

DOCKET NO. X08 CV 08 4015401 S : SUPERIOR COURT
NATIONWIDE MUTUAL INSURANCE : COMPLEX LITIGATION DOCKET
COMPANY and NATIONWIDE :
MUTUAL FIRE INSURANCE :
COMPANY :
v. : AT STAMFORD
JEFFERY S. PASIAK and PASIAK : MARCH 9, 2021
CONSTRUCTION SERVICES, LLC :

POST-TRIAL MEMORADUM OF DECISION

This case comes to the court on remand from the Connecticut Supreme Court with the following instructions: “Therefore, on remand, the plaintiffs are entitled to appropriate discovery and a trial de novo to determine whether they have met their burden of proving that the business pursuits exclusion bars coverage.” *Nationwide Mutual Ins. Co. v. Pasiak*, 327 Conn. 225, 270 (2017).

Following a trial de novo, upon consideration of the trial testimony and exhibits, and applicable law, the court has determined that plaintiff Nationwide has satisfied its burden of proof and is entitled to judgment in its favor.

Background

As is apparent from the above quotation, this dispute involves the applicability of a business pursuits exclusion, which is contained in the personal umbrella policy of the defendant, Jeffrey Pasiak (Pasiak). The Supreme Court noted that “business pursuits exclusions may be found in ‘practically all homeowners’ policies,’ ‘nearly all of the provisions employ virtually the same language,’ ‘provisions . . . include broad exclusionary language for liabilities “arising out of business pursuits of an insured”’” *Nationwide Mutual Ins. Co. v. Pasiak*, supra, 327 Conn. 247, citing Annot., 35 A.L.R.5th 375 (1996).

In the underlying case, a jury found Pasiak liable for the false imprisonment of his former employee, Sara Socci (Socci). Plaintiffs here, Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company (collectively Nationwide), provided a defense subject to a reservation of rights, and subsequently filed the present action seeking a determination that the business pursuits exclusion, among others, negated any coverage obligation under the homeowners personal umbrella policy, which specifically provided coverage for a claim of false imprisonment. Nationwide named as defendants Jeffrey Pasiak and Pasiak Construction Services, LLC. Pasiak was the sole policyholder and will be referred to as the defendant. The trial court found in his favor and held that the business pursuits exclusion did not apply to bar Pasiak's claim for indemnification. On appeal, the Appellate Court reversed and found that the exclusion did bar coverage. On subsequent appeal, our Supreme Court reversed the Appellate Court and held, "[W]e cannot say on the basis of the limited facts found by the trial court or the evidentiary record whether the business pursuits exclusion applies as a matter of law." *Id.*, 254. As a result, the Court remanded for further proceedings.

The Supreme Court summarized the relevant facts as follows:

At the time of the incident in question [May 9, 2006], the defendant operated a construction company, Pasiak Construction Services, LLC. The sole office for the company was a room located on the second floor of the defendant's home in Stamford; the company's construction equipment was stored at another site. Sara Socci was hired by the defendant to perform duties as an office worker for the construction company and worked at that office in the defendant's home. Her work hours were from 9:30 a.m. to 2:30 p.m., four days a week.

During Socci's second week of employment, while she was alone at the office performing her duties, a masked intruder carrying a gun entered the office and demanded that she open the safe. Unaware that a safe existed in the home, Socci could not provide the intruder with the safe's combination. The intruder led Socci into a bedroom, where he tied her hands, gagged her, and blindfolded her. At one point, he pointed a gun at her head and threatened to kill her family if she did not give him the combination.

The defendant returned home during the incident and was attacked by the intruder. During an ensuing struggle, the defendant pulled off the intruder's mask, revealing him to be Richard Kotulsky, a lifelong friend of the defendant. The defendant began talking to Kotulsky and inquired about Socci. Kotulsky led the defendant to Socci, who was crying and hysterical. After the defendant made Kotulsky untie Socci, the three of them returned to the office, where a discussion continued between the defendant and Kotulsky about a woman. Socci asked to leave, but the defendant told her to stay and sit down. After further discussions with Kotulsky, the defendant allowed him to leave the house. Socci then told the defendant about the threats that Kotulsky had made to her and her family, but the defendant would not call the police. He told Socci to stay with him and refused to let her call the police or to discuss the incident further. She remained with the defendant for several hours, in fear that, if she left, she or her family might be harmed by Kotulsky. Only after he drove Socci to Greenwich to discuss the incident with a mutual friend, Denise Taranto, who advised them to call the police, did he allow Socci to leave.

(Footnote omitted.) *Id.*, 230–31.

The insurance policy at issue is Nationwide's Personal Umbrella Policy No. 51 06 PU903400 (the Policy) with a per occurrence limit of \$1,000,000, which sits above Pasiak's Homeowners Policy No. 51 06 H01982191 with a per occurrence limit of \$300,000. The umbrella policy requires Nationwide to pay for damages an insured is legally obligated to pay due to an "occurrence" in excess of certain sums. "This term and others of significance are defined in the Policy as follows:

'Occurrence(s) means an accident including continuous or repeated exposure to the same general conditions. It must result in bodily injury, property damage, or personal injury caused by an insured. . . .

"Personal injury means:

"[a] false arrest, *false imprisonment*, wrongful conviction, wrongful entry"
(Emphasis added.)

The policy provides exclusions to this coverage. Those exclusions include:

'An occurrence arising out of the business pursuits . . . of an insured'" *Id.*, 237-38.

The court notes that this exclusion does not contain a common exception. "The 'business pursuits' exclusion which is commonly included in homeowners' and farmowners' liability policies frequently

contains an exception to the exclusionary language for activities which are ‘ordinarily incident’ or ‘usual’ to ‘non-business pursuits.’” 9A S. Plitt et al., *Couch on Insurance* (3d Ed. Rev. 2020) § 128:25. See *Nationwide Mutual Ins. Co. v. Pasiak*, supra, 327 Conn. 237-38, 247 n.10.

Prior Proceedings

Socci and her husband reported the traumatic events to the Stamford police on the evening of May 9, 2006. The State prosecuted Richard Kotulsky (Kotulsky) for his criminal acts and he served a lengthy prison sentence.

