

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

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5
6 August Term, 2002

7
8 (Argued May 5, 2003

Decided: September 22, 2003)

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10 Docket No. 02-9032

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14 OLIVER BISHOP, III and OLIVER BISHOP, IV,
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16 Plaintiffs-Appellees,

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18 v.

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20 NATIONAL HEALTH INSURANCE COMPANY,
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22 Defendant-Appellant.

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26 Before:

27 WALKER, Chief Judge,
28 CARDAMONE, and SOTOMAYOR, Circuit Judges.

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32 Defendant National Health Insurance Company appeals from a
33 judgment of the United States District Court for the District of
34 Connecticut (Droney, J.) entered on March 12, 2002, denying its
35 motion for summary judgment and granting a cross-motion for
36 summary judgment in favor of plaintiffs Oliver Bishop, III and
37 Oliver Bishop, IV.

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39 Vacated and remanded.

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43 WILLIAM H. CLENDENEN, Jr., New Haven, Connecticut (Kevin C. Shea,
44 Clendenen & Shea, LLC, New Haven, Connecticut, of counsel),
45 for Defendant-Appellant.

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47 JOHN F. WYNNE, JR., New Haven, Connecticut (Buckley & Wynne, New
48 Haven, Connecticut, of counsel), for Plaintiffs-Appellees.

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1 CARDAMONE, Circuit Judge:

2 On December 1, 1997 defendant National Health Insurance
3 Company (National) issued an Individual Hospital Surgical Expense
4 Policy to plaintiff Oliver Bishop, III (Bishop III), on which his
5 son, Oliver Bishop, IV (Bishop IV), as a member of his family,
6 was insured. The policy provided coverage for certain medical
7 expenses for Bishop III and the members of his family, including
8 his son. But the policy excluded coverage for "any loss incurred
9 while [the insured was] legally [i]ntoxicated," defining
10 "[i]ntoxicated" as "a level of blood alcohol content that is
11 specified in the laws defining [i]ntoxication in the state where
12 the loss or cause of loss occurred."

13 On March 14, 1998 Bishop IV, then 19 years old, purchased a
14 case of beer and a half-pint of liquor at a store in New Haven,
15 Connecticut, and proceeded to a party in Guilford, Connecticut,
16 where he consumed these alcoholic beverages. Earlier in the
17 evening, Bishop IV had made arrangements with a designated driver
18 to take him home after the party and this occurred at 3:00 a.m.
19 on March 15. Within minutes after his arrival at his home,
20 Bishop IV got into his pickup truck and drove away, soon
21 overtaking the designated driver. Almost 20 minutes from the
22 time he left his home, at 3:20 a.m., Bishop IV lost control of
23 his vehicle and drove off the road, colliding with a stone wall
24 and two trees. He was treated for his injuries at Yale-New Haven
25 Hospital, where medical personnel determined that his blood

1 alcohol content was .165 percent alcohol by weight. Citing the
2 intoxication exclusion in its policy, National refused to pay the
3 \$242,235.45 in medical expenses plaintiffs incurred as a result
4 of Bishop IV's accident.

5 In the district court the parties agreed that Bishop IV's
6 conduct violated Connecticut General Statutes § 14-227a(a)
7 (1998), the Connecticut drunk driving law. That law prohibited
8 driving with a blood alcohol content exceeding .10 percent
9 alcohol by weight. Nonetheless, the Bishops insisted that the
10 intoxication exclusion in their policy with National should not
11 apply because the exclusion is ambiguous. The district court
12 agreed and granted summary judgment in plaintiffs' favor,
13 ordering National to pay the Bishops' medical expenses.

14 We recognize that equitable considerations involved in
15 weighing, on the one hand, the effect on the insurer of paying
16 the claims against, on the other hand, the substantial medical
17 costs incurred by the insured for his son's injuries, might
18 counsel agreement with the district court's conclusion. But,
19 equity cannot be unbounded, without risking a throwback to those
20 days in Sixteenth Century England when -- in light of the vast
21 discretion exercised by the Chancellor -- it was said of the
22 English Court of Chancery that equity is as long as the
23 Chancellor's foot, be it long or short, on such an uncertain
24 measure, so goes equity. See John Selden, Table Talk 43
25 (Frederick Pollock, ed. 1927), cited in Zechariah Chafee, Jr. &

1 Sidney Post Simpson, Cases on Equity 6 n.8 (2d ed. 1946). Here,
2 of course, the exclusion from coverage is contained in the
3 written contract of insurance between the parties. It is written
4 in plain and, we conclude, unambiguous language, and is not
5 subject therefore to being construed on equitable principles. We
6 must vacate.

