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January 2, 2012

Andrew J. McDonald, Esq., General Counsel [[andrew.mcdonald@ct.gov](mailto:andrew.mcdonald@ct.gov)]  
Office of the Governor  
210 Capitol Avenue  
Hartford, CT 06106

Sen. Eric D. Coleman, Co-Chair [[Eric.Coleman@cga.ct.gov](mailto:Eric.Coleman@cga.ct.gov)]  
Rep. Gerald M. Fox, Co-Chair [[Gerald.Fox@cga.ct.gov](mailto:Gerald.Fox@cga.ct.gov)]  
Joint Committee on Judiciary  
Room 2500, Legislative Office Building  
Hartford, CT 06106

*Re: Judicial Reappointment Issue*

Dear Mr. McDonald, Sen. Coleman and Rep. Fox:

Rarely, if ever, does a judge openly convey the belief that judicial discretion includes the option to refuse to apply, or even acknowledge, clear, established, controlling law. Judge Daniel Shaban, who is up for reappointment this spring, has crossed that line dividing the exercise of discretion and abuse of judicial power. This manner of deciding cases undermines confidence in the Judiciary, vitiates lawyers' ability to assess cases based on the law, and thus harms the ability of litigants lacking financial resources to find lawyers to represent them.

Emailed/mailed\* with this letter is Judge Shaban's Aug. 18, 2011 decision in an insurance coverage case, the outcome of five years of litigation. Shockingly to the insured and its counsel (including me), the decision omitted mention of the long-established law governing Conn. courts' construction of insurance policies, or of several insurance policy provisions we relied on in litigating for five years. Yet, in a decision just 41 days earlier in another insurance case, R.T. Vanderbilt (attached), Judge Shaban fully applied the very law (starting at end of p. 4) not acknowledged in our case. In a 2007 decision, Pister (attached), Judge Shaban recognized (p. 4, left) that an insurance policy "must be viewed in its entirety", a principle he ignored in our case.

The omitted legal standard was cited in the very first paragraph of the insured's brief (see attached), the product of five years' effort. Judge Shaban also failed to acknowledge cited Conn. Supreme Court precedent and other caselaw, a statute, and a specific policy section, all relevant to a dispositive issue decided he against the insured (see decision p. 17-19; brief p. 19-24).<sup>1</sup>

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\* Mailed copies of this letter enclose only first & cited pages of referenced documents.

<sup>1</sup> A Motion to Reargue citing Pister and R.T. Vanderbilt was filed urging Judge Shaban to apply the law to the overlooked policy sections; also cited was a July 2011 App. Ct. decision, Ed Constr. Co. v. CNA Ins., 130 Conn. App. 391, reiterating that "It is axiomatic that a contract of insurance must be viewed in its entirety . . . [Ambiguities] must be construed in favor of the insured[.]" Judge Shaban denied reargument without hearing or written decision, or acknowledgment of any authority including his own prior decisions.

As background, the case was initiated in March 2007, and involved whether a title insurer owed the insured \$200,000+ for tax liens the insurer failed to discover in a title search. In March of 2008 I replaced the insured's prior counsel, relying on (a) the law for construction of insurance policies, (b) specific insurance policy provisions, and (c) a September 17, 2008 trial date. One week before that date, a judge postponed trial to July 2009 to accommodate insurer's counsel's sudden request to conduct discovery. After further costly trial preparation including our hiring an expert witness, in March 2009 without advance notice the case was transferred to the Complex Litigation Docket, indefinitely postponing trial again.<sup>2</sup> The case was not tried until 2011, before which the insured's owner, its main witness, passed away, and its expert witness became unavailable due to illness. Unable to advance a planned housing development in Bristol after years in court, the insured lost its property to foreclosure (and Bristol lost jobs and housing).

For our perseverance, Judge Shaban's decision did not even acknowledge the basic law governing Connecticut courts' construction of insurance policies... although other litigants received the benefit of Judge Shaban's application of this law a month earlier (R.T. Vanderbilt). A Motion to Reargue urging application of the law and construction of the overlooked policy provisions, prepared and filed at great additional expense by two highly respected law firms specially-retained, was summarily denied by Judge Shaban without hearing or written decision.

Although you should certainly inquire as to Judge Shaban's reason, if any, for refusing to apply the law, that is separate from the issue I raise: A judge must apply the law, and the failure to do so has the same effects regardless of any reason why. Years of effort and expense are wasted; litigants may not have the resources to pursue appeal; the ability of litigants to find lawyers is diminished; and the public's and legal profession's confidence in the Judiciary is undermined. The *right* of appeal cannot guarantee a litigant's ability to afford one or to find counsel willing to represent them, and certainly does not justify a trial judge's refusal to apply the law and fairly consider a party's arguments and authorities, as oath and conduct rules require.<sup>3</sup>

At the recent CBA "Judicial Independence" symposium, Representative Fox said, "When I question a judge [up for reappointment], I'm not looking so much at the actual decision that they made as much as I'm looking at the way they go about making their decisions. . . . Has this person looked at the law, can they explain their decision in a manner that is justified? . . . What I do get into is the decision making process . . . and how you go about your fact finding and applying the law." Mr. McDonald said, "The process is extraordinarily important. . . . [H]ow justice is done is just as important in many respects as how justice is perceived. . . . [T]he process by which [an outcome] is reached instills confidence in the branch of government." Former Conn. Supreme Court Justice Katz stated most succinctly, "[Judges up for reappointment] shouldn't be penalized for a decision, but that's different from the deliberative process."

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<sup>2</sup> The transfer notice did not include an opportunity to object, although 20 other randomly-researched CLD notices by the same Chief Admin. Judge all included a 15-day objection period. See attached examples. So many unique occurrences in this case, all disproportionately prejudicial to the insured, should raise troubling questions for the Judiciary Committee.

<sup>3</sup> The oath, the same taken by the Governor, Senators and Rep's, requires a judge to "faithfully discharge, according to law, the duties of the office of .... to the best of your abilities[.]" Jud. Conduct Rule 2.2 states, "A judge shall . . . apply the law, and shall perform all duties of judicial office fairly and impartially."

Andrew J. McDonald, Esq., Sen. Eric. D. Coleman, Rep. Gerald M. Fox  
January 2, 2012  
p. 3

This situation presents a timely and compelling opportunity to fulfill the Executive and Legislative branches' function of checks and balances on the Judicial branch, by reinforcing the most fundamental principle of judging: Applying the law is not a choice... judges must apply the law in all cases, indiscriminately. Adherence to this principle is necessary in order for the Judicial to effectively fulfill *its* function as a co-equal branch of government. As Conn. Supreme Court Justice Zarella stated at the CBA symposium, "There's got to be some substance to what the re-nomination process is all about, and some review. It's in our Constitution."

