would improve if damage awards were more predictable. Since a damages cap was reasonably related to greater predictability in damage awards, the statute survived an equal protection challenge.

The court had little difficulty rejecting the claim that the cap infringed on Murphy's right to jury trial. The jury's province extended to issues of fact. The constitutional limitation only prevented a court from taking factual issues from the jury. It did not prevent the legislature from taking an issue away from both the judge and the jury. In this case, the statute merely fixed the remedy. As a result, it did not interfere with Murphy's right to a jury since the legislature had taken the issue from the court and jury.

Underinsured Coverage Extended to Insured's Vehicle

State Farm Automobile Insurance Co. v. Alexander, 62 Ohio St. 3d 397 (1992).

The Ohio Supreme Court has held that underinsured coverage must be extended to the insured vehicle involved in a one car accident. Alexander's policy provided the normal \$50,000/\$100,000 coverage for bodily injury and the state-mandated uninsured and underinsured coverage. An exclusion in the underinsured portion of the policy, however, denied coverage to the insured's vehicle.

An unusual set of circumstances triggered the exclusion in the State Farm underinsured motorist coverage. While the policy was effective, Cosey drove the insured van with Alexander as a passenger. Cosey lost control of the van and was killed. Alexander was injured. Cosey carried auto insurance with Atlantic, and it paid Alexander the full amount available for liability coverage, \$12,500. Because Cosey's liability coverage was less than Alexander's, Alexander sought additional compensation from State Farm on the underinsured clause. State Farm refused coverage based on the exclusion. The supreme court, however, ruled that the exclusion violated state law and was not enforceable.

The policy language, if effective, would exclude coverage for the insured's own vehicle involved in a one car accident. The state statute mandating coverage, on the other hand, extended coverage to persons entitled to recover damages from the owner or operator of a vehicle. Thus, the restriction sought to carve out an area of coverage despite the tort damages owed by Cosey to Alexander. The court concluded that the policy could not deny coverage since the basic requirement of tort liability was satisfied. As a result, the clause was not enforceable.

The court then used the restriction to conclude that Cosey was in fact underinsured. Under Alexander's policy, Cosey received liability protection. As a result, Cosey's total insurance appeared to amount to \$62,500 (Cosey's policy for \$12,500 and Alexander's for \$50,000). The court, however, concluded that Cosey was underinsured for purposes of the Alexander policy because the policy did not extend liability coverage to Cosey as an insured.

Thus, he could not sue directly, but could sue State Farm on the underinsured portion of the policy and recover.

Insolvency Filing Period Extended by Failure to Receive Notice

In re Transit Casualty Co., Case No. 236 (N.Y. Ct. App. 1992) (Lexis, N.Y. lib., N.Y. file).

The state liquidator's failure to notify an insured party of impending cancellation may result in extending the period in which the insured can file claims against the insolvent insurer's estate. In this case, Missouri declared Transit Casualty insolvent and began liquidations proceedings. As part of the proceedings, the liquidator notified policyholders that policies would be cancelled. A policyholder, Digirol, did not receive the notice even though the liquidator had the proper address. After the date the liquidator designated for cancellation, fire destroyed the Digirol's property. Digirol learned of the cancellation after he filed a claim with the ancillary receiver appointed in New York. He appealed the decision, arguing that his policy required actual notice before cancellation. The lower courts rejected his argument, but the state's highest court agreed and reversed the prior adverse decision.

The court concluded that the cancellation notice did not disrupt the policyholder's existing right to notice. The right to notice was a right that existed as a claim against the insured at the time of the insolvency. That right or claim matured at the time of the insolvency. The state, therefore, had a duty to inform Digirol of the cancellation to make it effective.

The court then rejected the state's argument that a vested right to notice was inconsistent with the liquidation process. The state argued that the liquidation process needed to fix and value claims that were timely filed. In response, the court found that the liquidation process should be more flexible than that suggested by the state. Moreover, the court felt that delay did not present a danger to the liquidation process if the state's failure to notify caused the late claim.

Finally, the court concluded that its decision did not upset the policies of the Uniform Insurer's Liquidation Act. The act was designed to protect policyholders from the dissipation of insurance company assets. The court's requirement of adequate notification would not disrupt that policy goal.

Court Concludes Excess Insurance Policy Did Not Drop Down

Ambassador Assocs. v. Corcoran, Case No. 9 (N.Y. Ct. App. 1992), *affirming*, 143 Misc. 2d 706, 541 N.Y.S.2d 715 (1989).

In a one paragraph opinion, New York's highest court affirmed a trial court decision that an excess coverage policy did not require the insurer to drop down. In the underlying suit, the facts were relatively simple. Fire destroyed an insured building. The primary layer of insurance provided for one million dollars of coverage. Mission Insurance provided the first layer of excess coverage for $10 million. Home Insurance provided a second layer of excess coverage up to $15 million. When Mission became insolvent, the