7 DISCUSSION

8 I Principles of Interpretation of an Insurance Policy

9 We review a grant of summary judgment de novo, standing in
10 place of the district court and applying the same principles of
11 law to the facts in the case as it does. See Podell v. Citicorp
12 Diners Club, Inc., 112 F.3d 98, 100 (2d Cir. 1997). Summary
13 judgment is appropriate only if the court, resolving all
14 ambiguities and drawing all reasonable inferences in favor of the
15 non-moving party, determines there is no genuine issue of
16 material fact, and that the moving party is entitled to judgment
17 as a matter of law. See Alibrandi v. Fin. Outsourcing Servs.,
18 Inc., 333 F.3d 82, 85 (2d Cir. 2003) (per curiam). The district
19 court had jurisdiction over this case based on diversity of
20 citizenship -- the Bishops are Connecticut domiciliaries and
21 National is incorporated and has its principal place of business
22 in Texas. See 28 U.S.C. § 1332(a). The parties agree the
23 substantive law of Connecticut applies.

24 Under Connecticut law, we interpret an insurance policy as
25 we would a contract, with the ultimate goal of determining the

1 intent of the parties regarding the extent of coverage the
2 insured expected to receive and what the insurer agreed to
3 provide as disclosed by the terms of the policy. See Simses v.
4 N. Am. Co. for Life and Health Ins., 394 A.2d 710, 713-14 (Conn.
5 1978); Marcolini v. Allstate Ins. Co., 278 A.2d 796, 798 (Conn.
6 1971). An insurer may escape its obligation to pay an insured
7 for a loss otherwise covered in the policy by identifying a
8 specific clause that expressly excludes the loss. O'Brien v.
9 John Hancock Mut. Life Ins. Co., 119 A.2d 329, 331 (Conn. 1955).
10 If an exclusionary provision is ambiguous so that an average
11 policyholder of ordinary intelligence can reasonably read the
12 policy as both favoring and disallowing coverage, we construe the
13 clause in a manner most beneficial to the insured, i.e., in favor
14 of coverage and against the insurer. See Heyman Assocs. No. 1 v.
15 Ins. Co. of State of Pa., 653 A.2d 122, 130 (Conn. 1995); 2 Lee
16 R. Russ & Thomas F. Segalla, Couch on Insurance § 22:31 (3d ed.
17 2001). This rule of construction is followed because the insurer
18 as the drafter of the insurance contract bears the burden of
19 clarity, and because the insured must have notice of the types of
20 risk his policy covers and excludes. See Hansen v. Ohio Cas.
21 Ins. Co., 687 A.2d 1262, 1265 (Conn. 1996). "If the terms of the
22 policy are clear and unambiguous," however, then its language
23 "must be accorded its natural and ordinary meaning." Heyman
24 Assocs. No. 1, 653 A.2d at 130. Connecticut's highest court
25 instructs courts to refrain from "import[ing] ambiguity where the

1 ordinary meaning leaves no room for ambiguity." Springdale
2 Donuts, Inc. v. Aetna Cas. & Sur. Co. of Ill., 724 A.2d 1117,
3 1121 (Conn. 1999).

