

# BINDING AUTHORITY

Insurance Coverage Decisions: Issued Today - Impact Tomorrow



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**Coverage College Update** – The 6<sup>th</sup> White and Williams Coverage College, being held on October 4, is quickly approaching. We are getting close to filling all of the slots. If you are planning to attend, and have not yet registered, I suggest that you do so as soon as possible. The Coverage College has Sold Out every year and is on its way to doing so again this year.

I look forward to seeing so many of you there. I'm also looking forward to giving out a bunch of copies of my book, which recently had a name change and is now called: *50 States of Grey Insurance Issues*.

A copy of the brochure for the 2012 White and Williams Coverage College can be accessed here: [Coverage College 2012 Brochure](#)

Registration is easy by [clicking here](#)

## **Duty to Fender Bender: Connecticut Federal Court Held That Umbrella Insurer Had A Duty to Defend An Auto Claim (even while a defense was provided under the unexhausted primary policy)**

If Gary Coleman had been an insurance coverage lawyer, then a recent District of Connecticut decision would have unquestionably been a “Whatcha talkin’ ‘bout Willis” moment. Folks, this one is worth reading.

In *Cambridge Mutual Fire Ins. Co. v. Ketchum*, the District of Connecticut addressed coverage for a duty to defend an action seeking personal injuries arising out of an auto accident. Sounds pretty innocuous, right?

It was alleged in an underlying action that David Ketchum struck the motorcycle being driven by Richard Lucente. Lucente alleged that he suffered between \$400,000 and \$500,000 in damages. Lucente filed suit against Ketchum in Connecticut state court. *Ketchum* at 2.

Ketchum was defended in the *Lucente* Action under his personal automobile policy issued by Plymouth Rock Assurance. The automobile policy provided coverage in the

amount of \$250,000 per person/accident. Plymouth offered to settle the claim for its policy limit of \$250,000 and Lucente was prepared to accept \$250,000 in partial satisfaction of the claim. However, Lucente maintained that the settlement could not be effectuated until Ketchum's Umbrella insurer, Cambridge Mutual, agreed to defend Ketchum for the balance of the claim or agreed to participate in an overall settlement. *Id.* 3-4.

Cambridge first argued that it had no duty to defend Ketchum because his act of striking Lucente's motorcycle was intentional. The court rejected this argument because, based solely on the complaint – to which the court was bound to limit its consideration – the allegations all sounded in negligence and there were no allegations that Ketchum's acts were intentional. *Id.* at 5-10.

Here's where it gets interesting. Cambridge also maintained that it had no duty to defend Ketchum because Ketchum's primary automobile policy had not been exhausted. Ketchum countered that Plymouth's, the primary insurer, offer of settlement up to its policy limit should constitute exhaustion of the policy, thereby triggering Cambridge's duty to defend. *Id.* at 10.

The *Ketchum* Court concluded that it need not address this issue, as it concluded, for other reasons, that Cambridge had a duty to defend. Insurers -- Take a deep breath and read the following conclusion (which the court reached after a review of case law nationally addressing the issue):

This Court is unaware of any Connecticut court to have squarely addressed this particular issue and therefore it is a matter of first impression before this Court. This Court agrees with those cases which find that an excess carrier has a duty to defend where there is a reasonable possibility that a defendant's excess coverage may be reached despite the fact that a primary insurer has undertaken the defense as well. Here there is more than a reasonable possibility that Ketchum's excess coverage will be reached in light of the fact that Lucente has made clear that he has suffered more than \$400,000 in damages. Since Lucente's claim exceeds the monetary limits of Ketchum's primary insurance policy with Plymouth, Cambridge's duty to defend has been triggered despite the fact that Plymouth has initially undertaken defending Ketchum in the underlying state court action.

*Id.* at 13 (emphasis added).

The court's reasons for reaching this conclusion were as follows:

- “Here where it is clear that the claim exceeds the monetary limits of the primary policy, the majority of the claim is now no longer ‘covered by any primary insurance’ and therefore Cambridge has an obligation under the terms of its policy to defend.” *Id.* at 14.
- “[W]here the claim is in excess of the primary policy limits, the primary insurance policy is in effect exhausted and consequently the excess coverage is necessarily implicated at that moment.” *Id.*

While I do not see *Cambridge Mutual Fire Ins. Co. v. Ketchum* having an impact on case law nationally addressing exhaustion and an umbrella insurer's duty to defend, the case stands as a reminder that coverage litigation is inherently unpredictable.

A copy of the District of Connecticut's decision in *Cambridge Mutual Fire Ins. Co. v. Ketchum* is attached.

Please let me know if you have any questions.

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