



Insurance coverage for common law negligence for injuries in bar fights?

By Stephen Soule

So there was a fight in the bar. The bouncers threw the fighters out, but the participants in the fight were served alcohol at the bar and now the bar owner is being sued. "Claims involving allegations of alcohol intoxication require careful analysis when determining what policy or policies may apply. Two common theories centered on alcohol-related allegations that come into play include premises liability and dram shop liability, according to John P. Cunningham and Julia B. Jackson, presenters on this subject at the recent Property Loss Research Bureau's national conference in Orlando." Read about their thoughts on the subject on the Insurance Journal's website at <http://www.insurancejournal.com/news/national/2012/07/17/255919.htm>.

Premises liability claims are often made against the bar owner's Comprehensive General Liability policy. Typical claims are from bystanders injured in a fight, although participants in an altercation sometimes try to assert claims, too, especially if they were forcefully ejected from the premises by the insured's employees.

We see lots of disputes about insurance coverage in our practice because some policies have an absolute exclusion for claims based on fights. Such an exclusion might read:

ASSAULT AND BATTERY EXCLUSION

Notwithstanding anything in the policy to the contrary, it is understood and agreed that this insurance excludes claims arising out of:

- A. Assault and or Battery committed by any person whosoever, regardless of degree of culpability or intent and whether the acts are alleged to have been committed by the insured or any officer, agent, servant or employee of the insured by any other person; or
- B. Any actual or alleged negligent act or omission in the:
 - 1. Employment;
 - 2. Investigation;
 - 3. Supervision;
 - 4. Reporting to the proper authorities or failure to so report; or
 - 5. Retention;



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Of a person for whom any insured is or ever was legally responsible,
which results in Assault and/or Battery; Or

Any actual or alleged negligent act or omission in the prevention or
suppression of any act of Assault and/or Battery.

In our practice, which covers the New England states, we have seen the courts grapple with questions of insurance coverage for claims arising from bar fights in light of this exclusion. The insurance company will move for a Declaratory Judgment that there is no coverage as soon as a lawsuit is filed against the bar. The exclusion is usually upheld in all courts except for those in Maine. Maine has a doctrine that requires the underlying case be litigated to a conclusion (and defended by the insurance company asserting no coverage!) before the Declaratory Judgment action is heard. *Foremost Insurance Co. v. Levesque*, 2007 ME 96, ¶12, fn. 1.

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