4 II Alleged Ambiguity in the National Policy

5 Plaintiffs advance, and the district court accepted, the
6 proposition that the intoxication exclusion is unclear, ambiguous
7 and unintelligible as written. The district court pointed to the
8 policy's definition of intoxication, which refers to the level of
9 blood alcohol content that is specified in the laws defining
10 intoxication in Connecticut, and reasoned that the word
11 intoxication, as used in the policy, is ambiguous because no
12 Connecticut statute clearly defines intoxication by reference to
13 a blood alcohol content level. This would seem a curious
14 proposition, since the Connecticut drunk driving law, which
15 Bishop IV admits to violating, defines the offense as driving
16 "(1) while under the influence of intoxicating liquor or any drug
17 or both, or (2) while such person has an elevated blood alcohol
18 content," which, in turn, is defined (for the purposes of this
19 section) as blood alcohol content of 0.10 percent or more by
20 weight. Conn. Gen. Stat. § 14-227a(a) (emphasis added).¹

21 Undeterred by this admission, plaintiffs insist that the
22 statute does not provide an explicit legal definition of
23 intoxication. It is their contention that the statute only

¹ In 2002, the threshold blood alcohol content under this statute became 0.08 percent.

1 describes drunk driving, but not intoxication per se, and thereby
2 leaves open the possibility that other legal definitions of
3 intoxication may apply. The Bishops point out that Connecticut
4 law contains other definitions of intoxication that do not refer
5 to blood alcohol content, and that even the blood alcohol content
6 referenced in § 14-227a(a) has changed over time -- from .15
7 percent to .10 percent in 1971, and to .08 percent in 2002. See
8 1971 Conn. Pub. Acts 318; Conn. Gen. Stat. § 14-227a(a) (2002).

9 Outside of § 14-227a(a), the district court identified the
10 following definitions of intoxication in Connecticut law: (1) "a
11 substantial disturbance of mental or physical capacities
12 resulting from the introduction of substances into the body,"
13 Conn. Gen. Stat. § 53a-7 (2001) (discussing intoxication as a
14 means of negating criminal intent); (2) "mental or physical
15 functioning . . . substantially impaired as a result of the use
16 of alcohol or drugs," Conn. Gen. Stat. § 17a-680(13) (1992)
17 (intoxication in the context of provision of addiction services
18 by the State); and (3) "an abnormal mental or physical condition
19 due to the influence of intoxicating liquors, a visible
20 excitation of the passions and impairment of the judgment, or a
21 derangement or impairment of physical functions and energies,"
22 which may be found "[w]hen it is apparent that a person is under
23 the influence of liquor, when his manner is unusual or abnormal
24 and is reflected in his walk or conversation, when his ordinary
25 judgment or common sense are disturbed or his usual will power

1 temporarily suspended, when these or similar symptoms result from
2 the use of liquor and are manifest," Sanders v. Officers Club of
3 Conn., Inc., 493 A.2d 184, 190 (Conn. 1985) (interpreting
4 definition of intoxication in Connecticut Dram Shop Act, Conn.
5 Gen. Stat. § 30-102).

6 All of these other competing definitions of intoxication,
7 the Bishops declare, make the application of National's
8 intoxication exclusion so uncertain and ambiguous that it is
9 unintelligible and therefore unenforceable. The district court
10 agreed, holding there is no clear statutory definition of
11 intoxication that references blood alcohol level, and the policy
12 exclusion is therefore ambiguous and must be construed in favor
13 of the insured.

14 III Our View of Intoxication Exclusion

15 Plaintiffs' arguments misperceive the relevant principles of
16 law governing the interpretation of a contract. When examining
17 an insurance contract for ambiguity, a court must look to the
18 situation before it, and not to other possible or hypothetical
19 scenarios. See Coregis Ins. Co. v. Am. Health Found., 241 F.3d
20 123, 129 (2d Cir. 2001) (applying Connecticut law); Kelly v.
21 Figueiredo, 610 A.2d 1296, 1298-99 (Conn. 1992). That is, the
22 ambiguity must exist in the policy language as applied to the
23 facts before us, not in the abstract. An ambiguity does not
24 exist by virtue of the fact that one of a contract's provisions
25 could be ambiguous under some other circumstances. Rather, an

1 ambiguity exists if a court could reasonably interpret the
2 insurance policy before it either to warrant coverage of the
3 particular loss in question or to exclude coverage. See Heyman
4 Assocs. No. 1, 653 A.2d at 130 ("[W]hen the words of an insurance
5 contract are, without violence, susceptible of two [equally
6 responsible] interpretations, that which will sustain the claim
7 and cover the loss must . . . be adopted."). If the policy could
8 arguably be read to cover the behavior in question, the court is
9 to resolve the ambiguity in favor of the insured. However, when
10 an insured's behavior unquestionably falls within an insurance
11 exclusion, a court cannot invalidate the exclusion simply because
12 it might be ambiguous in another situation. See Buell Indus.,
13 Inc. v. Greater N.Y. Mut. Ins. Co., 791 A.2d 489, 501 (Conn.
14 2002).