In March 2008, the Soccis commenced a civil action for damages against Pasiak alleging false imprisonment, intentional and negligent infliction of emotional distress, negligence and loss of consortium. *Socci v. Pasiak*, Superior Court, judicial district of Stamford/Norwalk, Docket No. CV-08-5006811-S (the Underlying Action). Their motion for a prejudgment remedy of attachment was denied on June 17, 2008, because, although the trial court found probable cause to support an attachment of \$250,000, the existence of applicable insurance in the amount \$1,300,000, made the PJR unnecessary because any potential judgment was adequately secured, within the meaning of General Statutes § 52-278d (a) (2). Remand Exhibit J, Transcript of June 16-17, 2008 PJR Hearing, p. 257-61 (*Tierney, J.*).¹

On February 23, 2010, after an eleven-day trial, the jury entered a verdict in favor of the Soccis and against Pasiak in the amount of \$835,700. *Socci v. Pasiak*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-08-5006811-S, 2010 WL 4277558 (September 28, 2010, *Brazzel-Massaro, J.*) (motions to set aside verdict or for remittitur denied), aff’d, 137 Conn. App. 562, cert. denied, 307 Conn. 919 (2012).

¹ From the bench, the court indicated that it viewed Pasiak as a Good Samaritan. With respect to a workers compensation claim, the court said, “I recognize that this occurred at the place of employment but I would be hard pressed for anyone to tell me that the actions of Mr. Pasiak in negligent[ly] turning away an armed intruder is in the ordinary course of his business as a contractor.” *Id.*, 239.

Pasiak had tendered the claim to Nationwide, and Nationwide provided a defense in the Underlying Action subject to a reservation of rights. Nationwide filed the present action in December 2008 (the Coverage Action) seeking a declaratory judgment that the Policy did not cover Pasiak's liability. The trial court in the Underlying Action denied Nationwide's first summary judgment motion in the instant action and held that it had a duty to defend Pasiak. *Nationwide Mutual Ins. Co. v. Pasiak*, Superior Court, judicial district of Stamford/Norwalk, Docket No. CV-08-4015401-S, 2010 WL 1794122 (March 31, 2010, *Brazzel-Massaro, J.*) (the March 2010 Decision). Subsequently, the court denied a second motion for summary judgment, this time finding that the Policy's exclusions did not relieve Nationwide from the duty to indemnify Pasiak under the Policy, but reserved decision on the duty to indemnify until after trial. *Nationwide Mutual Ins. Co. v. Pasiak*, Superior Court, judicial district of Stamford/Norwalk, Docket No. CV-08-4015401-S, 2012 WL 310772 (January 9, 2012, *Brazzel-Massaro, J.*) (the January 2012 Decision). The rationale in both rulings was the same, namely that various Policy exclusions, including the business pursuits exclusion, did not apply. With respect to the business pursuits exclusion, the court held that Pasiak undertook his acts of false imprisonment out of concern that Socci would report his friend Kotulsky to the police, and not out of any business purpose. The trial court stated, "There is no element of any regular activity of the business that is related to the events. The occurrence did not arise out of the business of the insured Jeffrey Pasiak." March 2010 Decision, *supra*, Superior Court, Docket No. CV-08-4015401-S, 2010 WL 1794122 *7; January 2012 Decision, *supra*, Superior Court, Docket No. CV-08-4015401-S, 2012 WL 310772 *16.

On August 29, 2012, the court held a one-day bench trial on the duty to indemnify where no testimony was taken, but exhibits were received into evidence, including the transcript of the trial of the Underlying Action. On April 25, 2014, the court issued its memorandum of decision finding that the exclusions in the Policy, including the business pursuits exclusion, did not relieve Nationwide of its duty

to indemnify Pasiak for the damages found by the jury in the Underlying Action. Docket No. 331.86. With respect to the business pursuits exclusion, the court amplified its holdings in the summary judgment rulings that Nationwide failed to show that the false imprisonment arose out of Pasiak's business. The court stated, "There was some argument by the plaintiff that Sara provided supporting testimony that Pasiak claimed the incident would ruin his business. The plaintiff ignores the testimony of Pasiak about the Kotulsky friendship and thus without convincing support, accepts the inference that [Kotulsky's] actions would cause the business profit to suffer." *Id.*, 14.

The court concluded, "The actions of Pasiak did not flow from the business or were in furtherance of the business. The evidence strongly supports the conclusion that Pasiak was attempting to protect his friend. There is no clear evidence that it was in furtherance of the business. . . . There is no business connection between the acts of Pasiak in response to finding his friend trying to rob the safe in his bedroom and the actions thereafter to let his friend go free and try to keep him from going to jail by delaying a decision to call the police as he kept Sara with him. . . . In analyzing whether any specific activity is business related, a key question is 'could the claimed injury have been sustained even if the business was not involved? If so the case will generally fall outside the exclusion. . . .' L. Russ & T. Segalla, *Couch on Insurance* (3d Ed. 1997) § 128.14, p. 128-30. The occurrence here under the policy is a false imprisonment of Sara Socci. Using this criteria, it is not clear from the testimony whether the injury is linked in a sustainable manner to the business. The plaintiff has not satisfied its burden of proof on this exclusion. Thus the plaintiff has failed to demonstrate the continuity or the profit motive to support the business exclusion." *Id.*, 16-17.

Nationwide appealed the trial court's decision to the Appellate Court, which reversed it. The court held that, "when used in an exclusionary clause of an insurance agreement, the term 'arising out of' establishes an '[expansive] standard of causation' . . . and must be 'interpreted broadly' '[U]se of

[the phrase] does not require a direct proximate causal connection but instead merely requires some causal relation or connection.” (Citations omitted). *Nationwide Mutual Ins. Co. v. Pasiak*, 161 Conn. App. 86, 99 (2015), rev’d, 327 Conn. 225 (2017). The Appellate Court found that the case arose out of Pasiak’s business pursuits because the attack on Socci and the ensuing events would not have occurred but for Socci’s employment by Pasiak in his home office, and “her acquiescence in obeying the defendant’s commands to wait and not leave were, in part, a function of their employer-employee relationship.” *Id.*, 99-100. Finally, the court held that Pasiak’s reasons for his actions were not dispositive, given Socci’s engagement “in work for the defendant’s business at the time of her injuries” *Id.*, 101. Accordingly, the court reversed the trial court and ordered a remand with direction to render judgment for Nationwide on the duty to indemnify. *Id.*, 102.

The Decision of the Connecticut Supreme Court

Pasiak appealed the Appellate Court’s decision, and our Supreme Court reversed it, holding, “We conclude that the analysis in both of the lower courts’ decisions was a misapplication of the business pursuits exclusion, and that the case should be remanded to the trial court to allow it to reconsider the evidence, adduced after further proceedings, under the proper standard.” *Nationwide Mutual Ins. Co. v. Pasiak*, *supra*, 327 Conn. 242.