If there is no meaningful response to this during Judge Shaban's reappointment, it will be tantamount to approving of judges abusing the power of their office to choose at their whim whether, when, in which cases, and for which parties' or lawyers' benefit, or detriment, to follow the law. The impact, including cases not appealed and cases not filed due to lack of counsel, will be untold if lawyers cannot depend upon judges' application of established law. Litigants deserve more than to have their disputes decided this way, and lawyers who invest their time for litigants lacking financial resources, thus ensuring equal access to justice for those who would otherwise have no legal redress, deserve more for their diligence, dedication and faith in our Judiciary.

Anyone wishing to discuss this serious matter further, including other pertinent information about Judge Shaban's conduct and demeanor not included herein for brevity (and, if interested, other troubling aspects of this case), may reach me any time at 203-605-2784.

Very truly yours,

Bruce Matzkin

cc: Governor Dannel P. Malloy (by U.S. mail, without attachments)  
Members, Joint Committee on Judiciary (by individual emails and U.S. mail)  
Hon. Barbara M. Quinn, Chief Court Administrator

DOCKET NO. X02 UWY CV07 4020477 S : SUPERIOR COURT  
 CHICAGO TITLE INSURANCE CO. : COMPLEX LITIGATION DOCKET  
 V. : AT WATERBURY  
 BRISTOL HEIGHTS ASSOCICATES, LLC  
 and LEW J. VOLPICELLA : AUGUST 18, 2011

COMPLEX LITIGATION  
 AUGUST 18, 2011  
 4:00 PM

2011 AUG 18 A 10:13

MEMORANDUM OF DECISION

I

PROCEDURAL HISTORY

The plaintiff, Chicago Title Insurance Company (Chicago Title) has initiated this action seeking a declaratory judgment relative to its obligations under a title insurance policy issued to the defendant Bristol Heights Associates, LLC (BHA) for real property located near Daniel Road and Kingswood Dr. in Bristol, Connecticut ("Property"). The operative complaint is the May 23, 2007 six count revised complaint (#105) in which the plaintiff alleges that it is entitled to a declaratory judgment in its favor based upon the following: applicability of express policy exclusions (first and second counts); breach of contract through a failure of BHA to obtain plaintiff's consent prior to the payment of a delinquent tax lien as well its refusal to cooperate in the plaintiff's investigation of a claim (third and fourth counts); a breach of the implied covenant of good faith and fair dealing (fifth count) and conditional indemnification through the defendant Lew J. Volpicella (Volpicella) (sixth count).

In addition to its answer, the defendant BHA filed a three count counterclaim alleging breach of contract, a breach of the covenant of good faith and fair dealing, as well as a violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-

~~was ever received. Arguably then, the note is not yet due and payable and therefore the tax payment could not be set off against it.~~

~~Accordingly, judgment shall enter in favor of BHA as to the second count.~~

C.

In the third count of its complaint, the plaintiff seeks a declaratory judgment that BHA's voluntary payment of the taxes excludes coverage under the Policy. The language of paragraph 9 (c) of the Policy is set forth in footnote 4 above. As noted previously, it was stipulated at trial that BHA did not request or obtain the plaintiff's consent before paying the taxes in full. The evidence clearly established that the election of BHA to make payment was not based upon the fear of losing title to the Property, but rather, to conclude a refinance so as to forward its business expectations. This was a voluntary act and choice on the part of BHA. This is particularly so in the context of the purpose of the Policy (to protect the insured's title from claims adverse to it) when the evidence established that there was no pending claim of foreclosure against the Property at that time. Although the debt had been pursued by the filing of the tax liens against the Property, and the tax collector had warned of impending potential collection actions, at the time of payment there was no evidence that the City had yet referred the matter to counsel for collection. In fact extensions had been granted by the City to allow BHA and Chicago Title to address the liens. Coupled with BHA's resistance to cooperating with Chicago Title's investigation, which compounded the very problem BHA complained of (plaintiff's lack of speed in timely addressing the liens), the evidence is clear that the payment by BHA was done voluntarily through its own affirmative act and without the impetus of a pending loss of title.

Although it has been stipulated that BHA did not obtain plaintiff's consent prior to making payment, that alone does not excuse the plaintiff from its obligations under the Policy. There must be a showing that BHA's actions were prejudicial to the plaintiff. *Taricani v. Nationwide Mutual Insurance Co.*, 77 Conn App. 139, 148-49, 822 A.2d 341 (2003) (citing *Aetna Cas. & Surety Co. v. Murphy*, 206 Conn. 409, 415-16, 538 A.2d 219 (1988)). By making the payment, BHA did materially prejudice the plaintiff's ability to meet its obligations under the terms of the Policy. For example, the plaintiff could have challenged the failure of the City to apply the payments of BHA and/or Volpicella in accordance with General Statutes § 12-144b. Also, the plaintiff lost the opportunity to challenge the validity of the liens that were filed by the tax collector on the grounds that they had not been sent to the owner of record (they had been sent to PB Realty, Inc. rather than Volpicella) and that they failed to properly describe the Property (a single parcel vs. 147 separate lots). The payment also evaporated any ability of the plaintiff to negotiate with the City as to the amount due under the lien. Based on the evidence, there was a real possibility that the City had made an error in the description of the Property and might have conceded to such and adopted the position that the Property should have been liened as a single parcel thereby reducing the overall tax obligation. Other challenges may have been available to the plaintiff in addressing the liens which could have led to the ability to negotiate from a position of strength as to the amounts due, but such ability was lost upon payment.

The court finds that under the circumstances of this case, BHA's actions breached the terms of paragraph 9 (c) of the Policy and thereby terminated the plaintiff's obligations under it. *Brown v. Employers' Reinsurance Corp.*, 206 Conn. 668, 675, 539

A.2d 138 (1988). Such breach resulted in prejudice to the plaintiff's ability to determine whether coverage applied and to prevent loss or damage to BHA. Plaintiff is therefore not liable for any loss or damage suffered by BHA through such payment. Accordingly, coverage is excluded under the Policy and judgment shall enter for the plaintiff on the third count.

D.

The fourth count of plaintiff's complaint seeks a declaratory judgment that the plaintiff's obligations under paragraph 4 (d) (ii) and paragraph 5 of the Policy are terminated through BHA's breach of its duty to cooperate.<sup>10</sup> As noted above, it was stipulated between the parties that BHA did not cooperate in Chicago Title's coverage investigation of the City's claims.

