

8th Circ. Says Bar Shooting Victim's \$2.5M Award Not Covered

By **Shane Dilworth**

Law360 (August 2, 2023, 5:37 PM EDT) -- The Eighth Circuit agreed with a Missouri federal judge that an insurer need not cover a \$2.5 million judgment awarded to the victim of a bar shooting, finding that an assault-and-battery exclusion clearly applied to relieve the carrier of its obligations.

The three-judge appeals court panel said in a published opinion handed down Tuesday that the exclusion was unambiguous and applicable even though shooting victim Sominkole Conner was not injured by bar owner Steven Scaglione, but rather another patron of the establishment.

The language in the exclusion in Acceptance Indemnity Insurance Co.'s policy, the Eighth Circuit said, clearly barred coverage for "any" bodily injury arising from an assault and battery.

"Given the expansive meaning of the term 'any' and the lack of other limiting language, we disagree with Conner that the exclusion applies only where the assault or battery was committed by the insured or the insured's employees," U.S. Circuit Judge Bobby E. Shepherd wrote for the panel.

Conner was at Scaglione's Voce Bar in St. Louis when an altercation between two patrons led to the January 2019 shooting, court records say, leaving him with serious and permanent injuries. The other individual involved in the dispute and another bystander were also shot and injured.

Conner lodged a dispute against Scaglione in Missouri state court that was sent to arbitration and ultimately resulted in a \$2.5 million judgment in favor of the shooting victim. Acceptance Indemnity did not defend Scaglione against the suit, and the presiding state court judge later confirmed the award.

In an attempt to recover the judgment award, Conner filed a garnishment action against Acceptance Indemnity and Scaglione. The carrier removed the suit to federal court and sought to have the case dismissed based on the assault-and-battery exclusion in the commercial general liability policy issued to Scaglione.

U.S. Magistrate Judge Shirley Padmore Mensah sustained Acceptance Indemnity's argument and tossed the suit, prompting Scaglione and Conner's appeal.

In addition to challenging the applicability of the exclusion, Conner and Scaglione told the Eighth Circuit that the concurrent-proximate-cause rule allows for coverage. Under that rule, a policy will provide coverage if an injury results from an occurrence that is caused by a covered and noncovered event provided that the causation allegations are "independent and distinct."

Conner and Scaglione contended that while the shooting is not covered, the event also resulted from the bar owner's failure to frisk patrons prior to entry. According to Conner's suit against Scaglione, the bar owner knew that customers were often armed and dangerous during the hours of operation when the shooting occurred.

The Eighth Circuit was not persuaded and instead sustained Acceptance Indemnity's argument that Scaglione's alleged negligence was only incidental and that Conner's injuries were only narrowly foreseeable as a result of the bar owner's failure to search patrons for weapons.

The parties and their representatives did not respond to requests for comment.

U.S. Circuit Judges James B. Loken, Bobby E. Shepherd and Jane Kelly were on the panel.

Scaglione is represented by Kelly Clare Frickleton and Edward D. Robertson III of Bartimus & Frickleton.

Conner is represented by Megan Ann Crowe, John G. Simon and John Matthew Simon of Simon Law Firm.

Acceptance Indemnity is represented by Jennifer A. Dancy and Timothy M. Jabbour of Tressler LLP.

The cases are Steven Scaglione v. Acceptance Indemnity Insurance Co., case number 22-2496, and Sominkole Conner v. Acceptance Indemnity Insurance Co., case number 22-2497, in the U.S. Court of Appeals for the Eighth Circuit.

--Editing by Nick Petruncio.