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Assault and Battery Exclusion Held to Apply to Negligence Claims Involving Failure to Prevent Shooting

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August 25, 2020, in *Pickett v. Moore's Lounge*, – A.D.3d –, 2020 WL 4979476 (N.J. Super. Ct. App. Div. Aug. 25, 2020), the New Jersey Appellate Division held that an assault and battery exclusion in a Northfield policy barred coverage for a tavern owner's alleged negligent failure to prevent a shooting involving two patrons. The exclusion applied to "bodily injury" ... arising out of any act of 'assault' or 'battery' committed by any person, including any act or omission in connection with the prevention or suppression of such 'assault' or 'battery'. The insured argued that the exclusion was ambiguous under *L.C.S. Inc. v. Lexington Insurance Co.*, 853 A.2d 974 (N.J. Super. Ct. App. Div. 2004), in which case a bouncer allegedly assaulted a patron.

The underlying complaint in *L.C.S.* alternatively alleged that the bouncer negligently injured the plaintiff, unlike in *Pickett* where the plaintiff alleged only an intentional shooting. Thus, the *Pickett* court likened the facts before it to *Stafford v. T.H.E. Insurance Co.*, 706 A.2d 785 (N.J. Super. Ct. App. Div. 1998), in which the Appellate Division barred coverage for a shooting under an exclusion that applied to assault and battery along with negligent personnel management and "any other negligent action." In so holding, the *Pickett* court stated that its decision "finds support in the persuasive decisions of other courts," noting that such have "found unambiguous virtually the same exclusion found in the Northfield policy, or the policy in *L.C.S.*" (citing *First Fin. Ins. Co. v. GLM, Inc.*, 88 F. Supp. 2d 425 (D. Md. 2000); *Essex Ins. Co. v. Yi*, 795 F. Supp. 319 (N.D. Cal. 1992); *St. Paul Surplus Lines Ins. Co. v. 1401 Dixon's, Inc.*, 582 F. Supp. 865 (E.D. Pa. 1984); *Acceptance Ins. Co. v. Winning Concepts of Westport, Inc.*, 842 S.W.2d 206 (Mo. Ct. App. 1992); *Hernandez v. First Fin. Ins. Co.*, 106 Nev. 900, 802 P.2d 1278, 1280 (1990)).