Although it has stipulated to its failure to cooperate, BHA contends in its post trial brief that such failure does not implicate paragraphs 4 (d) (ii) and 5 as such breach was excused by Chicago Title's prior breach in failing to provide coverage for BHA's claim under the Policy. For reasons set forth above and in Section IV below, the court finds that Chicago Title did not breach the contract.

This however, is not dispositive of the issue as BHA also argues that the plain language of paragraph 4 (d) of the Policy limits its duty to cooperate to the context of matters in litigation and that the City's liens did not constitute such matters. BHA's argument is well founded. The heading of Section 4 of the Policy is entitled "Defense and Prosecution of Actions; Duty of Insured Claimant to Cooperate." The language of a duty to cooperate in Section 4 (d) must be viewed in the context of the language of Section 4 (a) which states in relevant part that Chicago Title "shall provide for the defense of an

<sup>10</sup> See footnotes 5 and 8 above.

Docket No.: UWY-CV-07-4020477-S (X02)

CHICAGO TITLE INSURANCE CO.,

Plaintiff,

vs.

BRISTOL HEIGHTS ASSOCIATES, LLC and  
LEW VOLPICELLA,

Defendants.

SUPERIOR COURT

J.D. OF WATERBURY

AT WATERBURY

May 16, 2011

**BRISTOL HEIGHTS' PROPOSED RULINGS OF LAW**<sup>1</sup>

As each of the parties' claims is based on the insurance policy's language,  
the law of construction of insurance policies governs the Court's analysis:

*Controlling law*

'Under our law, the terms of an insurance policy are to be construed according to the general rules of contract construction.... The determinative question is the intent of the parties, that is, what coverage the ... [plaintiff] expected to receive and what the defendant was to provide, as disclosed by the provisions of the policy.... If the terms of the policy are clear and unambiguous, then the language, from which the intention of the parties is to be deduced, must be accorded its natural and ordinary meaning.... However, [w]hen the words of an insurance contract are, without violence, susceptible of two [equally responsible] interpretations, that which will sustain the claim and cover the loss must, in preference, be adopted.' (Citations omitted; internal quotation marks omitted.) Hertz Corp. v. Federal Ins. Co., 245 Conn. 374, 381-82, 713 A.2d 820 (1998). '[T]his rule of construction favorable to the insured extends to exclusion clauses.' (Internal quotation marks omitted.) Heyman Associates No. 1 v. Ins. Co. of Pennsylvania, 231 Conn. 756, 770, 653 A.2d 122 (1995).

Travelers Ins. Co. v. Namerow, 261 Conn. 784, 796 (2002).

"Under well established rules of construction, any ambiguity in the terms of an insurance policy must be construed in favor of the insured because the

<sup>1</sup> Copies of unreported decisions cited herein are provided in an accompanying binder.

insurance company drafted the policy[.]” Enviro Express Inc. v. AIU Ins. Co., 279 Conn. 194, 199-200 (2006), quoting Pacific Indemnity Ins. Co. v. Aetna Casualty & Surety Co., 240 Conn. 26, 29-30 (1997). “If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous.” Enviro Express, 279 Conn. at 199-200, quoting Cantonbury Heights Condo. Ass’n., Inc. v. Local Land Development, LLC, 273 Conn. 724, 735 (2005).

A. Chicago Title’s First Cause of Action: Policy Exclusion 3(a) Based on Prior Knowledge of Bristol Heights

Chicago Title’s first claim for declaratory judgment is based on the purported applicability of policy exclusion 3(a) for “[d]efects, liens, encumbrances, adverse claims or other matters . . . created, suffered, assumed or agreed to by the insured claimant.” According to Chicago Title’s complaint, this exclusion applies “due to the prior knowledge of Bristol Heights or to the imputation of the prior knowledge of Volpicella to Bristol Heights.”<sup>2</sup>

This claim fails for several reasons: (1) Chicago Title adduced no evidence whatsoever to controvert all of the affirmative evidence that Bristol Heights and Mr. Volpicella did not know, and *could not have known*, of the tax liens at the time of the conveyance; (2) constructive knowledge is explicitly excluded from the policy’s definition of “knowledge”; and (3) even pretending Mr. Volpicella somehow could have known of the tax liens, his knowledge was not imputable to Bristol Heights.

<sup>2</sup> Chicago Title does not claim in this action that exclusion 3(b) – for defects “not recorded in the public records at Date of Policy, but known to the insured claimant” – applies, despite Ms. Levy having invoked 3(b) in her letter to Mr. Orlandi. As Chicago Title knew, the tax liens were recorded in the land records, outside the chain of title.

Chicago Title's ability to challenge the taxes in an action against the Town (which it did not), this would not affect their subrogation rights against Mr. Volpicella and thus would not defeat coverage under the policy's plain language.

1. Payment under protest did not "assume liability" for the taxes, and thus this claim fails under the plain policy language.

Chicago Title equates Bristol Heights' payment with it having "voluntarily assumed liability" for the taxes, ignoring both (a) the fact that Bristol Heights paid the taxes under written protest explicitly reserving the right to bring an action for a refund; and (b) the statute created for this very purpose, Conn. Gen. Stat. § 12-119. They can cite no legal authority supporting their assertion that the payment under protest by Bristol Heights "defeated [Chicago Title's] ability and right" to bring an action against the Town to reduce the tax liability; Connecticut law is clear that any and all legal challenges to the taxes were preserved by virtue of Bristol Heights paying under protest. Indeed, this claim ignores the very Connecticut Supreme Court precedent that Ms. Levy herself sent to Atty. Kuzmak, Seeley v. Town of Westport, 47 Conn. 294 (1879), which stated, as reiterated in Underwood Typewriter Co. v. Chamberlain, 92 Conn. 199, 102 A. 600, 602 (Conn. 1917): "We think therefore that the law is so that a man may protect his land from a sale, or prevent a cloud upon his title, by paying the tax and have his remedy to recover it back if the tax was illegal and unjust."

Connecticut law recognizes the right of a taxpayer to pursue a refund of taxes paid in order to prevent seizure of the taxed property. See, e.g., Morris v. City of New Haven, 78 Conn. 673, 63 A. 123, 124 (1906) ("A payment of money upon an illegal or unjust demand, where the party is advised of all the facts, [is]

considered involuntary when it is made to procure the release of the person or property of the party from detention, or when the other party is armed with apparent authority to seize upon either, and the payment is made to prevent it.") (internal citations and quotation marks omitted); White v. Town of Vernon, 9 Conn. Supp. 524, 1941 WL 1158, at \*2 (Conn. Super. 1941) ("The tax payment here . . . was accompanied by a letter indicating that it was made involuntarily and under protest. The better and more modern doctrine (which recognizes fairness to the government and justice to the citizen) does not require the taxpayer to refuse to pay his tax to test its validity but permits him to make payment *under protest* and such payment is not *in contemplation of law* voluntary."), citing Underwood Typewriter Co. (emphasis in original).

