

# Assault-and-Battery Exclusion Coverage Update

August 15, 2023

## Assault-and-Battery Exclusion – Eighth Circuit (Missouri Law)

### *Scaglione v. Acceptance Indem. Ins. Co.*

No. 22-2496, --- F.4th ---, 2023 WL 4876451 (8th Cir. Aug. 1, 2023)

Applying Missouri law, the U.S. Court of Appeals for the Eighth Circuit affirmed that the assault and battery exclusion contained in Acceptance Indemnity Insurance Company's (Acceptance) CGL policy applied to preclude coverage for a St. Louis bar owner and operator, Steven Scaglione (Scaglione), for an underlying suit in which Scaglione was sued by a bar patron, who was shot by a stray bullet while at the bar. The appellate court also ruled that the concurrent-proximate cause rule did not apply to Scaglione's negligence. Thus, Acceptance was not required to pay the \$2.5 million arbitration award entered in favor of the bar patron.

In the early morning of June 16, 2019, Sominkcole Conner (Conner) was a patron at Scaglione's bar, Voce Bar. Conner was severely injured when she was hit by a stray bullet following an argument between two other bar patrons. Conner sued Scaglione and others in state court, asserting claims of premises liability, negligence, and negligent performance of an undertaking to render services. Conner alleged that Scaglione was aware that bar patrons were often armed with dangerous weapons in the early morning hours and failed to provide adequate security measures, including frisking.

At the time of the shooting, Scaglione had a CGL policy issued by Acceptance that provided coverage for bodily injury and property damage occurring on the premises of Voce Bar. The CGL policy also contained a very broad assault and/or battery exclusion, which excluded coverage for any claims arising out of assault and/or battery, or any action or omission in connection with the prevention or suppression of such acts, or claims, accusations or charges of negligent hiring, placement, training or supervision arising from any of the foregoing. Scaglione sought defense and indemnification coverage for Conner's underlying suit, but Acceptance declined.

Conner and Scaglione arbitrated their dispute, and Conner was awarded \$2.5 million. The state court entered a judgment affirming the award. Conner, thereafter, filed an equitable-garnishment action against Scaglione and Acceptance, seeking satisfaction for the judgment. Acceptance removed the action to the U.S. District Court for the Eastern District of Missouri where Scaglione filed a crossclaim against Acceptance, alleging bad faith refusal to defend, bad faith refusal to settle and breach of fiduciary duty. Acceptance then filed separate motions to dismiss under FRCP 12(b)(1) and 12(b)(6).

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The district court dismissed Conner's and Scaglione's claims against Acceptance, finding that the allegations in the underlying action were excluded from coverage by the policy's unambiguous assault and battery exclusion, even though the shooting victim was injured by another bar patron and not by the bar owner or bar employees. The appellate court upheld the district court's dismissal, noting that the language in the policy exclusion clearly barred coverage for *any* bodily injury arising from assault and battery and that the exclusion was not limited to an assault or battery committed by the insured or the insured's employees. The appellate court was also unpersuaded by Conner's and Scaglione's argument that the exclusion does not apply to innocent bystanders, but only to the intended victim(s) of the assault and battery because the exclusion contains no such limiting language.

The appellate court panel also disagreed with Conner's and Scaglione's argument that even if Conner's injuries fell within the assault and battery exclusion, Scaglione's negligence constituted a separate, covered cause of Conner's injuries under the concurrent-proximate-cause rule. Focusing on foreseeability, the appellate court concluded that, because Conner's injury was a "foreseeable" result, albeit a narrow one, of the bar owner's alleged negligence in failing to provide adequate security measures, such as frisking, despite knowing that bar patrons were often armed with dangerous weapons in the late-night and early-morning hours, Scaglione's negligence was not a separate, covered cause. Thus, the concurrent proximate cause rule did not apply to trigger coverage.

By: Amy Diviney