

Britamco v. J.O.C. Enterprises

Here, a bar patron filed suit against the holding company that owned a tavern alleging that he sustained personal injuries when three patrons of the tavern became intoxicated and beat him severely. One count of that lawsuit alleged that the tavern was negligent in failing to eject the three patrons when the insured knew or should have known that they were likely to cause injury to other patrons. The tavern tendered its defense in the lawsuit to its general liability insurer. The insurer's policy with the tavern contained an Assault & Battery Endorsement which read, in pertinent part, that the insurer "is under no duty to defend ...an insured in any action alleging an assault and battery or any act or omission in connection with the prevention or suppression of such acts."

The insurer retained Condon & Cook to file a declaratory judgment action to seek a specific finding that the insurer had no duty to defend the underlying negligence cause of action filed against its insured, because the negligence claims were excluded under its Assault & Battery Endorsement. We prevailed in the trial court and the tavern appealed.

In a case of first impression in Illinois, the Second District Appellate Court found that the endorsement was unambiguous and susceptible only to one reasonable interpretation: "[T]he policy does not cover claims arising from assault and battery, regardless of what name is given to the actions comprising the assault and battery."

The clear import of this opinion is that the Appellate Court will look at the entire policy, including all endorsements thereto, to determine the intent of the parties under the contract. No clearly worded provision of the contract will be ignored. As a result of this opinion, we are confident that this one decision saved our client tens of thousands of dollars in defense and indemnity fees in Illinois as soon as the Opinion was issued.

For the full text of this opinion please contact Paul Festenstein of Condon & Cook, LLC, or see *Britamco Underwriters, Inc. v. J.O.C. Enterprises*, 252 Ill.App.3d 96, 623 N.E.2d 1036 (2nd Dist. 1993).