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Texas Federal Court Finds Assault and Battery Exclusion Bars Coverage for Negligent Supervision Claim at Rave Shooting

West Dallas Investments (WDI) owned property where a rave was held. Some partygoers at the rave fired gunshots into the air. One bullet struck and killed the claimant's son, who sued WDI for negligence. The claimant alleged that WDI had a duty to provide adequate protection from a known dangerous condition. The petition alleged that the property is regularly open to the public and promoted to hold raves, where it is not uncommon for inebriated patrons to fire weapons.

WDI sought coverage from its commercial general liability insurer, Mesa Underwriters. The policy had an assault and battery exclusion that stated:

> This insurance does not apply . . . for "bodily injury" . . . caused by, arising out of, resulting from, or in any way related to an "assault" or "battery" when that "assault" or "battery" is caused by, arising out of, or results from, in whole or in part from:
> . . .
> b. The failure to provide a safe environment including but not limited to the failure to provide adequate security, or to warn of the dangers of the environment, or
> . . .
> d. Negligent, reckless or wanton conduct by you, your employees, patrons or any person, or
> . . .

Mesa filed a declaratory judgment action seeking a declaration that it owed no duty to defend or indemnify WDI.

WDI argued that the incident fell outside the scope of the assault and battery exclusion. The court disagreed. The court found that firing weapons into the air at a crowded rave is a reckless use of force. The exclusion defined battery as an intentional or reckless use of force whether or not the actual injury is

intended or expected. Thus, the court found WDI's interpretation that battery requires the injury to be intended or expected unreasonable.

The court next applied "but for" causation. It noted that if WDI is found to be liable, it will be for bodily injury arising out of WDI's failure to provide a safe environment. As the court observed, under Texas law, the words "arising out of" are not words of narrow and specific limitation, but are broad, general, and comprehensive terms. Because "arising out of" is construed broadly as but-for causation in this context, the court found there was no set of facts that could develop in the underlying suit that would transform a shooting into something other than an action arising out of assault or battery under the policy. As such, there was no set of facts under which WDI would be held liable for the incident that would fall outside the policy's exclusion. Mesa thus had no duty to defend or indemnify WDI in the action.

The case is *Mesa Underwriters Specialty Ins. Co. v. W. Dallas Investments, LP*, No. 3:24-CV-332-N (N.D. Tex. July 22, 2025).

Georgia Federal Court Applies Firearms Exclusion to Negligent Security Claim

Two patrons of the Bamboo Lounge were injured after gunmen fired shots inside the lounge. One claimant was struck by a bullet. Another was trampled during the melee. They sued the lounge owner for inadequate security in failing to keep patrons safe. Both claimants alleged there had been a history of criminal activity at the lounge.

The lounge owner sought a defense under its commercial general liability policy. The policy had an endorsement adding a Firearms or Weapons Exclusion that barred coverage for injuries "arising out of firearms or weapons or omission in connection with the prevention or suppression of firearms or weapons, . . . whether caused by or at the instigation or direction of the insured, his employees, patrons or any other person[.]"

The insurer filed a declaratory judgment action and then moved for judgment on the pleadings. The issue was whether claimants' injuries arose out of firearms or weapons.

The court explained how Georgia law approaches the issue. The phrase "arising out of" warrants a "but for" test. That is, a claim arises out of excluded conduct when "but for" that conduct, there could be no claim against the insured. The focus is on the genesis of the underlying plaintiff's claims; if those claims arose out of the excluded acts, then there is no coverage. Thus, the court needed to consider whether there would still be a claim against the lounge owner in the absence of firearms or weapons.

The court held that both claimants' injuries arose out of firearms. One claimant was shot; the other trampled because of the panic caused by the gunmen's use of firearms. But for the firearms, neither claimant would have been injured.