As an initial matter, the Supreme Court set forth the applicable principles of policy interpretation:

“[W]hen the words of an insurance contract are, without violence, susceptible of two [equally responsible] interpretations, that which will sustain the claim and cover the loss must, in preference, be adopted. . . . [T]his rule of construction favorable to the insured extends to exclusion clauses.” (Citations omitted; internal quotation marks omitted.) *Vermont Mutual Ins. Co. v. Walukiewicz*, 290 Conn. 582, 591–92, 966 A.2d 672 (2009). When construing exclusion clauses, “the language should be construed in favor of the insured unless it has a high degree of certainty that the policy language clearly and unambiguously excludes the claim.” (Internal quotation marks omitted.) *Connecticut Ins. Guaranty Assn. v. Drown*, 314 Conn. 161, 188, 101 A.3d 200 (2014). While the insured

bears the burden of proving coverage, the insurer bears the burden of proving that an exclusion to coverage applies. See *Capstone Building Corp. v. American Motorists Ins. Co.*, 308 Conn. 760, 788 n.24, 67 A.3d 961 (2013).

Nationwide Mutual Ins. Co. v. Pasiak, supra, 327 Conn. 238-39.

Turning to the case at hand, the Supreme Court stated,

In the present case, no one questions that the activities of the defendant's construction company meet the two elements of a business pursuit. Nor does anyone contend that false imprisonment constitutes a business pursuit. Therefore, the question is not whether the false imprisonment itself satisfied the continuity/profit elements of a business pursuit, as the trial court's rationale suggested, but rather whether the defendant's false imprisonment of Socci "arose out of" his business pursuits in operating the construction company.²

...

[I]t is clear that neither the trial court nor the Appellate Court applied the proper standard for "arising out of" a business pursuit. The trial court's continuity and profit motive test conflated the test for determining whether a business pursuit exists with the one for determining whether the act giving rise to the injury arose out of such a pursuit. It appears to have compounded that misstep in two ways. First, the court focused on Kotulsky's actions as they may have related to the actual profitability of the defendant's business, rather than considering [Pasiak's] purported statements to, and actions toward, Socci as they may have related to his business and/or the employment relationship. Second, the court's analysis indicated that an act could satisfy the exclusion only if it was exclusively in furtherance of the business pursuit; consequently, any personal motive for that act would negate application of the exclusion. However, equating "arising out of" with exclusively "in furtherance of" would render the former clearly more restrictive than the descriptive terms used in *Hogle* [*v. Hogle*, 167 Conn. 367 (1975)]. Indeed, such an interpretation would render most tortious conduct (even accidental) outside the scope of the business pursuits exclusion, as such conduct rarely actually furthers a business purpose. Moreover, an employer's misuse of the employer-employee relationship to accomplish an end, whether partially or wholly motivated by personal reasons, could satisfy the expansive definition in *Hogle* of "arising out of."

² In a case of first impression, *Pacific Indemnity Ins. Co. v. Aetna Casualty & Surety Co.*, 240 Conn. 26, 33 (1997), the Court defined the exclusion as follows: "We conclude that the term 'business pursuits,' for the purposes of the exclusionary clause in the . . . policy, contemplates a continuous or regular activity engaged in by the insured for the purpose of earning a profit or a livelihood. The determination of whether a particular activity constitutes a business pursuit is to be made by a flexible fact-specific inquiry."

While the trial court’s approach was too restrictive, the Appellate Court’s was too expansive. The Appellate Court’s “but for” approach relied too heavily on Socci’s employment status and the work based location at which she sustained the injury. We agree with the Appellate Court that the requisite standard could be met if, in addition to these facts, the false imprisonment was a function of, or facilitated by, the employer-employee relationship. See *Nationwide Mutual Ins. Co. v. Pasiak*, supra, 161 Conn. App. 100. However, this is a factual finding on which the trial court expressed no view.

Indeed, we cannot say on the basis of the limited facts found by the trial court or the evidentiary record whether the business pursuits exclusion applies as a matter of law. There was additional evidence in the Socci action relating to the matter raised by the Appellate Court on which the trial court made no findings, which that court may consider on remand. See footnote 12 of this opinion. We express no view as to whether the court must credit this evidence or the weight that such evidence should be given if the court elects to credit it.

(Footnote added; footnotes omitted.) *Nationwide Mutual Ins. Co. v. Pasiak*, supra, 327 Conn. 243, 252–54.³

As cited by our Supreme Court, *Hogle v. Hogle*, supra, 167 Conn. 572 (*Hogle*), is the seminal case defining the phrase “arising out of” in the context of an insurance policy exclusion. In *Hogle*, Mr. and Ms. Hogle were out for a drive, with their collie dog in the car’s back seat. For an undisclosed reason, the dog suddenly leapt over the seat onto the driver’s side of the car. Mr. Hogle lost control of the car, causing an accident and the injuries suffered by Ms. Hogle. *Id.*, 574. Mr. Hogle sought coverage under his homeowners policy and the insured refused, relying on an exclusion barring coverage for injuries “arising out of” the use of an automobile away from the primary residence. *Id.*, 574-75. The Court resolved the issue as follows:

Furthermore, it 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*

³ In a concurrence and dissent joined by Justice Espinosa, Justice Eveleigh found that the business pursuits exclusion was ambiguous and that “[t]he record evidence supporting the theory that concern for the reputation of the business animated the defendant’s conduct is equivocal at best.” *Id.*, 277, 279. As a result, the opinion held that the exclusion should be construed narrowly and that Nationwide had not satisfied its burden of proof. *Id.*, 277-83. Accordingly, the opinion held that the Appellate Court judgment should be reversed and the trial court judgment affirmed. *Id.*, 283.

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. . . . [The insurer]’s obligation to pay the judgment rendered in favor of Mrs. Hogle does not depend on whether it was Mr. Hogle’s negligent operation of the car, or the activities of his dog inside the car, which constituted the “proximate cause” of the accident, and, consequently, of Mrs. Hogle’s injuries, as Mr. Hogle contends. Such obligation, rather, depends in this case on another fact, namely whether Mr. Hogle’s “use” of his car was connected with the accident or the creation of a condition that caused the accident. . . . Our review of the pleadings, affidavits, and other proofs submitted discloses no genuine issue between Mr. Hogle and [the carrier] on the fact that his use of the automobile was in some way “connected with” the accident which resulted in the injuries complained of by Mrs. Hogle. His liability to pay the damages assessed against him in the judgment rendered in favor of Mrs. Hogle, then, can be said to have arisen from his use of the automobile while away from the insured premises, so that coverage under the homeowner’s policy was expressly excluded.

(Citations omitted; emphasis added; footnote omitted.) *Id.*, 577-79.