In Pollio v. Somers Planning Commission, 1993 WL 392946 (Conn. Super 1993), the court held that an explicit protest is not necessary if circumstances show that the payment was not made voluntarily. Id. at \*3 (citing Underwood as "[t]he lead case on payment under protest and the reclaiming of monies.").

There are numerous Connecticut cases under § 12-119 for refunds of taxes paid under protest. See, e.g., Fitzsimmons v. Town of Madison, 2006 WL 852147 (Conn. Super.); Baker Residential Ltd. v. Town of Middlebury, 2006 WL 2054057 (Conn. Super.). Compare Services Development Corp v. Town of Willington, 2003 WL 22480418 (Conn. Super.) (no refund for excessively assessed taxes paid voluntarily); Wadsworth Atheneum v. City of Hartford, 1995 WL 806930 at \*6-7 (Conn. Super.) (taxes paid "inadvertently" but not under protest not refundable). Cf., Risdon Corp. v. Hartford Accident & Indemnity, 1994

statute

cases

WL 228642 (Conn. Super.) (insured entered into *settlement agreement* with EPA and did not notify insurer until more than a year later; court held that despite violation of policy's "voluntary payment" provision insured could rebut prejudice at trial); Augat v. Liberty Mutual Ins. Co., 571 N.E.2d 357 (Mass. 1991) (insured voluntarily entered into *settlement and consent judgment* to assume environmental cleanup cost and later sought coverage from insurer).<sup>7</sup>

Because Bristol Heights' payment under protest was not "voluntary" and did not "settle" or "assume liability" for the taxes as the above-cited caselaw makes clear, this claim fails under the plain policy language.

2. Chicago Title could have brought a refund action under § 12-119. *5 statute*

Ms. Levy was aware of the concept of bringing an action for a refund, having faxed Atty. Kuzmak the Seeley decision with a fax cover stating, "Dick: here's the case." She either knew, or willfully ignored, that Bristol Heights had paid the taxes, never following up with Atty. Conn or calling anyone else, including the Tax Collector or Atty. Kuzmak, to confirm that the taxes had been paid. Atty. Tagatac's April 26, 2006 letter flatly informed Ms. Levy of the payment of the "disputed taxes", and she admitted she "probably" was told by Atty.

<sup>7</sup> Chicago Title, in a brief ordered by Judge Shortall on "voluntary assumption of liability", cited Augat in support of their assertion that "a settlement is voluntary if the insured has the option to allow its insurer to defend a claim but does not do so for its own business reasons" (and will probably so argue in their post-trial brief). Augat rested on the fact that the insured had settled and entered into a consent judgment before notifying the insurer. The Augat court stated, "After Augat agreed to a settlement, entered into a consent judgment, assumed the obligation to pay the entire cost of the cleanup, and in fact paid a portion of that cost, it was too late for the insurer to act to protect its interests. There was nothing left for the insurer to do but issue a check." (Emphasis added.) 571 N.E.2d at 361. Bristol Heights did not settle or consent to judgment, but preserved all defenses to the Town's tax claim. Chicago Title had several options other than "issuing a check", and they had further courses of action available if and when they did issue a check: a refund action vs. the Town, or a subrogation action vs. Mr. Volpicella.

Tagatac they had been paid (which would have been prior to May 18, 2006, the date of Atty. Tagatac's letter which was the last communication between him and Ms. Levy). Thus, Chicago Title had *at least three months* from the time they learned the taxes were paid (although it is more likely that Ms. Levy was aware as early as January 2006 that payment was going to be made by early March, and she could have confirmed much sooner that payment *had been made*) before the one-year anniversary of Bristol Heights' first notice of the tax liens, August 16, during which time they could have brought an action under § 12-119.<sup>8</sup>

By way of attempting to excuse their failure to seek a refund against the Town under § 12-119, in their Consolidated Objections to Motions for Partial Summary Judgment dated September 17, 2010 Chicago Title asserted they were prejudiced as a result of Bristol Heights' payment because, "Simply stated, the law favors a citizen resisting paying taxes; it does not favor the recovery of taxes improvidently paid." They cited no legal authority for this assertion, which ignores that Bristol Heights' preserved the right to "resist" the taxes. By paying under protest the payment was in fact "provident", slogans notwithstanding.

If Chicago Title were correct, a title insurer may require their insured to allow a foreclosure to be initiated against the insured's property in order to accommodate the insurer's procedural preference in court. If this were the law,

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<sup>8</sup> Section 12-119's one-year limitation for bringing an action from the time of the challenged assessment would have been tolled until Bristol Heights first received notice, August 16, 2005, and would thus not have expired until August 16, 2006. See Wiele v. Board of Assessment Appeals of the City of Bridgeport, 119 Conn. App. 544, 551-53 (2010). See also, Lawrence & Memorial Hosp. v. City of New London, 44 Conn. L. Rptr. 797, 2008 WL 271664, at \*3-5 (Conn. Super. Jan. 14, 2008) (Peck, J.) (upholding taxpayer's right to pursue a refund beyond one year from the challenged assessment where no notice of the assessment was sent to the taxpayer).

Controlling  
(law)

then title insurance – which is purchased, *inter alia*, to prevent a foreclosure in the event an insured-against lien comes to light as in the present case – would be illusory. See, e.g., Endruschat v. American Title Ins. Co., 377 So. 2d 738, 742 (Fla. App. 1979) (“[T]he Title Company concludes that the bringing of a quiet title suit and the cessation of construction was an unnecessary and purely voluntary act for which it should not be responsible. We cannot agree. . . . To hold as the Title Company here contends is to require the [insured] to ignore duly recorded restrictions and play Russian Roulette with the surrounding property owners to see whether they will legally enforce the restrictions.”); Summonte v. First American Title Ins. Co., 436 A.2d 110, 115-16 (N.J. Super. 1981) (“If the company receives notice of a defect which it fails to remove within a reasonable time, a claim shall be maintainable. Were the policy not to be so read the insureds would be in a very unfortunate position. They would have no right to pay the judgment voluntarily[;] . . . [t]hey could not demand that the company defend their title: there is no litigation to defend[;] . . . [a]nd they could not require the company to remove the title defect. . . . The insurance would be illusory[.]”).

ignored

ignored

In sum, as long as Chicago Title’s ability to contest the amount of the tax liability claimed by the Town was preserved, the policy provision excluding claims for “liability voluntarily assumed” is inapplicable based on its plain words.

