

# Assault or Battery Exclusion Coverage Update

July 17, 2023

## Assault or Battery Exclusion – Ohio

### *Krewina v. United Specialty Ins. Co.*

--- N.E.3d ---, 2023 WL 4476250 (Ohio July 12, 2023)

The Ohio Supreme Court examined whether a provision in a CGL policy that excluded coverage for bodily injury arising from an assault or battery can be nullified based on the mental state of the attacker. The Supreme Court held that the underlying knife attack at issue qualified as a civil law assault, notwithstanding the attacker's compromised mental state, and coverage was precluded under the policy.

The insured was Brown County Care Center (Brown), an adult-care facility, and it had obtained a CGL policy with United Specialty Insurance Company (United). The policy excluded coverage for bodily injury arising from “any actual, threatened or alleged assault or battery.” The plaintiff, Austin Krewina, lived at Brown with a fellow resident Colin Doherty. While the policy was in effect, Doherty attacked Krewina with a knife and caused serious injuries. In the criminal case, Doherty was found not guilty by reason of insanity. Krewina then sued Brown and Doherty, and, thereafter, a settlement was entered between Krewina and Brown. Krewina then filed a declaratory judgment action against United, which had denied coverage on the basis of the policy's assault and battery exclusion.

The trial court found that United did not have a duty to defend or indemnify Brown or to satisfy the \$1 million settlement between Krewina and Brown. The trial court concluded that the fact Doherty was found to lack the requisite mental state for a criminal conviction did not change that his conduct satisfied the language of the policy's assault and battery exclusion. The Ohio Court of Appeals reversed, holding that Doherty did not act intentionally, knowingly or recklessly and, therefore, Krewina's bodily injury did not arise out of an actual assault or battery.

The Supreme Court reversed and reinstated the trial court's judgment. The Supreme Court applied the plain and ordinary civil-law definitions of the terms “assault” and “battery.” It held that based on the facts of the case and the applicable definition of “assault,” Doherty's attack fit within the assault and battery exclusion because there was no doubt he picked up the knife and attacked Krewina, amounting to a “willful attempt to harm” that would “cause a reasonable person to be in fear or apprehension of such harm or force.”

ASSAULT OR BATTERY EXCLUSION COVERAGE UPDATE Cont.

By: Joshua LaBar