As a result of the foregoing, it is the task of this court on remand to engage in a “flexible fact-specific inquiry” to determine if the insurer satisfied its burden of proof that the false imprisonment or Socci’s injury in this case “‘was connected with,’ ‘had its origins in,’ ‘grew out of,’ ‘flowed from,’ or ‘was incident to’” Pasiak’s business pursuits. *Nationwide Mutual Ins. Co. v. Pasiak*, supra, 327 Conn. 243-44. To aid the court in this task, the Supreme Court specified several topics in footnote 12 of its decision to be considered. They will be discussed in the context of the court’s finding of facts, below.

Proceedings on Remand

Prior to trial, the parties availed themselves of the Supreme Court’s suggestion of further discovery. Among other things, Nationwide took Pasiak’s deposition again on January 15, 2019. On February 19, 2019, Nationwide filed a motion for summary judgment, which this court denied, finding: “Plaintiff has filed the instant motion for summary judgment, claiming that there are no genuine issues as to any material fact and that it is entitled to judgment as a matter of law. Plaintiff relies on the record before the Supreme Court and on excerpts from a deposition of Mr. Pasiak taken on January 15, 2019.

Plaintiff advances a new theory, i.e., that Mr. Pasiak violated an employer's duty to provide a safe workplace for his employee and that this triggers the business pursuits exclusion.

“The court denies the motion for the following reasons: First, plaintiff has not satisfactorily shown the relationship between the alleged breach of the duty to provide a safe workplace and the tort of false imprisonment. Concededly, the new theory was not presented to the jury below or to any court since. This ruling is not to preclude plaintiff from presenting this theory at trial, but the court does not find that plaintiff has sustained its burden of proof on this motion.

“Second, there are several issues of material fact barring summary judgment. Mr. Pasiak filed an affidavit in opposition to the motion in which he denied ever claiming that reporting the attack by Mr. Kotulsky would damage his business or that Mr. Kotulsky's motive in the attempted burglary was to damage his business; yet plaintiff relies on the contrary assertion several times in its moving brief. Mr. Pasiak denied several other factual assertions made by plaintiff, such as directing Ms. Socci to leave her handbag at the office when they set off to meet with Ms. Taranto, and stopping on the way at a construction site, among other things. These facts would be relevant to a consideration of the applicability of the business pursuits exclusion.

“Finally, the court finds that the proffered testimony from Mr. Pasiak's recent deposition does not cure the deficiencies of proof which prevented the Supreme Court from resolving the dispute and which caused it to direct a trial de novo in this court.” May 9, 2019 Memorandum of Decision, Docket No. 384.01.

The Evidence at the Trial De Novo

On November 13, 2019, the court conducted a one-day bench trial. The court heard the testimony of Pasiak and of Socci.⁴ Additionally, the parties agreed on fifteen evidentiary exhibits, which were admitted into evidence. The trial exhibits are: A. – the Policy; B. – pleadings from the Underlying Action; C. – transcripts of the 2010 trial in the Underlying Action; D. – transcript of May 12, 2009 Pasiak deposition; E. – transcript of November 19, 2009 Pasiak deposition; F. – transcript of August 29, 2012 Pasiak deposition; G. – transcript of January 15, 2019 Pasiak deposition; H. – transcript of June 16 and 17, 2008 prejudgment remedy hearing; I. – transcript of October 19, 2009 Socci deposition; J. – transcript of December 3, 2009 Socci deposition; K. – transcript of July 28, 2009 Taranto deposition; L. – May 9, 2006 Pasiak voluntary statement to Stamford Police; M. – May 9, 2006 Socci voluntary statement to Stamford Police; N. – May 31, 2006 Socci voluntary statement to Stamford Police; and O. – April 23, 2008 Socci affidavit in support of application for prejudgment remedy. The parties submitted post-trial memoranda and responses thereto.

Contentions of the Parties

Nationwide contends that the evidence demonstrates a causal connection between Socci's false imprisonment and Pasiak's business because: 1) it was motivated by Pasiak's desire to protect his business, even if he was additionally interested in protecting his friend Kotulsky; 2) Pasiak abused the employer-employee relationship by forcing Socci to confront Kotulsky, among other things; and 3) Socci's compliance was compelled by Socci's fear that Kotulsky would harm her family based on his learning their address from information contained in the files of Pasiak Construction.

⁴ Socci's trial counsel filed a motion seeking to excuse her from testifying in person because she suffered from post-traumatic stress disorder and was apprehensive about being in proximity to Pasiak. The court denied the motion because it deemed her testimony essential to resolution of the case, but allowed Socci to testify by video conference from a different courtroom on another floor of the courthouse. *Nationwide Mutual Ins. Co. v. Pasiak*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-08-4015401-S, 2019 WL 6327245 (October 29, 2019, *Lee, J.*).

Pasiak contends that the business pursuits exclusion does not bar coverage because: (1) nothing business-related occurred during the time of the false imprisonment after Kotulsky left the premises; (2) Pasiak's sole motivation was to protect Kotulsky by delaying the report of the incident to the police, and never said reporting the incident would damage his business; and (3) the false imprisonment was not an abuse of the employment relationship because Socci terminated her employment shortly after Kotulsky's attack and acquiesced in Pasiak's commands out of her fear of him and the potential harm to her family. He further asserts that Nationwide has not satisfied its burden of proof because its contentions are not supported by the evidence and that his testimony, and not Socci's, is credible.

In response, Nationwide asserts that the business pursuits exclusion applies because Pasiak acted with a business purpose in denying Socci permission to collect her children and go home after Kotulsky's attack and delaying notification of the police. Additionally, Nationwide argues that a causal connection existed between the false imprisonment and Pasiak's business because, among other things, it commenced at the workplace, the visit to Taranto included a stop at a materials yard and Taranto was a business advisor. Finally, Nationwide contends that Pasiak abused the employment relationship, inter alia, by ordering Socci to remain at the office and then accompanying him to visit Taranto, and that she complied with these demands only because of Pasiak's position of authority. Further, Nationwide contends that Pasiak perpetuated an unsafe business environment by failing to keep Kotulsky out of the premises after the attack, and that this breach caused Socci's resignation.⁵

⁵ Pasiak's reply brief contains a new contention, i.e., that Nationwide "has not actually made a claim for declaratory relief that the business pursuits exclusion excludes coverage" in its second amended complaint. Docket No. 154. The court rejects that contention because, while paragraph 14 of the second count refers only to the willful acts and abuse exclusions, paragraph 15 provides more generally, "The allegations of the Complaint are not covered under the Policies by virtue of one or more of the foregoing Policies' terms and exclusions." The parties have litigated the application of the business pursuits exclusion literally for years, and Pasiak cannot credibly claim any prejudicial confusion arising from the wording of the operative complaint at this point.