3. Under the policy’s plain language, any prejudice to the ability to bring an action against the Town would NOT defeat coverage.

Even if Bristol Heights’ payment somehow harmed Chicago Title’s ability to raise substantive legal challenges to the taxes in an action against the Town of Bristol, this still would not defeat coverage under the policy. Section 13 of the

material  
policy  
language

Conditions and Stipulations provides, "If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company *by reason of the impairment by the insured claimant of the Company's right of subrogation.*" (Emphasis added.) Even if Bristol Heights had actually settled the tax claim with the Town thus *precluding* an action under § 12-119, this would not have impaired Chicago Title's right of subrogation against Mr. Volpicella, and so would not defeat coverage under the plain policy language.

material  
policy  
language

For the foregoing reasons, the Court must find for Bristol Heights on Chicago Title's claim that Bristol Heights forfeited coverage pursuant to 9(c).

E. Chicago Title's Fourth Claim: Alleged Breach of Duty to Cooperate

According to Chicago Title's complaint this claim is based on sections 4(d)(ii) and 5 of the policy's Conditions and Stipulations. As with the prior claim based on section 9(c), this claim fails because any duty of Bristol Heights to cooperate was eliminated upon Chicago Title's breach.<sup>9</sup> This claim, like the one based on section 9(c), also fails based on the plain policy language, because

<sup>9</sup> See Shah v. Cover-It, Inc., 86 Conn. App. at 75; see also, Metropolitan Life Ins. Co. v. Aetna Casualty & Surety Co., 249 Conn. 36, 59 (1999) ("[E]ither the policy provides coverage, in which case the denial of coverage breaches the insurance contract and relieves [the policyholder] of the duty to cooperate, or there is no duty to cooperate because the damage is not [within the scope of the policy]."), citing Remington Arms Co. v. Liberty Mutual Ins. Co., 142 F.R.D. 408, 417 (D. Del. 1992) (applying Connecticut law). "A leading treatise that supports such a reading explains that 'upon the insurer's anticipatory breach of its duty to indemnify the insured, the insured is freed from its obligations under the cooperation clause to the extent necessary to reasonably protect itself against the breach.'" Id. at 59, quoting 8 J. Appleman & J. Appleman, Insurance Law and Practice (Sup.1991) § 4786.

Not Reported in A.3d, 2011 WL 3278592 (Conn.Super.)  
 (Cite as: 2011 WL 3278592 (Conn.Super.))

**H**

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT  
 RULES BEFORE CITING.

Superior Court of Connecticut,  
 Judicial District of Waterbury.  
 R.T. VANDERBILT CO., INC.

v.

HARTFORD ACCIDENT & INDEMNITY CO. et  
 al.

No. X02UWYCV075007875.  
 July 8, 2011.

**SHABAN, J.**

**PROCEDURAL HISTORY AND FACTS**

\*1 The plaintiff, R.T. Vanderbilt Company, Inc., commenced the present declaratory judgment action against the defendants Hartford Accident & Indemnity Company (Hartford), Continental Casualty Company (CNA) and American International Specialty Lines Insurance Company (AISLIC) on November 9, 2007. On February 3, 2009, CNA filed a third-party complaint against several insurance companies that provided excess and/or umbrella coverage to the plaintiff at all times relevant to the present action. The plaintiff in turn requested leave to amend its complaint in order to bring direct causes of action against them. These insurers include Mt. McKinley Insurance Company (Mt. McKinley), Everest Reinsurance Company (Everest), Westport Insurance Corporation (Westport), Employers Mutual Casualty Insurance Company (Employers) and Pacific Employers Insurance Company (PEIC), and are the same defendants who have brought the present motions for summary judgment (the moving defendants). The court granted the plaintiff's request for leave to amend, and the resulting February 1, 2010 complaint (# 310) was the operative version of the complaint when the present motions were filed. The plaintiff has since filed a subsequent amended complaint, dated April 1, 2011 (# 909), which is now the operative complaint in the present action. For the purposes of the present motions, it is materially identical to the previously operative version of the complaint.

The complaint alleges the following relevant facts. The plaintiff is a corporation engaged in the sale of various chemical and mineral products, including, at all times relevant to the present action, industrial talc. Hartford and CNA provided the plaintiff with primary level liability insurance coverage from 1956 to 1986. AISLIC provided the plaintiff with liability insurance coverage from 2003 to 2008. The plaintiff has been named as the defendant in hundreds of actions alleging bodily injury caused by exposure to asbestos, silica and/or talc contained in products sold by the plaintiff (the underlying actions). The plaintiff initially brought the present action against Hartford, CNA and AISLIC after Hartford and CNA informed the plaintiff that they would stop contributing to the plaintiff's defense and liability costs and that such costs should be allocated to the plaintiff and/or AISLIC, even though AISLIC's policies exclude coverage for asbestos-related bodily injury actions. The plaintiff has added the excess and/or umbrella insurers who provided coverage at all times relevant to the present action, including the moving defendants, because it has been informed by Hartford and CNA that its policies with them have been exhausted or may soon be exhausted. The plaintiff therefore now seeks a declaratory judgment that the excess and/or umbrella insurers may not allocate any defense or liability costs that they must pay to the plaintiff or AISLIC.

Mt. McKinley and Everest filed a motion for summary judgment (# 333), an accompanying memorandum of law in support thereof and exhibits on April 13, 2010. Westport (# 371) and Employers (# 602) filed joinders to Mt. McKinley and Everest's motion on May 24, 2010 and November 4, 2010, respectively. These joinders were accompanied by exhibits. PEIC then filed its own motion for summary judgment (# 620), accompanied by a memorandum of law in support thereof and exhibits, on November 12, 2010. The plaintiff then filed pleadings in opposition to the motions including memoranda of law in support thereof and exhibits on the following dates: Mt. McKinley and Everest's on November 1, 2010 (# 597) which pleading was also directed to Westport; PEIC's on February 2, 2011 (# 831); and Employers' also on February 2, 2011 (# 832).

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 (Cite as: 2011 WL 3278592 (Conn.Super.))

can be no genuine issue of material fact that asbestos, silica and talc are “contaminants” or “pollutants” or that the exposure alleged by the *Franklin* plaintiff qualifies as a “discharge, dispersal, release or escape ... into or upon land, the atmosphere or any water-course or body of water” that is not “sudden and accidental.”

