

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

OLIVER BISHOP III AND OLIVER	:	
BISHOP IV,	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.
	:	3:00 CV 256 (CFD)
NATIONAL HEALTH INSURANCE CO.,	:	
Defendant.	:	

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

The plaintiffs, Oliver Bishop III (“Bishop III”) and his son Oliver Bishop IV (“Bishop IV”), bring this action against the defendant, National Health Insurance Company (“National Insurance”), alleging breach of the terms of an insurance policy.¹ The plaintiffs contest the defendant’s refusal to pay for medical expenses incurred by Bishop IV for injuries arising out of an automobile accident.

The parties have filed cross-motions for summary judgment. For the reasons set forth below, the defendant’s motion for summary judgment [Document #17] is DENIED, and the plaintiffs’ cross-motion for summary judgment [Document #14] is GRANTED.

I. Background²

On December 1, 1997, National Insurance issued an Individual Hospital Surgical Expense Policy to Bishop III. The policy provided coverage for certain medical expenses incurred by its

¹The Court has diversity jurisdiction over this case pursuant to 28 U.S.C. § 1332(a). The parties do not dispute the following: the plaintiffs are domiciled in Connecticut, National Insurance is incorporated in the State of Texas and has its principal place of business there, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

²The Court recites the following facts, which are undisputed, based on the parties’ Local Rule 9(c) Statements and other summary judgment papers.

insureds, which included Bishop IV. The policy excluded coverage for “any loss incurred while You were legally Intoxicated.”

On March, 14, 1998, Bishop IV, then nineteen years old, purchased a case of beer and a half-pint of liquor at a store in New Haven, Connecticut before attending a party in Guilford, Connecticut, but had made arrangements with a designated driver to take him home afterward. After the party, at approximately 3:00 a.m. on March 15, the designated driver drove Bishop IV to his home. However, shortly after he arrived at his home, Bishop IV drove away in his pickup truck. At approximately 3:20 a.m., Bishop IV lost control of the pickup truck, drove off the edge of the road, and collided with a stone wall and trees. Bishop IV was transported to Yale New Haven Hospital, where he was treated for his injuries. Medical personnel at Yale New Haven Hospital measured Bishop IV’s blood alcohol content at the time of his arrival at 187 mg/dL, which is approximately equivalent to .165 percent alcohol by weight.

The parties agree that at the time of the accident on March 15, 1998, Bishop IV violated Conn. Gen. Stat. § 14-227a(a), because his blood alcohol content exceeded .10 percent alcohol by weight. The parties also agree that Bishop IV’s injuries occurred during the coverage period for the National Insurance policy.

In July 1998, Bishop IV was charged in the Connecticut Superior Court with a violation of Conn. Gen. Stat. § 14-227a. He applied for participation in a pretrial alcohol education program under Conn. Gen. Stat. § 54-56, and, after its successful completion, the charge was dismissed.

Bishop IV incurred significant medical expenses related to the injuries he sustained in the accident and submitted the bills to National Insurance for payment under the policy. National

Insurance denied payment, citing the policy exclusion that precludes coverage for claims arising from injuries sustained while intoxicated. This action arises from National Insurance's denial of coverage.

II. Standard of Review

In the context of a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). A court must grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact.” Miner v. City of Glens Falls, 999 F.2d 655, 661 (2d Cir. 1993) (internal quotation marks and citation omitted). A dispute regarding a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (internal quotation marks omitted), cert. denied, 506 U.S. 965 (1992). After discovery, if the nonmoving party “has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof,” then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

“The nonmovant must do more than present evidence that is merely colorable, conclusory, or speculative and must present ‘concrete evidence from which a reasonable juror could return a verdict in his favor.’ ” Alteri v. General Motors Corp., 919 F. Supp. 92, 94-95 (N.D.N.Y. 1996) (quoting Anderson, 477 U.S. at 256). A party may not create its own “genuine” issue of fact simply by presenting contradictory or unsupported statements. See Sec. & Exch. Comm’n v.