The lounge owner's alleged negligence in securing the property did not take the claim outside the exclusion. Although broad, the court found that the exclusion was unambiguous. "At the end of the day," the court said, firearms were the cause of claimants' injuries. The use of firearms led to all the claims against the lounge owner (negligence, premises liability, nuisance, and false imprisonment). The Firearms or Weapons Exclusion thus applied and barred coverage for those claims.

The case is *Trisura Spec. Ins. Co. v. Nyrsha, LLC*, No. CV 224-105 (S.D. Ga. July 25, 2025).

Louisiana Court Applies Bodily Injury Exclusion to E&O Policy Claim Against Real Estate Broker

Amaleeta O'Neal sued RLN Investments, LLC and its liability carrier, Foremost Insurance Company, in Louisiana state court for bodily injuries. A tree from RLN's property allegedly fell across the road in front of O'Neal's vehicle, causing a collision between the fallen tree and the vehicle. O'Neal allegedly sustained bodily injuries to her spine, the left knee and elbow, as well as aggravation of preexisting Crohn's disease and degenerative disc disease.

RLN filed a third-party demand against Messina Realty, LLC, alleging that Messina was the manager for the property under a property management agreement and that Messina knew of concerns with the tree but failed to ensure the necessary maintenance and/or notify RLN. Later, RLN added claims against

Don Van Cleef, the real estate agent who acted for Messina as property manager and Continental Casualty Company, the professional liability insurer of Van Cleef and Messina.

Foremost and Continental cross-moved for summary judgment. Continental sought dismissal of the claims asserted by RLN, Messina, and Van Cleef against Continental based on a bodily injury exclusion in Continental's policies. That exclusion applied to "any Claim alleging, arising from or related to: "bodily injury, sickness, disease, mental anguish, pain or suffering, emotional distress or death of any person." The trial court denied Continental's motion. Continental appealed.

The appeals court reversed. The court held that O'Neal's claims against RLN were for bodily injuries, and it was this same claim for bodily injuries that underpinned RLN's third party demand against Messina, Van Cleef, and Continental. The court rejected Foremost's argument that Continental's bodily injury exclusion did not apply because the only claim asserted was one for breach of contract arising from a property management agreement. The court also determined that the bodily injury exclusion did not violate any statute or policy.

The case is *O'Neal v. Foremost Ins. Co.*, 24-cv-212 (La Ct. App. June 25, 2025).

Montana Federal Court Finds Insurer Had No Duty to Interplead Claims

Current and former hospital employees brought retaliation claims against the hospital and five other employees, referred to as "coconspirators." The plaintiffs allege that they were harassed or terminated for reporting patient abuse and neglect at the hospital. After a disciplinary hearing before the hospital's board, all formal discipline against the plaintiffs had been withdrawn and the five coconspirators were fired.

The hospital had a $1 million liability policy with Travelers. The limit applied to both defense costs and indemnity (the payment of defense costs eroded the liability limit).

In April 2023, plaintiffs made individual settlement demands totaling $550,000. But Travelers was also defending the hospital in separate wrongful termination claims by the coconspirators and settled some of them.

In December 2023, Travelers informed plaintiffs that the policy's liability limits were eroding and that the majority had been depleted by the coconspirators' claims. Plaintiffs settled with the hospital for $325,000 and any remaining policy limits.

Plaintiffs then sued Travelers for common law bad faith and violation of Montana's Unfair Trade Practices Act.

Plaintiffs contended that when Travelers recognized it had nine claimants with nine competing claims against a single policy with eroding limits, the insurer had a duty to interplead the policy limits to protect all policy claims and preserve fairness.

The court ruled otherwise, finding that Montana common law does not impose a duty on an insurer to interplead available insurance funds when there are multiple potential claimants who may or may not eventually assert a claim. Instead, interpleader is an equitable tool available to insurance companies should they want to avoid expending funds in the defense of multiple claims advanced against their insured.

The court dismissed plaintiffs' common law bad faith claim.