\*5 In support of their argument that the terms “contaminant” and “pollutant” are clear and unambiguous in the pollution exclusion context, the moving defendants direct the court's attention to *Heyman Associates No. 1 v. Ins. Co. of Pennsylvania*, 231 Conn. 756, 653 A.2d 122 (1995). The *Heyman* court upheld the grant of the defendant insurers' motions for summary judgment in an action where the plaintiff sought primary and excess liability coverage for remediation costs paid pursuant to a leak of fuel oil from one of the plaintiff's properties into Stamford Harbor. The ground on which the defendants moved was that pollution exclusions in the plaintiff's policies barred coverage for the incident. The pollution exclusions at issue in *Heyman* are materially identical to the pollution exclusions at issue in the present action. *Id.*, at 771–72, 653 A.2d 122. The court looked to the natural and ordinary meanings of the terms in the pollution exclusions and held that they clearly and unambiguously covered a spill of fuel oil into a public waterway: “[T]here is no ambiguity in the absolute pollution exclusions as applied to the facts of this case. Instead, we find that the clear and unambiguous language of the absolute pollution exclusions in the plaintiff's policies with the defendants excludes coverage for the fuel oil spill into Stamford Harbor.” *Id.*, at 779, 653 A.2d 122.

The plaintiff makes the following arguments in opposition. First, the pollution exclusions do not refer to asbestos, silica or talc and therefore do not cover asbestos, silica or talc-related bodily injury actions. Second, in the alternative, the pollution exclusions are ambiguous, because the language contained therein traditionally applies to environmental pollution, and the underlying actions referenced in the present matter essentially sound in products liability. Third, based on the moving defendants' actions and representations towards the plaintiff, the court may conclude that the plaintiff reasonably expected excess and/or umbrella coverage for the underlying actions and that the moving defendants have waived their rights to enforce the pollution exclusions. Finally, it

argues that the moving defendants cannot meet their initial burden on summary judgment by relying on *Franklin* alone to demonstrate that their pollution exclusions preclude the present action against them. Even if the court accepts the moving defendants' argument that *Franklin* is representative of all of the underlying actions, it still must deny the present motions with respect to the moving defendants whose pollution exclusions contain “sudden and accidental” exceptions, because the exposure alleged by the *Franklin* plaintiff qualifies as “sudden and accidental.” The plaintiff makes the additional argument with respect to PEIC that PEIC's absolute pollution exclusion is inapplicable to the underlying actions, because PEIC characterized the exclusion as a “seepage pollution” exclusion on the declarations pages of the plaintiff's policies, and none of the underlying actions allege bodily injury due to seepage of asbestos, silica or talc.

\*6 In their reply memoranda, the moving defendants make the following additional arguments. First, that the court must reject the plaintiff's argument that the pollution exclusion language is ambiguous, because the argument relies upon extrinsic evidence, which violates the “natural and ordinary meaning” rule for interpreting clear and unambiguous contract language. Second, the moving defendants have never waived their rights to invoke the pollution exclusions and have in fact expressly and repeatedly reserved all of their rights under their policies in their communications with the plaintiff. Third, the moving defendants also argue that the court may grant the present motions on the basis of *Franklin* alone, because of the nature of the declaratory judgment relief sought by the plaintiff, the plaintiff's own treatment of *Franklin* as representative of all of the underlying actions and the plaintiff's inability to establish that the “sudden and accidental” exception language applies to *Franklin*. Lastly, PEIC specifically argues that the plaintiff improperly relies upon the word “seepage” in its discussion of PEIC's pollution exclusion, because the word “seepage” appears nowhere in the pollution exclusion itself.

“It is the function of the court to construe the provisions of the contract of insurance.” (Internal quotation marks omitted.) *Bonito v. Cambridge Mutual Fire Ins. Co.*, 64 Conn.App. 487, 489, 780 A.2d 984 (2001). “An insurance policy is to be interpreted by the same general rules that govern the construction of any written contract and enforced in accor-

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legal standard

dance with the real intent of the parties as expressed in the language employed in the policy ... If the insurance coverage is defined in terms that are ambiguous, such ambiguity is, in accordance with standard rules of construction, resolved against the insurance company. Where the terms of the policy are of doubtful meaning, the construction most favorable to the insured will be adopted." (Citations omitted; internal quotation marks omitted.) Schultz v. Hartford Fire Ins. Co., 213 Conn. 696, 702, 569 A.2d 1131 (1990). "[T]his rule of construction favorable to the insured extends to exclusion clauses." (Internal quotation marks omitted.) Heyman Associates No. 1 v. Ins. Co. of Pennsylvania, *supra*, 231 Conn. at 770, 653 A.2d 122. "The court must conclude that the language should be construed in favor of the insured unless it has 'a high degree of certainty' that the policy language clearly and unambiguously excludes the claim." Liberty Mutual Ins. Co. v. Lone Star Industries, Inc., 290 Conn. 767, 796, 967 A.2d 1 (2009).

"If ... the words in the policy 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 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 ... A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity, and words do not become ambiguous simply because lawyers or laymen contend for different meanings." (Internal quotation marks omitted.) Schultz v. Hartford Fire Ins. Co., *supra*, 213 Conn. at 702-03, 569 A.2d 1131. "The fact that the parties advocate different meanings of the [insurance policy] does not necessitate a conclusion that the language is ambiguous ... Rather, insurance policy language is ambiguous if we determine that it is reasonably susceptible to more than one reading." (Citation omitted; internal quotation marks omitted.) Connecticut Ins. Guaranty Assn. v. Fontaine, 278 Conn. 779, 786, 900 A.2d 18 (2006).

\*7 In addressing the issue of the insurers' contractual obligations, the court must consider the insurers' duty to defend. "[I]t is well settled that an insurer's duty to defend ... is determined by reference to the allegations contained in the [underlying] complaint ... [I]f an allegation of the complaint falls even possibly within the coverage, then the insurance

company must defend the insured ... The issue we must resolve first, therefore, is whether any of the allegations ... fall even possibly within the scope of the policy, as drawn by the pollution exclusion and the sudden and accidental [discharge] exception to that exclusion ... [O]nce an insurer has satisfied its burden of establishing that the underlying complaint alleges damages attributable to the discharge or release of a pollutant into the environment, thereby satisfying the basic requirement for application of the pollution coverage exclusion provision, the burden shifts to the insured to demonstrate a reasonable interpretation of the underlying complaint potentially bringing the claims within the sudden and accidental discharge exception to exclusion of pollution coverage, or to show that extrinsic evidence exists that the discharge was in fact sudden and accidental ... In determining whether the underlying complaint can be read as even potentially bringing the claim within the sudden and accidental [discharge] exception to the exclusion of pollution coverage, a court should not attempt to impose the duty to defend on an insurer through a strained, implausible reading of the complaint that is linguistically conceivable but tortured and unreasonable." (Citations omitted; internal quotation marks omitted.) Schilberg Integrated Metals Corp. v. Continental Casualty Co., 263 Conn. 245, 259-60, 819 A.2d 773 (2003).