15 The question, then, is not whether National's policy is
16 ambiguous in a hypothetical sense, but whether there is any
17 question that Bishop IV was intoxicated within the policy's
18 definition when his accident occurred. If the language of the
19 insurance exclusion yields conflicting possible conclusions about
20 whether Bishop IV was "intoxicated," then we would construe the
21 policy in favor of coverage.

22 As an initial matter, we think § 14-227a(a) is the relevant
23 statute defining intoxication as used in National's policy.
24 Although the statute does not explicitly define intoxication, it
25 clearly provides such a definition by implication in setting

1 forth the boundaries of the crime it prohibits. The law
2 proscribes driving "while under the influence of intoxicating
3 liquor." Conn. Gen. Stat. § 14-227a. "Under the influence" as
4 stated in the law is commonly understood to mean "intoxicated,"
5 and the Connecticut courts have enshrined this understanding in
6 their case law. See Coble v. Maloney, 643 A.2d 277, 282 (Conn.
7 App. Ct. 1994); State v. McKenna, 525 A.2d 1374, 1379-81 (Conn.
8 App. Ct. 1987).

9 In light of this, it would make little sense to call the
10 crime "driving while under the influence" "driving while
11 intoxicated" if the limits set forth in the law did not define
12 "under the influence" or "intoxication." The fact that the
13 provision does not explicitly purport to define intoxication does
14 not mean that its clear implication for the legal limit of
15 sobriety cannot be used as a general standard. On the contrary,
16 we think it appropriate in this case to look to § 14-227a(a) to
17 interpret the policy's reference to intoxication as defined by
18 the laws of Connecticut which reference blood alcohol content.²

19 Plaintiffs further contend that § 14-227a(a) cannot clearly
20 define intoxication because it uses two alternative definitions

² Conn. Gen. Stat. § 14-227g further indicates that § 14-227a defines intoxication. Section 14-227g prohibits those under the age of 21 from driving with a blood alcohol content exceeding .02 percent. Unlike § 14-227a, however, § 14-227g does not mention the term "under the influence," indicating that such a low level of alcohol content is not the threshold for drunkenness, even though it is prohibited among minors. Even if .02 percent were a possible alternative definition of intoxication, Bishop IV surely met it the night of his accident.

1 of intoxication -- § 14-227a(a) (2) that references blood alcohol
2 content and § 14-227a(a) (1) that refers simply to being under the
3 influence of liquor or drugs. But the fact that these
4 alternative definitions exist is irrelevant because the law makes
5 plain that an individual is always liable for driving under the
6 influence if his or her blood alcohol content by weight exceeds
7 the .10 percent limit. Connecticut case law, relied on by the
8 plaintiffs and cited by the district court, confirms this by
9 describing the difference between the two definitions: for § 14-
10 227a(a) (2), a blood alcohol content of .10 percent per se
11 establishes intoxication, while for § 14-227a(a) (1), blood
12 alcohol content is evidence, but is not necessary to establish
13 intoxication. See State v. Gilbert, 620 A.2d 822, 827 (Conn.
14 App. Ct. 1993), aff'd, 640 A.2d 61 (Conn. 1994); Coble, 643 A.2d
15 at 282. While a lesser blood alcohol content may support a
16 finding of intoxication, it is not necessary for such a finding.
17 Far from making the appropriate definition ambiguous, the statute
18 makes very certain that regardless of non-numerical definitions,
19 a sufficient blood alcohol content always triggers liability
20 under the statute. Since Bishop IV's blood alcohol level
21 indisputably exceeded the threshold, he was intoxicated within
22 the definition set out in § 14-227a(a).