It also dismissed plaintiffs' claims under Montana's Unfair Trade Practices Act. Plaintiffs argued that Travelers mispresented pertinent facts when it represented that there was a $1 million policy without disclosing that the limit was eroded by defense costs. The court found that there was insufficient evidence that Travelers concealed information. The only relevant allegation showed just the opposite; that Travelers expressly informed plaintiffs that defense cost eroded limits. The court also rejected plaintiffs' other claims under the Unfair Trade Practices Act.

The case is *Amberg v. Travelers Cas. & Sur. Co. of Am.*, No. CV 24-70-BU-DLC (D. Mont. July 1, 2025).

Eighth Circuit Declines to Extend Minnesota's Innocent Co-Insured Doctrine to Corporations and LLCs

Andrew and Jessie Welsh purchased The Press Bar and Parlor in 2016, managing it through two entities: Horseshoe Club, LLC (property owner) and Timeless Bar, Inc. (business operator). Illinois Casualty Company (ICC) issued a business owner's policy with Timeless Bar as the named insured and Horseshoe Club as an additional insured. Andrew was CEO of Timeless Bar and Chief Executive Manager of Horseshoe Club with broad authority over finances and operations. Neither Andrew nor Jessie was a named or additional insured.

After the couple divorced in November 2019, Andrew assumed control of the businesses' finances. On February 17, 2020, the bar was destroyed by fire. Andrew and Jessie signed a sworn proof of loss stating the fire was of unknown origin and not caused by the insured. A law enforcement investigation determined Andrew intentionally set the fire, and he later pled guilty to arson. ICC denied the insurance claim based on policy provisions related to misrepresentation, dishonesty, and intentional acts.

Because neither the entities nor Jessie were involved in setting the fire, they sued ICC, contending that policy must be reformed to permit recovery under Minnesota's standard fire insurance policy. The district court awarded summary judgment to ICC. Plaintiffs appealed.

The Eighth Circuit affirmed. Applying Minnesota law, the court reasoned that corporations and LLCs act through their agents. Acts taken within the scope of an officer's authority – whether honest or fraudulent – are attributable to the entity. Because Andrew was an executive officer with operational and financial control of both entities, his misrepresentations to ICC arose from his authority to manage insurance matters for the businesses.

The court found no Minnesota precedent to support extending the "innocent co-insured" doctrine to corporations or LLCs. Extending the innocent-insured doctrine under the facts here, the court explained, would improperly insulate businesses from the misconduct of authorized agents.

The case is *Timeless Bar, Inc. v. Ill. Cas. Co.*, No. 24-2245 (8th Cir. July 22, 2025).

Ninth Circuit Finds No Occurrence for Insured's Failure to Obtain Proper Permits for Shooting Range

KRRC operated a shooting range in Kitsap County, Washington. Kitsap County sued KRRC, alleging that KRRC created a nuisance by expanding the range and for failing to obtain required permits for site development work on its property without those permits. In doing so, KRRC allegedly cleared wetlands and vegetation buffers.

KRRC tendered defense of the claim to Northland Insurance Company. The Northland policy covered damages caused by an "occurrence," defined as an "accident, including repeated exposure to substantially the same general harmful conditions." Northland defended under a reservation of rights, but KRCC sought a declaration in Washington state federal court that Northland owed a duty to defend and indemnify. KRCC and Northland moved for summary judgment.

The district court ruled for Northland. Applying Washington state law, the court held that Kitsap County's claim was not based on, and did not seek damages for, KRRC's damage to the wetlands or the waters. It instead sought an injunction based on KRRC's site work without the required permits. For similar reasons, the court held that the underlying claims were not for damages "because of property damage" or "caused by an occurrence." KRCC appealed.

The Ninth Circuit affirmed. The court held that KRCC failed to provide evidence that suggested a reasonable person would not have foreseen this damage. Nor was there any evidence of an additional independent cause of harm. The court thus held that whatever money damages KRRC faced were not attributable to an "occurrence" and were not covered by Northland's CGL policies.

The case is *Kitsap Rifle & Revolver Club v. Northland Ins. Co.*, No. 24-3064 (9th Cir. July 21, 2025).