The moving defendants refer to *Franklin* in an attempt to meet their burden of establishing that all of the underlying actions are covered by their pollution exclusions and therefore ineligible for coverage under their policies. They argue that they may do so, regardless of any factual variations that may exist among the underlying actions, because the plaintiff itself has treated *Franklin* as representative of all of the underlying actions, specifically in both its complaint and its motion for partial summary judgment against Hartford and CNA. The court's review of the complaint reveals, however, that the plaintiff refers to *Franklin* as only one example of the underlying actions pending against it, but it does not allege that it is factually representative of all claims. Pl.'s Fifth Amended Complaint ¶ 111. Similarly, in its partial motion for summary judgment, the plaintiff treats *Franklin* as representative in order to illustrate the cost allocation disputes between its primary insurers and itself in all of the underlying actions, and not for the purpose of establishing the general factual and legal contours of all of the underlying actions. The factual variations among the complaints filed in other

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(Cite as: 2007 WL 2200348 (Conn.Super.))

▶ Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT  
RULES BEFORE CITING.

Superior Court of Connecticut,  
Judicial District of Danbury.  
Anna PISTER

v.

NATIONWIDE MUTUAL INSURANCE CO.

No. DBDCV064005239.  
April 13, 2007.

Sinoway & McEnery & Messey PC, North Haven,  
for Anna Pister.

Ryan Ryan Johnson & DeLuca LLP, Stamford, for  
Nationwide Mutual Insurance Company.

**SHABAN, J.**

\*1 The plaintiff has filed a complaint against the defendant alleging a wrongful denial of insurance coverage based upon its failure to defend James Gustavson, Eric P. Gustavson and Pamela Gustavson ("insureds") relative to an award for damages in favor of the plaintiff against the insureds. On August 8, 2001, while riding as a passenger, the plaintiff suffered injuries when thrown from an all terrain vehicle which was owned and/or operated by the insureds. Following an arbitration hearing on the plaintiff's claim against the insureds, the plaintiff was awarded \$287,290.31. That award was made a judgment of the court on December 20, 2005 in the matter of *Pister v. Gustavson*.<sup>FN1</sup> Thereafter, the insureds subrogated their rights against the defendant to the plaintiff pursuant to General Statutes § 38a-321 through which the plaintiff has brought the instant action. The defendant has filed a motion for summary judgment (# 110) on the ground that it was not obligated to defend or indemnify the insureds for any claim of damages stemming from the accident as its insurance policy excluded coverage for bodily injury "arising out of the ownership, maintenance or use of a motor vehicle owned or operated by, or rented or loaned to an insured." It further argues that there was no obligation

to defend or indemnify as the insureds failed to comply with their duty to cooperate with the defendant in that they failed to forward to it copies of documents related to the accident. The plaintiff has filed an objection to the motion (# 111) and submitted documentation in support thereof arguing that there remains a genuine issue of material fact between the parties as to the issue of coverage. The matter was heard by the court at short calendar on January 16, 2007.

<sup>FN1</sup> See *Pister v. Gustavson*, Superior Court, judicial district of Danbury, Docket No. CV 03 0349917 (Mintz, J.).

### I

#### FACTS AND PROCEDURAL HISTORY

In order to address the motion presently before the court it is necessary to review the procedural history of the *Pister v. Gustavson* matter and the factual allegations therein. In her initial action, the plaintiff filed a five-count complaint dated July 31, 2003. The first count alleged negligence against James Gustavson; the second count alleged negligent entrustment as to Eric and Pamela Gustavson; the third count alleged damages pursuant to General Statutes § 14-388; the fourth count against C.A.R.D. Foundation, LLC is not pertinent to this action; and the fifth count alleged liability on the part of Eric and Pamela Gustavson under the family car doctrine. On or about February 9, 2004, the plaintiff filed a revised complaint. The plaintiff then filed a substitute revised complaint on or about November 17, 2004. Thereafter, on or about December 7, 2005, the plaintiff made yet another revision by filing an amended complaint. Each complaint shall be referred to hereafter as the first, second, third or fourth complaint, respectively.<sup>FN2</sup> The first, second, and third complaints are virtually identical as to the factual allegations regarding the actions leading to, and the cause of the plaintiff's injury. Each alleges in part that the insureds owned a four-wheeled one-seat all terrain vehicle ("ATV") which was garaged at their residence; that James Gustavson invited Anna Pister to ride as a passenger on nearby property not owned by the Gustavsons; and that as they proceeded over unpaved, uneven trails and terrain, the plaintiff was thrown from the ATV suffering injuries as a result.

Not Reported in A.2d, 2007 WL 2200348 (Conn.Super.)  
(Cite as: 2007 WL 2200348 (Conn.Super.))

Hence, if the complaint sets forth a cause of action within the coverage of the policy, the insurer must defend." (Citation omitted; internal quotation marks omitted.) *Id.* Furthermore, in this context, "it is irrelevant that the insurer may get information from the insured, or from any one else, which indicates, or even demonstrates, that the injury is not in fact covered." (Internal quotation marks omitted.) *Flint v. Universal Machine Co.*, 238 Conn. 637, 647, 679 A.2d 929 (1996). Moreover, the court has emphasized that, "[i]f an allegation of the complaint falls even possibly within the coverage, the insurance company must defend the insured." (Emphasis in original; internal quotation marks omitted.) *Hartford Casualty Ins. Co. v. Litchfield Mutual Fire Ins. Co.*, 274 Conn. 457, 463, 876 A.2d 1139 (2005).

\*4 Accordingly, if the plaintiff's complaint in her action against the Gustavsons "alleged facts that brought it within the ambit of coverage of [their] liability policy," the defendant was obligated to defend them in that action. *Flint v. Universal Machine Co.*, *supra*, 238 Conn. at 647. "On the other hand, if the complaint [alleged] a liability which the policy does not cover, the insurer [was] not required to defend." (Internal quotation marks omitted.) *Id.*

The court first examines the insurance policy, mindful of the standards that apply thereto. "The [i]nterpretation of an insurance policy ... involves a determination of the intent of the parties as expressed by the language of the policy ... [including] what coverage the [insured] expected to receive and what the [insurer] was to provide, as disclosed by the provisions of the policy ... [A] contract of insurance must be viewed in its entirety, and the intent of the parties for entering it derived from the four corners of the policy ... [giving the] words ... [of the policy] their natural and ordinary meaning ... [and construing] any ambiguity in the terms ... in favor of the insured." (Internal quotation marks omitted.) *Hartford Casualty Ins. Co. v. Litchfield Mutual Fire Ins. Co.*, *supra*, 274 Conn. at 463.