Supplemental Findings of Fact

As discussed above, the Supreme Court identified and endorsed the finding of basic underlying facts as stated by the trial court and the Appellate Court. The Supreme Court directed this court to make further supplemental findings of fact to enable it to determine whether the false imprisonment arose, as that term is defined in the case law, out of Pasiak's business pursuits. To assist in that process, the Supreme Court specified for this court's consideration eleven points of evidence from the Underlying Action of Pasiak's "purported statements to, and actions toward, Socci as they may have related to his business and/or the employment relationship" as set forth in footnote 12 of its decision:

Socci's testimony reflects numerous additional facts on which the trial court's decision is silent. For example, [1] Kotulsky was targeting Socci's "boss." [2] Because Socci was a new employee, the defendant periodically stopped by the office to see whether Socci had any questions. [3] After the incident, the defendant anxiously and repeatedly expressed a concern to Socci that Kotulsky's actions would "ruin" his business, and did so as part of a two-pronged argument as to why she should not report the incident to the police. [4] When she told the defendant that she wanted to leave the office, he told her, "It's business as usual." [5] Although Socci was too distraught to perform any of her usual tasks, she viewed her presence in acquiescence to the defendant's demands as having "worked all day." [6] When he and Socci left the office to meet with Taranto to discuss the incident, the defendant directed Socci to leave her personal effects at the office. [7] The defendant stopped at a construction site on the way to the meeting with Taranto and spoke with two workers there. [8] Socci announced to the defendant that she could no longer work for him, and [9] he relayed that concern to Taranto when the three met. [10] Taranto was instrumental in Socci's hiring and training, and she was intimately involved in the defendant's business affairs. Socci and Taranto knew each other from having previously worked for the same employer for several years, but never had any relationship outside of work. [11] The defendant allowed Socci to leave close to the time that her normal workday was scheduled to end.

Nationwide Mutual Ins. Co. v. Pasiak, supra, 327 Conn. 253 n.12.

The court added, "We express no view as to whether the court must credit this evidence or the weight that such evidence should be given if the court elects to credit it." *Id.*, 254.

* * *

With consideration of all of the above, the court has reviewed and evaluated the testimony and all other evidence submitted at trial and makes the following findings of supplemental facts and conclusions of law:

A. Pasiak and Pasiak Construction Services, Inc.

1. On the date of the event at issue, May 9, 2006, Pasiak was 41 years old and the owner of Pasiak Construction Services, Inc. (PCS). Its sole office was located in Pasiak's lifetime home at 217 Soundview Avenue in Stamford.

2. Pasiak started PCS out of his home in 1986, as its sole owner/operator. PCS's business was delivering construction materials to various worksites and renting out construction equipment. The business had one truck at that time. His insurance coverage consisted solely of a homeowners policy. He did not purchase a commercial general liability policy.

3. The PCS office consisted of a room on the second floor of Pasiak's home, across the hall from Pasiak's bedroom and next to the bathroom. It accommodated three desks, including a computer workstation.

4. Twenty years later, at the time of the attack, Pasiak's business had grown considerably. PCS had five employees, consisting of himself, three drivers and an office assistant. It also owned five dump trucks and various construction machines, which were kept on a nearby lot. PCS did work for "a lot of big companies and homeowners, a lot of builders." Pasiak Testimony, November 13, 2019 Remand Trial Transcript, 125.27-126.1. The business was doing well.

5. Pasiak was asked about the Policy in effect during the incident: "Q. Well, so why did you have the insurance, what did you think it was important to protect? A: Number one, your home. Okay. A personal umbrella was - - protects you further. So that's why I had it." Id., 151.22-27. Pasiak's base premium was \$359.80.

6. Pasiak did not purchase any commercial liability insurance for his business. He also did not purchase workers compensation insurance for Socci because he claimed that she worked part-time.

B. Socci and Her Employment by PCS

7. Socci was thirty years old at the time of the attack. She was married and living in Norwalk. She had two sons, one in school and the other in day care.

8. In late April 2006, Socci started working for PCS at the home office as a part-time office manager. Her duties included bookkeeping, billing, correspondence and answering the telephone. She also performed certain personal tasks for Pasiak such as helping with his correspondence. She had no duties that would take her out of the office. Her office hours were 9:30 to 2:30, which would allow her to drop off her children at school and day care in the morning and to pick them up in the afternoon.

9. Socci worked solely for Pasiak, whom she considered to be her boss. Socci and Pasiak each had desks in the office. While Pasiak's primary work was at jobsites, he regularly stopped by the office in the morning to work with Socci.

10. Socci had learned of the position from Denise Taranto, with whom she had worked at a previous employer. Pasiak had asked Taranto to help him find a new office assistant, and Taranto called Socci to see if she would be interested in the position. After a positive response, Taranto met with Socci to discuss the job and arranged and participated in an interview with Pasiak. After Socci was hired, Taranto called her daily at the job to see if she had any questions or problems.

11. Taranto went to high school with Pasiak, had dated him for a few years, and remained his best friend. They were considered friends of each other's families. They talked on the telephone every day. Taranto set up his original filing system and did some typing for him. She advised him with regard to personnel and other business matters, would obtain various permits for the company, and run errands

to the post office. Taranto was never employed by Pasiak or PCS and never received any money in compensation for her help.

C. Events on the Morning of May 9, 2006

12. Socci had reported for work at about 9:30 AM. She was at her desk and had started the computer when Richard Kotulsky entered the office wearing a mask and carrying a gun. He demanded that Socci show him Pasiak's safe and open it. The safe was located in Pasiak's bedroom, and Socci did not know about the safe or its combination. The safe was used to store Pasiak's personal papers, such as passports and titles, and some company papers. Kotulsky became enraged, and bound, gagged and blindfolded Socci, and forced her down on the floor of the bedroom.

13. Kotulsky put a gun to her head and told her that he knew where she lived and would kill her and her family if she did not open the safe for him. Socci told him that there was petty cash in the office, which Kotulsky took.

14. After about forty-five minutes of continuous threats, Pasiak returned home and Kotulsky attacked him at the top of the stairs. After a struggle, Pasiak pulled off Kotulsky's mask and recognized him as a long-time friend.

15. Pasiak asked about Socci's whereabouts. After Kotulsky took Pasiak to the bedroom, Pasiak made Kotulsky untie Socci. Then Pasiak and Kotulsky went into the office and Pasiak insisted that Socci join them, although she did not want to do so because Kotulsky had threatened to kill her if she saw his face.

