DOCKET NO. CV085024259S	: SUPERIOR COURT
DONALD GILDERSLEEVE	: JUDICIAL DISTRICT OF NEW HAVEN
V.	: AT NEW HAVEN
TRAVELERS HOME AND MARINE INS. CO.	: DECEMBER 29, 2009

MEMORANDUM OF DECISION RE MOTION FOR SUMMARY JUDGEMENT (#111)

The defendant, Travelers Home and Marine Insurance Company, argues that it is entitled to judgment as a matter of law because there is no genuine issue of material fact about whether the plaintiff's alleged injuries, losses and damages were causally related to the operation, maintenance or use of an uninsured motor vehicle, and such a causal relationship must exist for the plaintiff to recover uninsured motorist benefits under his policy with the defendant. The plaintiff, Donald Gildersleeve, counters that the proper interpretation of the phrase "use of an uninsured motor vehicle" supports his theory that his injuries arose from an illegally parked vehicle that was blocking the roadway and his attempt to get the driver to move the vehicle by blowing his horn. For reasons more fully set forth herein, the court grants the motion.

Judicial District of New Haven
SUPERIOR COURT
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Counsel/Pro Se Parties notified 12/30 2009
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The basic facts giving rise to this case are undisputed. The plaintiff was driving down a one-way street in New Haven when he encountered another vehicle stopped in the middle of the road. The unknown operator of the vehicle was conversing with a pedestrian who was leaning against it. After waiting for a period of time, approximately thirty to forty seconds, the plaintiff honked the horn in his vehicle. The unknown driver pulled over. As the plaintiff attempted to pass, the pedestrian threw a glass bottle toward the plaintiff's vehicle, which broke his window and hit him in the face and injured him. Although there are allegations in the plaintiff's complaint which allege that the driver of the vehicle **or** the pedestrian threw the bottle, the plaintiff testified during a deposition that the pedestrian, not the unknown driver, threw the glass bottle at him after the unknown driver's car pulled over out of the middle of the road. The plaintiff further testified in his deposition that the pedestrian was never in the unknown vehicle, but rather was standing outside the vehicle at all pertinent times. This testimony is uncontested and uncontradicted.

The plaintiff made an uninsured motorist claim with the defendant, who provides uninsured motorist coverage for him, for his injuries. The defendant refused the claim, asserting that the plaintiff's injuries did not arise from the operation or use of an uninsured motor vehicle. On September 14, 2009, the defendant filed a motion for summary judgment with an accompanying memorandum of law and two exhibits. The plaintiff filed his

objection and an accompanying memorandum in opposition to the motion, to which he attached documentary evidence, on October 2, 2009. The court heard the matter at short calendar on October 5, 2009.

The insurance policy provides, in pertinent part, that:

"A. We will pay compensatory damages which an insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle . . . because of bodily injury:

1. Sustained by an insured; and

2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the uninsured motor vehicle . . . .

C. Uninsured motor vehicle means a land motor vehicle . . .

2. Which is a hit and run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in bodily injury without hitting:

a. you . . .

b. a vehicle which you . . . are occupying; or

c. your covered auto.

If there is no physical contact with the vehicle causing the accident, the insured must prove by a fair preponderance of the evidence that the injuries resulted from the negligence of an unidentified motorist . . . ."

The question for this court is whether the "use" of the unknown driver's automobile gave rise to the negligent act(s) which caused the plaintiff injury. Based upon a review of the undisputed facts in the record this court concludes that the operation of the unknown vehicle did not give rise to the negligent act which caused injury to the plaintiff.

Our Supreme Court stated in *Hogle* v. *Hogle,* 167 Conn. 572, 577, 356 A.2d 172 (1975), that "[i]t is generally understood that for liability for an accident or an injury to be said to 'arise out of' the 'use' of an automobile for the purpose of determining coverage under the appropriate provisions of a liability insurance policy, it is sufficient to show only that the accident or injury 'was connected with,' 'had its origins in,' 'grew out of,' 'flowed from,' or 'was incident to' the use of the automobile, in order to meet the requirement that there be a causal relationship between the accident or injury and the use of the automobile."

Negligence is generally based upon the foreseeability of the harm. The test is, would the ordinary driver in the unknown driver's position, knowing what he knew or should have known, have anticipated the harm of the general nature that occurred in this case? *Noebel v Housing Authority*, 146 Conn. 197, 148 A.2d 766 (1956). In this case, the intentional acts of a pedestrian would not be ordinarily foreseeable to a driver of a

motor vehicle. Therefore, the act(s) of the pedestrian fall outside the scope of the harm to which the operation of the vehicle could give rise.

There may have been some temporal connection between the pedestrian's actions and the operation of the unknown motor vehicle. In other words, a trier of fact might conclude that the unknown car was improperly stopped in the middle of the road minutes before the pedestrian threw the bottle at the plaintiff. And, there appears to have been a relationship and inter-personal connection between the pedestrian and the operator of the unknown vehicle. In other words, a trier of fact could reasonably conclude that the pedestrian and the driver of the unknown vehicle knew each other. However, there is no evidence from which a trier of fact could reasonably conclude that the pedestrian and the operator of the unknown vehicle acted in concert, or that the pedestrian was reacting as a result of the operation of the unknown vehicle. Therefore, there is no evidence to support the conclusion that it was the use or operation of the vehicle caused or led to the actions of the pedestrian.

The plaintiff relies heavily on *Padillo v Allstate Ins. Co.*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV 000375169 (June 19, 2002, *Sheedy, J.*) (32 Conn. L. Rptr. 325) to support his claim that the issue of whether or not the injuries to the plaintiff resulted from the "use" of an uninsured motor vehicle implicate facts in dispute. *Padillo* is not precedent for the instant matter. And, even if it were, it is

factually distinguishable. In *Padillo*, the plaintiff claimed that "an unidentified driver had been following his vehicle for some time and that that unidentified driver shot him in the leg after [the plaintiff] had pulled his vehicle to the side of a public street, opened his door and had begun to exit the car." Id., 325. The court (*Sheedy, J.*) denied the defendant insurer's motion for summary judgment on the basis that "[t]he events which culminated in the plaintiff's shooting grew out of or flowed from his operation of the car that the defendant insured. The plaintiff's use of his automobile was clearly 'connected to' the shooting which caused his injury." Id., 327. In the present action, the alleged tort-feasor is not the driver of the uninsured motor vehicle and there is no evidence of a connection between the uninsured vehicle and the plaintiff's injury. Further, the requirements of the insurance policy in this case mandate that payments of uninsured motorist coverage be made as a result of the "use" and "operation" of the uninsured vehicle, not of the plaintiff's vehicle.

In this case, there were two different actors: one a driver and one a pedestrian. There were two different courses of action: one the operation of a vehicle, which improperly stopped and then moved; the other the throwing of a bottle after the vehicle had moved. And, there were two different chains of events: one leading to the impeding of traffic (which could have led to an accident and subsequent injury); and the other involving intentional assaultive behavior which did result in injury to the plaintiff. While the defendant might be liable to cover damages flowing from the first actor and subsequent course of action and chain of events, it is not liable for the second based upon

the facts presented. Accordingly, this court concludes that the defendant is entitled to judgment and grants its motion.

Robinson, A., J.