23 Moreover, even if the policy were unclear as to which law it
24 intended to use as a benchmark for intoxication, the exclusion
25 would still apply because Bishop IV's blood alcohol level is

1 evidence that he was intoxicated under any definition in any of
2 the Connecticut statutes. The policy of reading ambiguity in
3 favor of the insured stems from an interest in giving insureds
4 notice of exclusions, so that they do not unwittingly lose
5 coverage because of confusing or misleading language in insurance
6 contracts. It may not be persuasively argued that an ordinarily
7 intelligent person reading National's policy would believe that a
8 loss occurring when the insured had consumed enough alcohol to
9 reach a .165 percent blood alcohol level was a covered risk under
10 the terms of the policy.

11 IV Remaining Arguments

12 Plaintiffs submit that even if § 14-227a(a) provides the
13 relevant standard for defining intoxication, evidence of the
14 blood alcohol level alone is not enough, and an adjudication is
15 necessary before Bishop IV can be found to have been intoxicated.
16 The Bishops, however, admitted in their submissions that Bishop
17 IV was in violation of § 14-227a(a). Since one cannot be driving
18 while under the influence unless one is intoxicated under the
19 legal definition in § 14-227a(a), the Bishops' admission is
20 tantamount to an admission of intoxication. Further, the
21 insurance policy National issued does not require an
22 adjudication, but simply sets as a benchmark for inebriation the
23 level set forth in the statutes, and Connecticut case law holds
24 that evidence of the requisite blood alcohol content alone

1 establishes intoxication under the relevant statute, see Gilbert,
2 620 A.2d at 827.

3 In a related argument, the Bishops additionally contend that
4 National has the burden not only of showing that Bishop IV was
5 intoxicated at the time of his accident, but that his
6 intoxication caused the accident. We see no justification for
7 requiring such a showing. The policy excludes any loss incurred
8 while the insured was intoxicated and does not suggest that the
9 loss must have been proximately caused by the intoxication.
10 Further, plaintiffs stipulated that Bishop IV's blood alcohol
11 content was "at least a contributing factor" in his accident.

12 Finally, plaintiffs raise policy considerations in support
13 of their position. They assert that Connecticut public policy
14 precludes a minor from falling within the legal definition of
15 intoxication under the terms of the insurance policy. Plaintiffs
16 advance this argument by reminding the court that intoxication
17 exemptions generally only apply where intoxication was "knowing
18 and voluntary." See Russ & Segalla, supra, § 143:81. The
19 Bishops cite Ely v. Murphy, 540 A.2d 54, 57 (Conn. 1988), for the
20 proposition that minors lack the capacity to be voluntarily
21 intoxicated, and reason that therefore the intoxication exclusion
22 cannot apply to minors like Bishop IV.

23 Such a reading stands Connecticut case law on its head. In
24 Ely, the Connecticut Supreme Court considered whether an adult
25 who provided alcohol for a minor at a party could be liable for

1 that minor's killing of another in a drunk driving accident. The
2 court questioned whether the alcohol provider's liability was cut
3 off by the common law doctrine that "no tort cause of action lay
4 against one who furnished, whether by sale or gift, intoxicating
5 liquor to a person who thereby voluntarily became intoxicated and
6 in consequence of his intoxication injured [another] person."
7 Id. at 56-57. The Supreme Court of Connecticut held that since
8 minors are "incompetent by reason of their youth and inexperience
9 to deal responsibly with the effects of alcohol," id. at 57, they
10 do not have the legal capacity to consume alcohol responsibly,
11 and their voluntary consumption of alcohol does not automatically
12 cut off the liability of a social host who provides the minors
13 with alcohol under the common law doctrine. Id. at 58.

14 That is vastly different from saying that minors cannot as a
15 matter of law become voluntarily drunk and need not face the
16 consequences of their own actions while intoxicated. We believe
17 plaintiffs' proposed reading of the case is not only inaccurate,
18 but also unreasonable. We think it highly unlikely that
19 Connecticut public policy seeks to encourage underage drinking
20 and driving by making minors or their parents exempt from the
21 consequences of their actions when so conducting themselves. As
22 a consequence, we conclude that Bishop IV's conduct falls within
23 National's intoxication exclusion and thus the insurer need not
24 provide coverage for the loss incurred.

25 CONCLUSION

1 Accordingly, the judgment is vacated and remanded to the
2 district court with instructions to grant summary judgment in
3 favor of defendant National.