16. Nevertheless, Socci joined them in the office. Pasiak was upset that Kotulsky tried to rob him and "tried to ruin his business." It became apparent that Kotulsky was motivated both by a desire to rob Pasiak because Kotulsky was out of work and could not cover his debts, and to punish Pasiak for

purportedly having an affair with Kotulsky's girlfriend. Eventually, the two resolved that dispute and spoke amicably.

17. Socci was crying and shaking with fear. She said she wanted to leave, but Pasiak forbade her. He said she could not leave because they had to decide whether to call the police. Kotulsky begged him not to do so. After further discussion, at Socci's insistence, Pasiak told Kotulsky to go outside the house. At this point, Socci told Pasiak of Kotulsky's threats to her and her family. Pasiak refused to call the police or to let her leave. He brought Kotulsky back into the room, where Kotulsky apologized to Socci and she assured him that she would not tell the police. Eventually, Kotulsky left.

18. Pasiak insisted that Socci remain with him while they decided what to do. Socci said she could not work any longer for him or PCS, because she was terrified that Kotulsky might return or hurt her family. Nevertheless, Pasiak prevented her from leaving.⁶ Pasiak was concerned that if he let Socci leave, she might call the police without his permission. Socci testified, "I remember he was worried about me ruining his business." Socci Testimony, November 13, 2019 Remand Trial Transcript, 67.10-11.⁷ While they discussed whether to call the police, Pasiak said that he could not harm his friend by doing so.

19. Socci obeyed Pasiak and did not try to escape because she was afraid that he would tell Kotulsky, who had telephoned her several times, that she had left to go home with her children and that Kotulsky would harm her and her family. At five feet two inches tall and 105 pounds, she also felt intimidated by Pasiak, who was about six feet tall, weighing about 200 pounds, with the physique of a body builder, and by Kotulsky, who was about six feet one inch tall and weighed approximately 270 pounds.

⁶ Socci claims that Pasiak said, "It is going to be business as usual," which Pasiak denies. The evidence is insufficient to incorporate this statement into a finding of fact because it is not corroborated by a third party or extrinsic evidence and, in any event, is unnecessary to the court's decision as to coverage.

⁷ This quotation is a variation on similar statements attributed to Pasiak by Socci. The court cites this one because it occurred at trial in the court's presence.

20. Pasiak's housekeeper came to the house and noticed that Socci had bloodstains, which turned out to be Kotulsky's, on her clothes. To avoid attention, Pasiak told her to put on a PCS tee shirt, which she did.

21. Eventually, Pasiak decided to discuss the situation with Taranto, who was working at an office in Greenwich. Pasiak and Socci spoke to her on a company phone and she invited them to come speak with her.

D. Events during the Afternoon of May 9, 2006

22. Shortly after noon, Pasiak told Socci to get into his car so he could drive them to Greenwich. He directed her to leave her pocketbook and other belongings at his house, to be picked up when they returned.

23. En route to Greenwich, they stopped at a donut shop and bought coffee for themselves and for Taranto. They also stopped at what the court construes to be a material supply yard, where stone, gravel and rock were stored. Pasiak spoke with several of the yard's employees for a few minutes before continuing the trip. Without stopping, they also drove by some construction sites that PCS was serving.

24. When they reached the parking lot at Taranto's office building in Greenwich at about 1 p.m., they telephoned her, and she came out and sat in the rear passenger seat. Socci and Pasiak each told her what had happened and asked what they should do. Her response was, "That was barbaric," and that they should call the police. Pasiak was not entirely convinced, but a plan was evolved that Pasiak and Socci would drive back to the PCS office, Socci would leave to pick up her children and speak with her husband, and they would further discuss how to call the police.

25. Pasiak and Socci returned to the PCS office at about 2:30 p.m. Socci collected her things and left in her car at about 2:45 p.m. She called her husband from her mobile phone, picked up her children

between 3:00 and 3:15 p.m., and returned home. Her experience, from arrival at work to departure, approximated her regular work schedule.

26. Later that afternoon, Ms. and Mr. Socci and a male friend returned to Pasiak's house, where they met with Pasiak, who called the police. The Soccis and Pasiak spoke with the police at Pasiak's house, and subsequently went to the police station, where Socci and Pasiak gave signed statements. At the end of the evening, Pasiak apologized to Socci and hugged her. They never spoke to each other again, although Pasiak sent her flowers soon thereafter.

27. Socci was paid in full by PCS for the period May 6 through May 9, 2006.

E. Other Findings

28. On October 1, 2007, after being charged with kidnapping in the second degree and witness tampering, Pasiak pled guilty pursuant to the Alford doctrine to charges of interfering with an officer and threatening in the second degree. Pasiak paid a fine of \$1500 for each charge.

29. At the underlying trial on January 28, 2010, Socci's counsel called her treating psychologist, Dr. Timlin-Scalera, to the stand to discuss Socci's injuries. The doctor testified that Socci was suffering from Post-Traumatic Stress Disorder (PTSD). She also testified that the events of the second part of the day increased Socci's risk of a more complicated, long-lasting type of PTSD because it involved a second trauma, in this case, the betrayal by a trusted person. Dr. Timlin-Scalera said that Socci trusted Pasiak because he was her boss, enough to take a job as an employee. The doctor opined that Pasiak's actions contributed as much if not more to her PTSD than Kotulsky's actions.

30. On the next day of the underlying trial, January 29, 2010, Dr. Walter Borden, a psychiatrist, and physician certified in forensic psychiatry, presented his expert testimony on the causes and extent of Socci's PTSD. Dr. Borden said she suffered from relatively severe PTSD with associated depression. He stated that, while Kotulsky started the problem, Pasiak's failure to save her or defend her exacerbated it.

Pasiak occupied a position of authority to Socci. She trusted him enough to work in his home. Dr. Borden opined, “[W]hen it is an authority that betrays you, that has much more impact. And much more impact on your sense of trust. It is not a stranger. That might have a fair impact. But if it is somebody you know who is involved in a threat to your life, that is far worse. And especially a person who is an authority. She thought he was going to save her. So that is another factor.”⁸

31. On February 4, 2010, the seventh day of the underlying trial, Pasiak’s expert, psychiatrist Dr. Mark Rubenstein, discussed Socci’s condition and said, “It is the person’s rendering or description of events that can be influenced by anything, by many, many things you are doing or after the event that’s being described.”

