Gasser Law Firm, LLC

Client Quarterly

Summer 2010

Decisions of Interest

UIM CARRIERS RECEIVE FAVORABLE DECISIONS

In *Anastasia v. General Casualty, Co. of Wisconsin*, (Wilson, J.) (2010), plaintiff argued that defendant UIM carrier was not entitled to a credit for the punitive damage payments made by the tortfeasor's carrier as they were not "compensatory". The Court held that regardless of the nature of the damages, the UIM carrier was entitled to a credit as they fit the policy definition of being made "by or on behalf of persons or organizations who may be legally responsible."

In a troubling case in terms of the decision to present the claim, in *Schultz v. Safeco Insurance of Illinois*, CV-08-50061955S (2010) plaintiff argued that the UIM carrier was not entitled to a credit for a tortfeasor payment as it was made on behalf of a corporate tortfeasor and was not therefore "paid by or on behalf of any person responsible for the injury." The Court, Radcliffe, J., rejected the argument, finding that there was no indication in the policy or the insurance regulations that the legislature intended "persons" to only be considered "natural" persons.

TRIPPING OVER DOG NOT "DOG BITE"

In *Moulten v. Coffee & More LLC*, CV-10-6006205-S, (Wagner, J. T.R.) (2010) the Court held that the plaintiff tripping over a dog allowed to lie in front of a door was not a "dog bite" claim under C.G.S.§22-357. The Court held the "dog bite" statute, which provides for recovery for any injury caused by a dog, requires "active conduct" by the dog. Since the dog, was not doing anything "active" that the plaintiff could prevail only on a negligence claim that subjected the plaintiff to a comparative negligence defense.

Client Quarterly is designed to keep our clients and friends informed about new legislation, court decisions, and issues that affect them. The quarterly is published in both print and electronic formats.

Clients are encouraged to submit questions and topics of interest to be addressed in future issues.

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DEPOSITION TACTICS

In *Ostrofsky v. Sheehy*, CV-05-4011030-S (Silbert, J.) (2010) the Court sanctioned defense counsel (not this office) for instructing a client not to answer a question concerning ownership of a particular piece of property on the ground that the testimony was irrelevant. The Court held that counsel lacked a basis to instruct a client not to answer a question when there was no claim of privilege, or harassment concerning the questioning. The court ordered defense counsel to reimburse plaintiff's counsel for the time and expenses in connection with arguing the issue and resuming the deposition.

Similarly, in *Jones v. Corsi*, CV-08-5004225-S, (Murano, J.) (2010) this office obtained significant sanctions against a co-defendant's carrier when assigned staff counsel for the co-defendant directed the adjuster not to answer (over)

questions about their procedures involving obtaining statements from their insured and directed the adjuster not to produce the notes confirming that the carrier obtained information from their insured that amounted to a statement, harmful to the insured, not previously disclosed.

PLAINTIFF'S VERDICT WITH ZERO DAMAGES AMBIGUOUS

In *Hall v. Bergman*, SC18155 (2010) plaintiff claimed damages including emotional distress from the sale of a condominium. The jury returned a general verdict in favor of plaintiff with zero damages. The Trial Court ordered an Additur of $2,000, which plaintiff rejected. The verdict was set aside and a new trial ordered. Defendant appealed the additur. The Supreme Court remanded, finding that an award for plaintiff with no damages was inconsistent given the facts of the case and ordered a new trial on liability and damages. This is a fact-specific decision given the decision in *Hughes v. Lamay*, 89 Conn. App. 378, 378, Cert. Denied 275 Conn. 922 (2005) defended by this office. In *Hughes*, plaintiff proved that defendant was negligent in allowing a co-tenant to use an illegal kerosene heater. However, plaintiff had no medical treatment. The Court found that while plaintiff established that defendant was negligent, she had no evidence of any bodily injury. The *Hall* Court cited to *Hughes*, finding the two cases consistent.

GASSER LAW FIRM TRIALS

This office obtained a defendant's verdict for its client in *Torrenti v. Kancir* CV 075012366S (April 2010) Plaintiff's vehicle was struck by our client after being pushed into her by a "force and run" tractor trailer. Plaintiff denied the trailer existed but filed a UM claim. Plaintiff's UM carrier argued that there was no evidence that our client's vehicle was struck by the tractor despite extensive damage to the driver's side of our client's vehicle. The jury found solely against the UM carrier and awarded damages.

In King v. Borough of Bantam, CV-07-5002375-S, (July 2010) this office obtained judgment for the defendant in a slip and fall case where plaintiff claimed the borough was negligent in not adequately treating the parking lot. The borough used volunteer labor to in order to reduce costs.

In *White v. MPGE*, MPTC-CV-PI-2009250 (August 2010) the office obtained judgment for defendant where plaintiff argued it was negligent in providing seating that allowed a patron to hit her chair while she was sitting, which she claimed caused her fall.

Client Quarterly

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