

CAN AN 'UMBRELLA' OR CATASTROPHE POLICY APPLY TO A CLAIM FOR UNDERINSURANCE?

Course of Dealing Matters

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The issue recently arose where the injured claimant had recovered the minimum coverage limits of the tortfeasor in an auto liability case. The claimant then looked to her own household underinsurance policy. However, it too had only the minimum limits and as a result the claimant could not recover from this underinsurance (UIM) policy. Massachusetts Auto Insurance Policy, Seventh Edition (1-00) page 21. A household member of the claimant had a further 'umbrella' or catastrophe policy. However, Mass. Courts hold that a catastrophe policy should not be construed as an automobile underinsurance policy for coverage purposes. *Liberty Mutual Insurance v. McLaughlin*, 412 Mass. 492 (1992). See also, *Murphy v. Safety Insurance*, 429 Mass. 517, 521 (1999).

In *McLaughlin*, the Massachusetts Supreme Judicial Court looked to the statutory language of the underinsurance provision in Mass G. L. c. 175 § 113L. That statute states UM coverage or underinsured coverage must be provided by a minimum level of applicable coverage. In the instant case, there was an underinsured policy for limits of 20/40 (20,000 per person/40,000 per accident). However, a catastrophe policy is not a liability insurance policy under this underinsurance statute. *McLaughlin* at 494. Rather, a straightforward or unambiguous reading of an umbrella policy language indicates that it protects solely against the risk of a judgment against an insured in excess of the policy limits for liability provided by an underinsureds underlying auto and home owners insurance policy. *McLaughlin* at 493. Thus, a claimant cannot look to a catastrophe policy for underinsurance coverage.