TRAUB LIEBERMAN

NEWS & EVENTS

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Traub Lieberman Partner Brandt Allen and Associate Charles Tortorice Secure Coverage Win in Assault and Battery Case

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Traub Lieberman Partner Brandt Allen and Associate Charles Tortorice recently won a motion for judgment on the pleadings in favor of Golden Bear Insurance Company (“Golden Bear”) in a matter brought before the United States District Court for the Western District of Missouri. In the underlying lawsuit, a patron sued the insured bar for injuries he allegedly sustained when an employee of the bar either forcibly struck him in the face (as alleged in the initial complaint) or used force in defense of himself or another employee to contact the patron (as alleged in the amended complaint), which caused the patron to fall to the pavement and strike his head. The patron asserted claims for negligence and negligent security against the insured bar.

Golden Bear denied coverage pursuant to an Assault and Battery Exclusion (the “Exclusion”) found within the policy and subsequently filed a declaratory judgment action asking the Court to find that the Exclusion precluded a duty to defend and indemnify. Golden Bear filed a motion for judgment on the pleadings arguing there was no genuine issue of material fact that the claims asserted against the insured in the underlying lawsuit fell within the scope of the Exclusion, thus precluding coverage for the claims under the policy. The patron and the insured opposed the motion. The patron and the insured did not contest that the Exclusion precluded coverage for the underlying lawsuit, but rather argued that (1) Golden Bear failed to join the unknown employee who struck the patron as a necessary and indispensable party to the declaratory judgment action and (2) the Exclusion was void as against public policy because Missouri law favors self-defense. The Court found both arguments unavailing and entered judgment for Golden Bear.

After finding the patron’s and the insured’s failure to oppose Golden Bear’s argument that the conduct fell within the scope of the Exclusion constituted a waiver of that argument, the Court concluded that regardless of whether the employee was an insured under the policy, and regardless of whether the employee was subject to service of process, he was not a required or indispensable party to the declaratory judgment action. The Court determined it was able to afford complete relief among the existing parties and to determine Golden Bear’s obligation to defend and indemnify the insured, an obligation which was separate and apart from any obligations Golden Bear may owe to any other potential insured. Thus, the Court found the employee was not a necessary party.

The Court also found the Exclusion was not void as against public policy. The patron and the insured argued the Exclusion was against public policy because Missouri’s public policy favors self-defense, and the Policy’s Expected or Intended Injury exclusion has a carve out for those who “use reasonable force to protect persons or property.” However, the Exclusion replaced the Expected or Intended Injury exclusion and deleted the carve-out for use of reasonable force to protect persons or property. The Court found the patron’s and the insured’s public policy argument “borderline frivolous” and refused to conflate the legal justification for using force in self-defense with an entitlement to insurance coverage when using self-defense. Thus, the Court found the Exclusion was not against public policy and granted Golden Bear’s motion for judgment on the pleadings, finding Golden Bear had no duty to defend or indemnify the insured in the underlying lawsuit.