Research Automation Corp., 585 F.2d 31, 33 (2d Cir. 1978). When a motion for summary judgment is supported by documentary evidence and sworn affidavits, the nonmoving party must present “significant probative evidence to create a genuine issue of material fact.” Soto v. Meachum, Civ. No. B-90-270 (WWE), 1991 WL 218481, at *6 (D. Conn. Aug. 28, 1991).

In ruling on a motion for summary judgment, the Court resolves “all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide.” Aldrich, 963 F.2d at 523. Thus, “[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991), cert. denied, 502 U.S. 849 (1991); see also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

III. Discussion

The plaintiffs and the defendant agree that there is no genuine issue of material fact as to the events of March 15, 1998. The plaintiffs contend, however, that, inter alia, the policy exclusion for intoxication is ambiguous, and thus unenforceable. The defendant argues that the exclusion is unambiguous and clear for the Court to interpret as a matter of law and maintains that there are no genuine issues of material fact that the exclusion bars coverage in the instant case. The specific nature of these arguments is discussed below.

A. Standards for Interpretation of the Policy

Under Connecticut law, insurance policies are to be interpreted by the same general rules that govern the construction of any written contract. See Simses v. North Am. Co. for Life and Health Ins., 394 A.2d 710, 713 (Conn. 1978). The object of the interpretation or construction of an insurance policy is to determine the intent of the parties so that it may be given effect

according to their real purpose and intention. See Marcolini v. Allstate Ins. Co., 278 A.2d 796, 798 (Conn. 1971) (“The determinative question is the intent of the parties, that is, what coverage the ... [insured] expected to receive and what the [insurer] was to provide, as disclosed by the provisions of the policy.”). Policy words must be accorded their natural and ordinary meaning. See Barnard v. Barnard, 570 A.2d 690, 696 (Conn. 1990) (noting that Connecticut courts “have repeatedly stated that the intent of the parties is to be ascertained by a fair and reasonable construction of the written words and that the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract”). Courts “will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity” Springdale Donuts, Inc. v. Aetna Cas. & Surety Co., 724 A.2d 1117, 1121 (Conn. 1999).

Any ambiguity in the terms of the insurance policy, however, must be construed in favor of the insured. See Moore v. Continental Cas., 746 A.2d 1252, 1254 (Conn. 2000). This rule of construction applies especially to policy exclusions, where the insurer bears the burden of demonstrating that the loss is excluded under the “express” terms of the policy. See Western World Ins. Co. v. Stack Oil, Inc., 922 F.2d 118, 121 (2d Cir. 1990) (applying Connecticut law); M.H. Lipiner & Son, Inc. v. Hanover Insurance Co., 869 F.2d 685, 687 (2d Cir. 1989) (“Exclusionary clauses are given the interpretation most beneficial to the insured.”). When an exclusion’s terms are “of uncertain import or reasonably susceptible of a double construction,” they are to be strictly construed against the insurer. See 2 Lee R. Russ & Thomas F. Segalla, *Couch on Insurance* § 22:31 (3d ed. 2001) (“Couch on Insurance”). “If the language of a policy does not clearly express an exception, when fairly interpreted, the courts will not write an

exception into it by construction, for the purpose of exempting the insurer from liability.” 2 Couch on Insurance § 22:30.

B. Interpretation of the Policy Exclusion

Part IV.7 of the policy here provides:

No payment will be made for claims resulting from any loss incurred while You were legally Intoxicated or loss caused by the voluntary use of any controlled substance as defined in Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as now or hereafter amended, unless as prescribed by Your Physician.

See Pls.’ Br. Supp. Cross-mot. Summ. J. Ex. A. The “Definitions” portion of the policy further provides:

“Intoxicated/Intoxication” means a level of blood alcohol content that is specified in the laws defining Intoxication in the state where the loss or cause of loss occurred.

See Pls.’ Br. Supp. Cross-mot. Summ. J. Ex. A. at Part V.R.