32. At the remand trial, Pasiak remarked to the court, “You know, I got a brain injury over here.” When the court asked him how he was feeling, he said, “I’m not doing too good, Judge. I’m feeling terrible.” The brain injury to which Pasiak referred was caused by several blows to his head with a hard object during his fight with Kotulsky. Pasiak was diagnosed with hydrocephalus, or blood on the brain. He had been seeing neurologists and therapists for eight to ten years. He said testifying about the experience was like opening old wounds, “I can’t concentrate good, I lose focus quick, and have slight memory problems.” At her deposition in 2009, Taranto said that after the incident, Pasiak had changed: “He can’t stay focused. His memory is awful. His concentration is horrible” Pasiak closed his company in November 2018 because he could not concentrate on his business.

Conclusions of Law

A. Burden of Proof

Pasiak correctly argues that Nationwide has the burden of proof to show that the business pursuits exclusion applies to defeat coverage of his claim. He also cites to the Supreme Court decision and case

⁸ Dr. Borden also said that his extensive tests of Socci indicated that “she had difficulty managing routine affairs and the items she endorsed [on the questionnaire] suggest a poor memory.”

law discussed therein for the proposition that, “When construing exclusion clauses, ‘the language should be construed in favor of the insured unless it has a high degree of certainty that the policy language clearly and unambiguously excludes the claim.’” *Nationwide Mutual Ins. Co. v. Pasiak*, supra, 327 Conn. 239.

This court declines to apply this heightened standard in this procedural posture because it is not called upon to construe the exclusion. The Supreme Court has already done so. Rather, the court is applying the high court’s construction to the facts of the case. Accordingly, the court finds that Nationwide must satisfy its burden of proof by a preponderance of the evidence.

B. Credibility of the Witnesses

The testimony of the key witnesses in the case, Pasiak and Socci, is in stark conflict regarding Pasiak’s remarks and conduct during the period of false imprisonment, running from mid-morning until mid-afternoon on May 9, 2006. As a result, an important part of the court’s task has been to determine the credibility and reliability of their testimony.

The standard Connecticut jury instruction on credibility is helpful to the court in its role as factfinder: Connecticut Civil Jury Instructions § 2.5-1, available at <http://www.jud.ct.gov/ji/civil/Civil/pdf> (last visited March 4, 2021), provides, “The credibility of witnesses and the weight to be given to their testimony are matters for you as jurors to determine. However, there are some things to keep in mind. It is the quality and not the quantity of testimony that controls. In weighing the testimony of each witness, you may consider whether the witness has any interest in the outcome of the trial. You should consider a witness’s opportunity and ability to observe facts correctly and to remember them truly and accurately, and you should test the evidence each witness gives you by your own knowledge of human nature and the motives that influence and control human actions. You may consider the reasonableness of what the witness says and the consistency or inconsistency of (his/her) testimony. You may consider (his/her) testimony in relation to facts that you find to have been otherwise proven. You may believe all of what a

witness tells you, some of what a witness tells you, or none of what a particular witness tells you. You need not believe any particular number of witnesses and you may reject uncontradicted testimony if you find it reasonable to do so. In short, you are to apply the same considerations and use the same sound judgment and common sense that you use for questions of truth and veracity in your daily life.”

In testifying before this court at the remand hearing in 2019, Socci was attempting to recollect what she had heard at a time of extreme stress thirteen years earlier. Expert testimony at the underlying trial established that this subject matter had inflicted severe PTSD upon her, which affected her recall of events, even to the point of distortion. In person, she at times became extremely agitated, shaking and crying, even though she was testifying remotely. Having viewed Socci’s live testimony and having reviewed all the other evidence, the court believes Socci’s memory is unreliable on various details in this matter.

On the other hand, the court found that much of Pasiak’s testimony at the 2019 trial lacked credibility. Pasiak told the court while he was on the stand that he was suffering from brain damage and was in pain. His best friend, Taranto, had testified in the underlying trial that his memory was terrible. The court found his demeanor to be uneasy and confused. In addition to denying virtually all of Socci’s recollection and testifying inconsistently with some of his prior testimony, Pasiak stated that Socci had remained with him voluntarily so he could “comfort her.” Given the uncontested facts regarding what had happened to Socci earlier that morning, the court finds this statement entirely unbelievable and that Pasiak’s recollection was consistently shaped by his self-interest.

In short, with respect to the two key witnesses, the court found much of Socci’s testimony to be unreliable and much of Pasiak’s testimony to lack credibility.⁹ As a result, the court declined to make

⁹ The court is reminded of Mark Twain’s apt observation, “It isn’t so astonishing, the number of things that I can remember, as the number of things I can remember that aren’t so.” Quoted in Random House Webster’s *Quotationary* (2010) p. 501, citing A. Paine, *Mark Twain, A Biography* (1912) 3.1269.

several findings of fact advanced by the parties. Where possible, it relied on matters not in dispute or where corroborated by extrinsic evidence.

C. Did the False Imprisonment Arise out of Pasiak's Business Pursuits?

In determining the ultimate question in the case, the court found it useful to refer to several of our Supreme Court's discussions of the "arising out of" formulation, in addition to those in this case and in *Hogle*, supra, 167 Conn. 572.

In *Board of Education v. St. Paul Fire & Marine Ins. Co.*, 261 Conn. 37, 39-40 (2002), the Supreme Court had to determine whether a claim based on an assault on a student, who was allowed by a bus driver to enter the school unescorted, was within the grant of coverage of a commercial auto policy. The Supreme Court held, "[I]t 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.' . . . Under this standard of causation, it need not be shown that the incident in question was proximately caused by the vehicle for coverage to attach. See 6B J. Appleman & J. Appleman, Insurance Law and Practice (Cum. Sup. 2001) § 4316, p. 88; see also *Federal Ins. Co. v. Tri-State Ins. Co.*, 157 F.3d 800, 804 (10th Cir. 1998) (citing cases from other jurisdictions). Thus, the plaintiff in the present case need not allege that the school bus itself was the locus of the injury in order to prove causation under the language of the policy. The plaintiff must allege only that the injury originated in, grew out of, or flowed from the use of the vehicle. Given the alleged connection, discussed previously herein, between the use of the bus and the alleged injuries to Jane Doe, the fact that the injury occurred away from the bus does not, in and of itself, show the insufficiency of the causal nexus between the alleged injury and the use of the bus." (Citation omitted.) *Board of Education v. St. Paul Fire & Marine Ins. Co.*, supra, 261 Conn. 48.

In *New London County Mutual Ins. Co. v. Nantes*, 303 Conn. 737, 758 (2012), the Supreme Court held, “The present case, like *Hogle*, involves injuries that stem from two causes, one falling within the exclusion, that is, Nantes’ act of leaving her car running in the garage, and the other arguably falling outside the exclusion, that is, Nantes’ act of closing the garage door. If we were to accept the defendants’ argument and extend coverage to Dzhgalian’s and Melikyan’s injuries on the ground that a contributing cause of those injuries falls outside the exclusion, we would be required to repudiate our reasoning in *Hogle*, in which we deemed it dispositive that the driver’s “use” of his car was connected with the [injury] or the creation of a condition that caused [it].’ *Id.* We deemed it irrelevant that a covered event—the dog’s leaping into the front seat—was a contributing cause of the passenger’s injury. Here, too, it is irrelevant that an arguably covered event—Nantes’ closing of the garage door—was a contributing cause of Dzhgalian’s and Melikyan’s injuries. Consistent with our reasoning in *Hogle*, the fact that Nantes’ use of her motor vehicle was connected to or created a condition that caused Dzhgalian’s and Melikyan’s injuries is enough to bring them within the motor vehicle exclusion.”

In the present case, Kotulsky plays a role comparable to that of Mr. Hogle’s dog. *Hogle*, *supra*, 167 Conn. 578. While Kotulsky’s unexpected attack was partially responsible for Socci’s PTSD, the chain of events following the attack, which constituted the false imprisonment, contributed to Socci’s injuries and had important connections to Pasiak’s business. These include the court’s findings that:

- i. Socci was employed by Pasiak Construction Services, Inc., not by Pasiak, who was the insured homeowner;
- ii. The events occurred during the work day;
- iii. The acts of false imprisonment were committed by Socci’s boss;
- iv. The actions commenced at the corporate office and continued through the visit to Taranto;

- v. Pasiak did not let Socci leave because he was afraid, among other things, that she would call the police before he had decided to do so;
- vi. On the way to see Taranto, Pasiak stopped at a materials yard, as used in his business, to speak to its employees, and passed by a few worksites his company served. As a result, the trip, in which Socci unwillingly participated, had elements of a business purpose;
- vii. Taranto, in addition to being a friend, was a business advisor who was instrumental in placing Socci in the job. That Pasiak sought her advice about how to handle the situation suggests that he viewed the decision of whether to call the police as a business decision as well as a personal one, and that he prevented Socci's departure as a result of those concerns.
- viii. Socci was paid her contractual salary for the day and the rest of her work week; and
- ix. Medical testimony adduced at the underlying trial by two experts demonstrated that Socci's injuries were seriously exacerbated by the actions of her employer, who occupied a position of trust and authority as her boss.

Upon consideration of these facts, a pattern emerges: that Kotulsky's actions amounted to an attack on Pasiak's company, as well as upon Pasiak personally. Kotulsky broke into the company's principal place of business, terrorized and immobilized its office staff, stole the company's petty cash and attempted to steal more, and assaulted its leader. These acts disrupted the company's activities for the rest of the day.

Once Kotulsky left, Pasiak had to determine how to respond to the situation. This was as much a business decision as a personal one. He prevented Socci from leaving in order to keep her from calling the police and taking the decision out of his hands. For the same reason, he kept Socci with him while he consulted with a company advisor, Taranto. When he decided what to do, he let Socci go home. As a result, the tort of false imprisonment was committed to allow him to control the decision and do what was

best for the business, in addition to his concern for his friend Kotulsky. As a matter of corporate policy, the false imprisonment was inextricably intertwined with the interests of Pasiak's business. Further, medical testimony established that Socci's injuries were exacerbated by the fact that her boss, a person of trust and authority, restrained her after her traumatic experience at the hands of Kotulsky, which creates another connection between Socci's injuries and Pasiak's business.

As a result, the court concludes that Nationwide has satisfied its burden of showing that the claim of false imprisonment and Socci's injuries arose out of, were related to, connected with or were incident to, Pasiak's business pursuits.¹⁰

D. Public Policy

Consideration of public policy also supports the court's conclusion that the business pursuits exclusion should apply in this case. As found above, Pasiak started his business out of his home in 1986, as the sole owner/operator with one truck, and had only a homeowners policy. Twenty years later, when the events of the case occurred, he still had not purchased commercial coverage, but had five employees, five trucks and various construction equipment. His primary policy was a still homeowners policy with a personal liability umbrella policy above it, with a base premium of \$359.80, from which he seeks coverage in excess of \$850,000. To hold that the business pursuits exclusion does not apply in this situation is to defeat its reasonable purpose.

A leading commentator explained the purpose of the business pursuits exclusion as follows: "Homeowners' and farmowners' liability policies typically exempt from coverage bodily injury or

¹⁰ In reaching this conclusion, the court does not adopt two of Nationwide's contentions. First, it does not determine whether Pasiak abused the employer/employee relationship because Socci advised that she would no longer work for PCS when Pasiak refused to let her leave the workplace, and because she said she obeyed him, not because he was her corporate superior, but because she was afraid of what Kotulsky might do and also was intimidated by Pasiak. Second, the court similarly does not determine whether Pasiak/PCS violated a duty to provide a safe environment for Socci because of a lack of authority for that proposition, and because of a concern that unnecessarily adopting such a doctrine might dramatically broaden the scope of the exclusion, effectively rendering any mishap occurring at the workplace to be within the business pursuits exclusion.

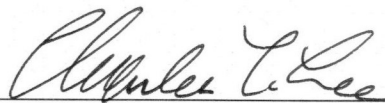
property damage arising out of or in connection with a business engaged in by the insured. People characteristically separate their business activities from their personal activities, and therefore, business pursuits coverage is not essential for their homeowners' or farmowners' coverage and is excluded to keep premium rates at a reasonable level.

“As with most language contained in an insurance policy, this exclusionary provision has appeared in various forms. Nevertheless, nearly all of these variations employ virtually the same substantive language, including broad exclusionary language for liabilities arising out of ‘business engaged in by’ or ‘business pursuits’ of an ‘insured.’” (Footnote omitted.) 9A S. Plitt et al., Couch on Insurance (3d Ed. Rev. 2020) § 128.14.

Segregation of the coverage lines allows the insurer to properly understand and underwrite the risk. A company with multiple employees and business assets is not properly insured under a homeowners policy, and Pasiak's homeowners coverage cannot fairly be held to respond to this claim.

CONCLUSION

As a result of the foregoing reasoning, on the facts as found by this court based on the evidence and the credibility of the witnesses, and upon applicable law, the court finds that the business pursuits exclusion in the Policy precludes coverage of defendant Pasiak's claim. Accordingly, the court grants a declaratory judgment to plaintiff Nationwide that it has no obligation to indemnify Pasiak for the damages awarded against him.



Hon. Charles T. Lee, JTR