

Negligent Security Claims and Insurance Coverage

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Your client is stabbed at a bar; your client is strangled by a security guard at a gas station; your client is shot outside of a restaurant. All potential negligent security scenarios, all with potentially different outcomes: not just because of the facts or the different theories of liability, but based on the controlling establishment's insurance coverage.

Exclusions destroy many seemingly promising negligent security claims. Recently, we have found more insurance policies containing “Lethal Weapons” exclusions, along with the traditional “Liquor Liability” exclusions contained in some Commercial General Liability (CGL) policies – especially issued to bars/restaurants/nightclubs. One recent “Lethal Weapons” exclusion read as follows: “USE OF WEAPONS” – This insurance does not apply to ‘bodily injury’, ‘property damage’ or ‘personal and advertising injury’ arising out of or resulting from the possession, ownership, maintenance, use of or threatened use of a lethal weapon, including but not limited to firearms by any person.”

This exclusion has been used by courts to preclude coverage for any claims arising out of a gunshot, regardless of how the claims are styled. For example, in Robinson v. Hudson Specialty Ins. Group, 984 F. Supp.2d 1199 (S.D. Ala. 2013), the plaintiff was shot five times while leaving a nightclub. The plaintiff filed suit against the owner of the nightclub for “negligence, wantonness, negligent/wanton training, monitoring and supervision of employees, joint venture, breach of contract third-party beneficiary, and for violating Alabama’s Dram Shop Act...” Id. at 1201. In granting the insurer’s motion for summary judgment, the Court stated: ‘Despite the varied manner in which Robinson alleges his negligence and Alabama Dram Shop Act claims (whether failure to warn, protect, supervise, prevent weapons from coming into the club, failing to stop serving alcohol, etc.), a review of the Colony policy reveals clear and unambiguous exclusions which apply to bar his ... claim.’

Other Courts have looked at this issue as well as similar exclusions for “Assault or Battery”, all with similar outcomes for the Plaintiff/Victim. See also Seneca Specialty Ins. Co. v. 845 North, Inc., Case No. 3:14-cv-922-J-34PDB, 2015 U.S. Dist. LEXIS 67791 (M.D. Fla.); Chappell v. Colony Ins. Co., Case No. 2:16-cv-140-MHT-GMB, 2017 U.S. Dist. LEXIS 127973 (M.D. Ala.); Fouquet v. Daiquiris & Creams of Mandevill, LLC., 49 So.3d 44 (La. App. 2010).

What constitutes a “Lethal Weapon” may be fact specific, but assume that retractable batons, knives, bats, and, most certainly, guns will fall under these exclusions. Unfortunately, these are the typical vehicles used to cause harm to our prospective clients, making any recovery nearly impossible.

This is especially true when investigating a case against a bar or a nightclub. When a CGL combines both “Liquor Liability” AND “Lethal Weapons” exclusions, what is the establishment even buying? Business owners should be careful to buy insurance policies that protect their customers, and their economic interests. These policies don’t seem to protect either.