No Connecticut statute currently defines “intoxication” with reference to a specified level of blood alcohol content. While the Connecticut Appellate Court held in State v. McKenna that “intoxication” refers to the same level of inebriation as “under the influence of intoxicating liquor,” State v. McKenna, 525 A.2d 1374, 1379 (Conn. App. 1987), cert. denied 531 A.2d 939 (Conn. 1987), neither “under the influence of intoxicating liquor” nor “intoxication” are defined under Connecticut law in terms of a specific blood alcohol content.

Section 14-227a(a) of the Connecticut General Statutes defines the criminal offense of operation of a motor vehicle under the influence as operation “(1) while under the influence of intoxicating liquor or any drug or both *or* (2) while such person has an elevated blood alcohol content [defined as .10 or more].” Conn. Gen. Stat. § 14-227a(a) (emphasis added). Because an elevated blood alcohol content is not per se “under the influence of intoxicating liquor” under §

14-227a(a)(1), such a blood alcohol content does not, by itself, establish “intoxication.” See State v. Gilbert, 620 A.2d 822, 827 (Conn. App. 1993) (distinguishing between Conn. Gen. Stat. § 14-227a(a)(2), which is per se violated by a blood alcohol content of .10 or more, and § 14-227a(a)(1), where evidence of an elevated blood alcohol content may be evidence of, but does not per se establish, a violation under that subsection); Conn. Gen. Stat. § 14-227a(d) (providing that “[i]n any prosecution for a violation of subdivision (1) of subsection (a) of this section, reliable evidence respecting the amount of alcohol or drugs in the defendant’s blood or urine at the time of the alleged offense . . . shall be admissible”). Although an elevated blood alcohol content may certainly be evidence of “under the influence of intoxicating liquor” for purposes of subdivision (1) of § 14-227a(a), it is not dispositive.

Other Connecticut statutes circumscribing offenses committed “under the influence of intoxicating liquor” or as a result of “intoxication” do not define either with reference to a specified blood alcohol content. See State v. Corrigan, 680 A.2d 312, 315 (Conn. App. 1996) (holding that the offense of assault in the second degree with a motor vehicle while under the influence of intoxicating liquor is not committed, per se, by a certain blood alcohol content); Coble v. Maloney, 643 A.2d 277, 282 (Conn. App. 1994) (holding that proof of blood alcohol content is not necessary to establish, but may support, claim that the defendant was intoxicated under Dram Shop Act, Conn. Gen. Stat. § 30-102). Again, under such statutes, an elevated blood alcohol content may be evidence of “under the influence of intoxicating liquor” or “intoxication,” but it is not dispositive.

No other Connecticut statute specifies a blood alcohol content when defining

“intoxication.”³ Thus, the policy’s definition of “intoxication” utilizes a nonexistent statutory or common law reference. “Intoxication,” as used in the policy, is ill-defined, and as a result, the policy does not “clearly express” the exclusion. As noted earlier, the Court cannot “write an exception into [the policy] by construction.” 2 Couch on Insurance § 22:30. “A risk that comes naturally within the terms of a policy is not deemed to be excluded unless the intent of the parties to exclude it appears clearly, so that it cannot be misconstrued.” *Id.* Here, the intent of the parties to exclude coverage is uncertain in light of the ill-defined policy term. It is possible that the parties intended for the exclusion to apply to persons with a level of blood alcohol content that is specified in the laws prohibiting the operation of a motor vehicle under the influence of alcohol, but it is equally possible that they intended some other level of blood alcohol content to apply. The parties’ intention cannot be ascertained by reference to the language used. “[T]he fact that the insurer’s choice of words was unfortunate from the standpoint of the meaning attempted to be given the contract is no justification for disregarding the plain import of the language of the policy.” *Id.* § 22:9. Accordingly, as the exclusion for “intoxication” is not clearly

