damages by reason of personal injury to, or the death of, any one person, of twenty-five thousand dollars, or by reason of personal injury to, or the death of, more than one person on account of any accident, of at least fifty thousand dollars, and for damage to property of at least twenty-five thousand dollars. When the commissioner requires proof of financial responsibility from an operator or owner of any motor vehicle, he may require proof in the amounts herein specified for each vehicle operated or owned by such person. . . .

''(b) Such proof of financial responsibility shall be furnished as is satisfactory to the commissioner and may be evidence of the insuring of the named insured or resident relative of the named insured against loss on account of legal liability of the named insured or resident relative of the named insured for injury to or the death of persons and damage to property in the respective amounts provided by this section in the form of a certificate signed by any person authorized in writing by an officer of any company authorized to issue such insurance in this state or any agent of such company licensed under the provisions of section 38a-769, showing that a policy of insurance in such amounts, noncancellable except after ten days' written notice to the commissioner, has been issued to the person furnishing such proof . . . .''

We note that, although the legislature has amended § 14-112 since the events underlying this appeal; see, e.g., 2017 Public Acts, No. 17-114; those amendments are not relevant to the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[5] In a footnote in that motion, the plaintiff stated that the court ''ruled on the defendant's summary judgment motion based on its examination of the complaint, pleadings, and exhibits, including the plaintiff's statements about the vehicle shortage and [the] corporate account [with a rental car company] maintained by the [university]. . . . To remove any doubt as to the adequacy of the record, the plaintiff attaches herewith an affidavit formally averring those same facts. (Ex. A.).'' (Citation omitted.) The plaintiff, however, failed to include any exhibits with her motion to reargue.

[6] Because the court denied the motion to reargue without explanation, it is unclear whether the court denied the motion because the plaintiff failed to assert the claims raised therein in opposition to the defendant's motion for summary judgment or whether it rejected the plaintiff's claims on the merits. The plaintiff sought permission from this court to file a late motion for articulation as to the denial of her motion to reargue, which this court denied. See footnote 7 of this opinion. Although the plaintiff stated in her appeal form that she was appealing from the ''summary judgment for the defendant, and . . . the denial of reconsideration,'' she does not argue on appeal that the court abused its discretion in denying her motion to reargue.

[7] On August 12, 2021, the plaintiff filed a motion for permission to file a late appeal. This court granted the plaintiff's motion, and the plaintiff filed this appeal on October 19, 2021. After filing her appeal, the plaintiff filed motions requesting permission to file late motions for articulation and rectification. The plaintiff sought to have the trial court articulate the factual and legal basis for its order denying her motion to reargue and rectify the record to include an affidavit that inadvertently was not included with her motion to reargue. See footnote 5 of this opinion. This court denied both motions on April 13, 2022.

[8] In her principal brief to this court, the plaintiff did not renew her primary claim before the trial court regarding the lessor endorsement. After oral argument before this court, we ordered, sua sponte, that the parties may file supplemental briefs addressing whether the trial court properly determined that there was no genuine issue of material fact as to whether the plaintiff was entitled to underinsured motorist benefits under the policy and the lessor endorsement. In her supplemental brief, the plaintiff claimed that the court properly applied the plain meaning of the lessor endorsement and erred only in failing to apply § 38a-336 in construing the policy as a whole. In light of the plaintiff's position, we do not consider this issue.

[9] Our conclusion is limited to the particular circumstances of the present

case and should not be understood as relaxing the well established rule that we will not review claims of error not raised before and decided by the trial court. See, e.g., *Theodore* v. *Lifeline Systems Co.*, 173 Conn. App. 291, 314, 163 A.3d 654 (2017) ("[i]t is well settled that this court generally does not review claims not raised before the trial court").

[10] We note that, although the plaintiff has not invoked the plain error doctrine, our Supreme Court routinely has held that a court's failure to apply an applicable statute is plain error. See *Genovese* v. *Gallo Wine Merchants, Inc.*, 226 Conn. 475, 480 n.6, 628 A.2d 946 (1993) ("[i]t is plain error for a trial court to fail to apply an applicable statute, even in the absence of the statute having been brought to its attention by the parties"); *Ralto Developers, Inc.* v. *Environmental Impact Commission*, 220 Conn. 54, 59, 594 A.2d 981 (1991) ("[w]e have noticed plain error in the failure of a trial court to apply a clearly relevant statute to the case before it" (internal quotation marks omitted)); *State* v. *Preyer*, 198 Conn. 190, 199, 502 A.2d 858 (1985) ("[a] charge that demonstrates that the trial court has overlooked the applicable statute justifies consideration as plain error"); *State* v. *Burke*, 182 Conn. 330, 331–32, 438 A.2d 93 (1980) (exercising discretion to consider defendant's unpreserved statutory claim because, "[w]here the legislature has chosen specific means to effectuate a fundamental right, failure to follow the mandatory provisions of the statute is plain error, reviewable by this court"); *Hartford Federal Savings & Loan Assn.* v. *Tucker*, 181 Conn. 607, 609, 436 A.2d 1259 (1980) ("oversight of a clearly applicable statute can be considered plain error"), cert. denied, 474 U.S. 920, 106 S. Ct. 250, 88 L. Ed. 2d 258 (1985); *Stoni* v. *Wasicki*, 179 Conn. 372, 377, 426 A.2d 774 (1979) (although not raised by parties on appeal, court concluded that trial court's failure to apply applicable statute constituted plain error); see also *Persico* v. *Maher*, supra, 191 Conn. 403–404, ("[i]t appearing that the limiting statute was overlooked in the court below and that public welfare would be best served by resolving this issue, we will consider this [unpreserved] claim"); *Campbell* v. *Rockefeller*, 134 Conn. 585, 588, 59 A.2d 524 (1948) (considering unpreserved claim as to application of federal statute because "[w]hile ordinarily questions not raised at the trial will not be considered on appeal, an exception is made when a pertinent statute has been overlooked"); *Leary* v. *Citizens & Manufacturers National Bank*, 128 Conn. 475, 478–79, 23 A.2d 863 (1942) (noting that our Supreme Court has reviewed unpreserved claims "where the error was manifest . . . where an applicable statute was overlooked . . . and where the error went to a vital issue in the case" (citations omitted)); *Adley Express Co.* v. *Darien*, 125 Conn. 501, 504, 7 A.2d 446 (1939) (court, sua sponte, raised applicability of statute because "pertinent statute [was] overlooked"); *Stevens* v. *Neligon*, 116 Conn. 307, 311, 164 A. 661 (1933) (although applicable statute neither was brought to attention of trial court nor relied on by plaintiff, "it [was] sufficient if the complaint states facts which, if true, give an action under the statute, and the statute is the law of the land which the parties and the court were conclusively presumed to know").

Similarly, this court can commit plain error by ignoring a plainly applicable statute or rule of practice when conducting plenary review of a trial court's decision on a question of law. See, e.g., *Mueller* v. *Tepler*, 312 Conn. 631, 645–46, 95 A.3d 1011 (2014) (Appellate Court committed plain error by affirming judgment of trial court rendered on stricken complaint on alternative basis instead of remanding case to trial court with direction to allow plaintiff to amend complaint pursuant to Practice Book § 10-44). Nevertheless, because the plaintiff's claims with respect to the application of § 38a-336 and the business auto extension endorsement expressly were raised before the trial court in her motion to reargue, addressed before the trial court on the merits by the defendant, and briefed on the merits before us, we need not employ plain error review.

[11] The defendant concedes that the business auto extension endorsement amends the definition of an insured under the coverage form for purposes of liability coverage. In addition, during oral argument before this court, counsel for the defendant agreed that the plaintiff was an insured for purposes of liability coverage under the policy.

[12] As previously noted in this opinion, the construction of a statute is a question of law subject to plenary review. See *Aldin Associates Ltd. Partnership* v. *State*, supra, 209 Conn. App. 767.

[13] Although *Middlesex Ins. Co.* v. *Quinn*, supra, 225 Conn. 257, was decided in 1993, before subsection (f) was added to § 38a-336; see Public Acts 1993, No. 93-297, § 1 (effective January 1, 1994); our Supreme Court subsequently reaffirmed its holding in *Quinn* in 2006, in *Gormbard* v. *Zurich Ins. Co.*,

supra, 279 Conn. 821–25.

[14] In light of our conclusion that, on the basis of the application of § 38a-336 to the university's policy, the court improperly rendered summary judgment for the defendant, we do not address the plaintiff's remaining arguments.