The homeowner's policy issued by Nationwide to the Gustavsons included a provision in the personal liability section that stated, in part, as follows: "[w]e will pay damages the insured is legally obligated to pay due to an occurrence. We will provide a defense at our expense by counsel of our choice." <sup>FN6</sup> The term "occurrence" is defined as "bodily injury ... re-

sulting from an accident ..." that occurs during the policy period.<sup>FN7</sup> The exclusion at issue between the parties provides: "Medical Payments to Others do not apply to bodily injury ... arising out of the ownership, maintenance or use of ... a motor vehicle owned or operated by, or rented or loaned to an insured." <sup>FN8</sup> The defendant relies on the following definition of the term "motor vehicle," which is included in the definitions section of the policy, paragraph 5(c): "a motorized golf cart, snowmobile or other motorized land vehicle owned by an insured and designed for recreational use off public roads, while off an insured location." Read in conjunction with this definition, the exclusion applies to claims for bodily injuries sustained by a third party that arose out of the use of a motorized land vehicle that was owned or operated by an insured and designed for recreational use off public roads, while the vehicle was off an insured location.

<sup>FN6</sup>. Coverage E-Personal Liability, Section II of the Nationwide Mutual Insurance Golden Blanket Policy # 5106MP961035; Exhibit 1 to defendant's motion for summary judgment.

<sup>FN7</sup>. Amendatory Endorsement 3362-B, Definitions section. Exhibit 1 to defendant's motion for summary judgment.

<sup>FN8</sup>. Section II(1)(e)(2) of the policy. Exhibit 1 to defendant's motion for summary judgment.

In the first three versions of the complaint that the plaintiff filed in her action against the Gustavsons,<sup>FN9</sup> she alleged that "upon information and belief, one or more of the [Gustavsons] owned a four-wheeled one-seat all terrain vehicle which was garaged in said residence, which vehicle shall hereinafter be referred to as the 'ATV.'" She further alleged that her injuries arose out of James Gustavson's careless and negligent use of the ATV. Pursuant to these allegations, the plaintiff asserted a claim of negligence against James Gustavson in regard to the manner in which he used and operated the ATV, a claim of negligent entrustment against Pamela and Eric Gustavson based on their entrustment of the ATV to their son, a claim that Eric and Pamela Gustavson were liable for her injuries in that they owned and maintained the ATV as a family vehicle and, at the

**UWY-CV08-4018262-S COMM'R ENVIRONMNT PR v. SERGY COMPANY LLC ET AL**

Date Sent: 09/11/2008 Sequence #: 2

Notice Was Sent Under Docket #: HHD-CV08-4036630-S

**Notice Content:**

\*\*\*ORDER RE: COMPLEX LITIGATION DOCKET (CLD)\*\*\*

I HEREBY ORDER THE ABOVE MATTER TRANSFERRED TO THE CLD AT WATERBURY JD(X06 DOCKET) BECAUSE SUCH TRANSFER WILL HELP TO PROMOTE EFFICIENT OPERATION OF THE COURTS AND ASSIST IN PROMPT AND PROPER ADMINISTRATION OF JUSTICE. ANY PARTY OBJECTING TO THE TRANSFER SHALL FILE SUCH OBJECTION (WHICH SHALL BE ENTITLED "OBJECTION TO THE TRANSFER TO CLD") WITH THE COURT AT 300 GRAND ST, WATERBURY, CT 06702, WITHIN 15 DAYS OF THE DATE OF THIS ORDER, WHICH OBJ. MAY BE SCHEDULED FOR ARGUMENT AT THE DISCRETION OF THE CAJ. CONTINUE TO FILE ALL OTHER MOTIONS, ETC. IN THE ORIGINATING COURT UNTIL YOU RECEIVE A NOTICE THAT THE CASE HAS BEEN TRANSFERRED. ARTHUR A. HILLER, CHIEF ADMINISTRATIVE JUDGE

*15-day  
objection  
period*

**HHD-CV08-5026131-S TABACCO, LORI v. VITRANO, PRELESKI & ET AL**

Date Sent: 12/09/2008 Sequence #: 1

Notice Was Sent Under Docket #: HHB-CV08-5006116-S

**Notice Content:**

**\*\*\*ORDER RE: COMPLEX LITIGATION DOCKET (CLD)\*\*\***

I HEREBY ORDER THE ABOVE MATTER TRANSFERRED TO THE CLD AT HARTFORD JD (X03 DOCKET) BECAUSE SUCH TRANSFER WILL HELP TO PROMOTE EFFICIENT OPERATION OF THE COURTS AND ASSIST IN PROMPT AND PROPER ADMINISTRATION OF JUSTICE. ANY PARTY OBJECTING TO THE TRANSFER SHALL FILE SUCH OBJECTION (WHICH SHALL BE ENTITLED "OBJECTION TO THE TRANSFER TO CLD") WITH THE COURT AT 300 GRAND ST, WATERBURY, CT 06702, WITHIN 15 DAYS OF THE DATE OF THIS ORDER, WHICH OBJ. MAY BE SCHEDULED FOR ARGUMENT AT THE DISCRETION OF THE CAJ. CONTINUE TO FILE ALL OTHER MOTIONS, ETC. IN THE ORIGINATING COURT UNTIL YOU RECEIVE A NOTICE THAT THE CASE HAS BEEN TRANSFERRED.  
ARTHUR A. HILLER, CHIEF ADMINISTRATIVE JUDGE

*15-day objection period*

**UWY-CV07-4020477-S CHICAGO TITLE INS. v. BRISTOL HEIGHTS ET AL**

Date Sent: 03/19/2009 Sequence #: 2

Notice Was Sent Under Docket #: ~~HHB-CV07-4013310-S~~

**Notice Content:**

**\*\*\*ORDER RE: COMPLEX LITIGATION DOCKET (CLD)\*\*\*  
I HEREBY ORDER THE ABOVE MATTER TRANSFERRED TO  
THE CLD AT HARTFORD JD (X09 DOCKET) BECAUSE  
SUCH TRANSFER WILL HELP TO PROMOTE EFFICIENT  
OPERATION OF THE COURTS AND ASSIST IN PROMPT  
AND PROPER ADMINISTRATION OF JUSTICE.**

*our case*

*← omitted 15-day  
objection period*

CONTINUE TO FILE ALL MOTIONS, PLEADINGS,  
DOCUMENTS, ETC. IN THE ORIGINATING COURT  
UNTIL YOU RECEIVE A NOTICE THAT THE CASE HAS  
BEEN TRANSFERRED.

ARTHUR A. HILLER, CHIEF ADMINISTRATIVE JUDGE

PJRP