³Connecticut law provides the following other definitions of “intoxication.” Section 53a-7 of the Connecticut General Statutes, regarding intoxication as a means of negating criminal intent, defines “intoxication” as “a substantial disturbance of mental or physical capacities resulting from the introduction of substances into the body.” Conn. Gen. Stat. § 53a-7. Section 17a-680(13), regarding the provision of addiction services by the State, defines an “intoxicated person” as “one whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs.” Conn. Gen. Stat. § 17a-680(13). In Sanders v. Officers Club of Connecticut, Inc., the Supreme Court of Connecticut clarified the definition of “intoxicated” in Conn. Gen. Stat. § 30-102, the Dram Shop Act, as “an abnormal mental or physical condition due to the influence of intoxicating liquors, a visible excitation of the passions and impairment of the judgement, or a derangement or impairment of physical functions and energies. When it is apparent that a person is under the influence of liquor, when his manner is unusual or abnormal and is reflected in his walk or conversation, when his ordinary judgment or common sense are disturbed or his usual will power temporarily suspended, when these or similar symptoms result from the use of liquor and are manifest, a person may be found to be intoxicated.” 493 A.2d 184, 190 (Conn. 1985).

expressed in the policy, it must be construed in favor of coverage.⁴ See General Plasma, Inc. v. Reliance Ins. Co., No. CV 970575899S, 2000 WL 72811, at * 4, (Conn. Super. Jan. 11, 2000) (“[T]o the extent that there is ambiguity in the terms of the exclusion provision, it must be interpreted in favor of coverage because [the insurer] drafted the policy.”) (citing Springdale Donuts, 724 A.2d at 1120).

Moreover, interpreting intoxication in the policy by reference to a blood alcohol level chosen by the legislature as the threshold for prohibiting motor vehicle operation may very well be inconsistent with the expressed public policy of the Connecticut legislature and have unintended consequences. The legislature has chosen to refer to a certain blood alcohol level as per se evidence of operating a motor vehicle while under the influence, but in all other contexts, including other criminal statutes, has chosen not to rely simply on blood alcohol content. Although evidence of blood alcohol content is usually relevant to intoxication in these other contexts, it is not dispositive. As the legislature has reduced the threshold of blood alcohol content for a violation of § 14-227a and may continue to do so, compare 1971 Conn. Pub. Acts 318 (reducing blood alcohol content with which a motor vehicle operator violates § 14-227a from .15 percent by weight to .10 percent by weight), with H.B. 5371, 2002 Gen. Assem., Reg. Sess. (Conn. 2002) (reducing the blood alcohol content from .10 to .08 percent by weight) and S.B. 20, 2002 Gen. Assem., Reg. Sess. (Conn. 2002) (same), the definition of “intoxication” for other applications appears to have been unaffected. Simply stated, the legislature is free to set a certain

⁴Accordingly, the Court need not reach the plaintiffs’ other arguments that the exclusion does not conform with Connecticut insurance regulations, is affected by the “saving provision” of the policy, is inapplicable because there has been no adjudication of guilt of Bishop IV’s violation of any law, and is void on public policy grounds because minors lack the mental capacity to become voluntarily intoxicated.

blood alcohol content as the threshold for prohibiting motor vehicle operation without rendering the term “intoxication” synonymous with blood alcohol content in all contexts.

An unintended consequence that also could result from loosely tying “intoxication” to blood alcohol content referred to in the motor vehicle statutes is the denial of coverage for insureds who have been injured or suffered loss and who may exceed a prescribed blood alcohol threshold, but are not intoxicated. Although the instant case involves an individual who was operating a motor vehicle—and who not only exceeded .10 percent in blood alcohol content, but also may have been “intoxicated” by other definitions under Connecticut law—there may be many situations where an impaired, but not intoxicated, insured should be provided medical coverage, and bargained for it, but would not receive it because of a blood alcohol content that exceeded the limit chosen by the legislature to increase safety on its roads.⁵

IV. Conclusion

The exclusion for “intoxication” is not clearly expressed in the policy; thus, the policy must be construed in favor of coverage. The defendant has set forth no other evidence to defeat coverage. Accordingly, the defendant’s motion for summary judgment [Document #17] is DENIED, and the plaintiffs’ cross-motion for summary judgment [Document #14] is GRANTED.

The Clerk is directed to close the case.

SO ORDERED this ___ day of March 2002, at Hartford, Connecticut.

⁵Of course, the parties are also free to agree in the contract to a specific blood alcohol content, or to agree to refer to a blood alcohol content level established in the State motor vehicle statutes, but that did not happen here.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE