

Court Rejects Attenuated Argument of Automobile Insurer Liability

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Just how attenuated is *too* attenuated for a driver's conduct outside the vehicle to be covered by the auto policy covering the vehicle? In *Hough v. McKiernan*, the Supreme Court of Rhode Island drew the line at about two-to-three car lengths from the vehicle, holding that the driver's conduct, after exiting the vehicle and knocking a pedestrian to the ground, was not sufficiently connected with his use of the vehicle to trigger coverage. On the evening of February 22, 2006, a group of friends gathered for a party at one of their homes. One friend asked another to borrow his pickup truck. The owner declined, but the friend still "borrowed" the truck anyway. When the owner of the pickup truck found out, he borrowed another friend's car to search for his own pickup. This car was owned by the friend's grandmother and insured by the same. As the pickup owner searched for his own pickup—with three of his friends in the vehicle—the car passed by two young men on foot. At this point, the pickup owner rolled down the car window and yelled what he considered to be "funny jokes" about the young men's mothers. The pickup owner further circled around the young men a few times, flashing his high beams at them. When the pickup owner and friends later located his pickup, he parked approximately two-to-three car lengths in front of it. Coincidentally, at that time, the two pedestrians who had earlier been harassed approached the pickup and conversed with the friend that had borrowed it. One of them flicked a cigarette, which struck the pickup owner. Incensed, the pickup owner got out of the car, pursued the young man, and punched him in the chest. The young man collapsed to the pavement, and the assailant and his friends left the scene in the insured vehicle, without checking to see if he needed medical attention. As a result of hitting his head on the pavement, the young man sustained a subdural hematoma and required multiple surgeries and months of treatment. The injured pedestrian sued, and coverage was sought under the auto policy covering the vehicle, under the theory that the car enabled the incident to happen, as it provided transport to the scene of the incident, "facilitated a series of drive-bys that would have been very unlikely had the [pickup owner] been on foot," and enabled the pickup owner to "have passengers

with him who were ‘egging him on.’” The Supreme Court of Rhode Island, however, found that this theory was a bridge too far, and held that this was not an accident arising from use of the vehicle.

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