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NEWS & EVENTS

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Montana Federal Court Enforces Assault and Battery Exclusion in Two Bar Shooting Coverage Disputes

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Traub Lieberman Partner Brandt Allen and Associate Charles Tortorice recently won summary judgment in favor of Golden Bear Insurance Company (“Golden Bear”) in consolidated declaratory judgment actions before the United States District Court for the District of Montana. The federal court in Montana held that an assault and battery exclusion barred coverage for two underlying lawsuits arising from separate shootings outside the insureds’ bar in Billings, Montana.

Both underlying lawsuits arose from separate events in February 2023 that occurred eleven days apart. The first lawsuit involved an 18-year-old patron who had allegedly been drinking at the bar. The patron thereafter engaged in an altercation with another patron in the bar’s parking lot before fatally shooting him. The decedent’s estate brought dram shop, negligence, wrongful death, survival and punitive damages claims against the bar, its owners and its landlord. The second lawsuit involved a bartender who attempted to stop a fight in the bar’s parking lot by firing his gun at two patrons. The patrons sued the bar, its owners and its landlord for negligence and vicarious liability for assault and infliction of emotional distress.

Golden Bear denied coverage for both lawsuits under an Assault and Battery Exclusion in the policy (the “A&B Exclusion”). Golden Bear then filed declaratory judgment actions seeking declarations that it had no duty to defend or indemnify any of the parties in the underlying lawsuits. The A&B Exclusion was broadly written to preclude coverage for claims arising from assault, battery and similar acts. The A&B Exclusion also precluded coverage for negligence-based claims resulting in or pertaining to the excluded acts, including negligent hiring or retention, failure to supervise or train, negligent maintenance of the premises and any failure to prevent, halt or bar the excluded acts. The A&B Exclusion applied regardless of the degree of culpability or intent and without regard to several enumerated factors, including liability based on respondeat superior.

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The parties filed cross-motions for summary judgment. The insureds argued that several allegations in the underlying lawsuits fell outside the scope of the A&B Exclusion, including the service of alcohol and the creation of dangerous conditions on the premises. The insureds also argued the phrase “arising from” in the A&B Exclusion was ambiguous under Montana law. The Court rejected both arguments. It found the allegations of dangerous premises, disorderly conditions and underage drinking were expressly addressed by the A&B Exclusion’s negligent maintenance and failure to prevent provisions. The Court acknowledged Montana’s distinct treatment of the phrase “arising from,” but followed recent District of Montana decisions (and other decisions throughout the country interpreting similar exclusions) holding that no ambiguity exists where an exclusion specifically delineates the outer boundaries of the excluded conduct. Because the A&B Exclusion enumerated thirteen excluded acts and eight “without regard to” provisions, the Court held the language was unambiguous. The Court also rejected the argument that the dram shop allegations were an independent cause of injury in the first lawsuit, as that underlying complaint linked the shooter’s alcohol consumption directly to his aggression and the shooting. With respect to the second lawsuit, the Court held that the Liquor Liability Coverage part of the policy was not triggered at all, reasoning that the patrons’ injuries were alleged to have stemmed from the bartender firing his weapon at the patrons, not from the sale or service of alcohol. The Court also held the A&B Exclusion applied regardless of whether the tortfeasor was an employee rather than a patron, noting the A&B Exclusion expressly referenced employees, negligent hiring and retention, failure to supervise or train and respondeat superior liability. The Court granted Golden Bear’s motions, denied the insureds’ cross-motions and held that Golden Bear had no duty to defend or indemnify in either underlying lawsuit.

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