

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

REGIS INSURANCE COMPANY,  
Plaintiff

vs.

CARL SHULTZ, BIG DOGZ SPORTS BAR &  
RESTAURANT, BEAR & HUNTER ENTERPRISES,  
INC. and VIRGINIA M. COPSON,  
Defendants

: NO. 09 – 01,815  
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: CIVIL ACTION - LAW  
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: Motion for Summary Judgment

**OPINION AND ORDER**

Before the Court is a Motion for Summary Judgment filed by Plaintiff on March 3, 2010. Argument on the motion was held April 23, 2010.

Plaintiff has issued to Bear & Hunter Enterprises a special multi-peril policy of insurance. In its Complaint, Plaintiff seeks a declaration that it has no duty to defend or indemnify any defendant in the matter of Copson v. Shultz, et al., filed to No. 09 – 00027. In that matter, Copson alleges she was assaulted by Shultz, allegedly an employee/agent/owner of Big Dogz Sports Bar, which is owned by Bear & Hunter Enterprises, and Plaintiff contends the Assault & Battery exclusion of the insurance policy applies to relieve it from its duty to defend or indemnify.<sup>1</sup> The Court agrees.

The policy exclusion at issue provides:

Actions and proceedings to recover damages for “bodily injury” or “property damage” or “personal injury” arising, in whole or in part, from the following are excluded from coverage and the Company is under no duty to defend or indemnify an insured in any action or proceeding alleging such causes of action and damages:

1. Assault and Battery or any act or omission in connection with the prevention, suppression or results of such acts;
2. Harmful or offensive contact between or among two or more persons;

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<sup>1</sup> Plaintiff also points to the Liquor Liability exclusion and the Punitive Damages exclusion, but in light of this Court’s holding with respect to the Assault & Battery exclusion, discussion of those exclusions is unnecessary.

3. Apprehension of harmful or offensive contact between or among two or more persons;
4. Threats by words or deeds;
5. This exclusion applies to “bodily injury”, “property damage”, “personal injury” or any obligation to investigate, defend or indemnify, if such injury, damage or obligation is caused directly or indirectly by any other cause or event that contributes concurrently or in any other sequence to the injury or damage. If injury or damage from a covered occurrence, cause or event occurs, and that injury or damage would not have occurred but for the acts or omissions set forth in paragraphs 1 through 4 above, such injury or damage will be considered to be caused by the acts or omissions set forth in paragraphs 1 through 4 above, and would be excluded from coverage.

This exclusion applies regardless of the degree of culpability or intent and without regard to:

- A. Whether the acts are alleged to be by or at the instruction or at the direction of the insured, his officers, employees, agents or servants; or by any other person lawfully or otherwise on, at or near the premises owned or occupied by the insured; or by any other person;
- B. The alleged failure of the insured or his officers, employees, agents or servants in the hiring, supervision, retention or control of any person, whether or not an officer, employee, agent or servant of the insured;
- C. The alleged failure of the insured or his officers, employees, agents or servants to attempt to prevent, bar or halt any such conduct or to medically treat or obtain treatment for any injuries or damages sustained.

This exclusion applies as well to any claims by any other person, firm or organization, asserting rights derived from or contingent upon any person asserting a claim excluded under Clauses A, B or C (above); specifically excluding from coverage claims for:

1. Emotional distress or for loss of society, services, consortium and/or income;
2. Reimbursement for expenses (including but not limited to medical expenses, hospital expenses and wages) paid or incurred by such other person, firm or organization;
3. Apprehension of harmful or offensive contact between or among two or more persons; or
4. Threats by words or deeds;

5. Any obligation to share damages with or repay someone who must pay damages because of the injury.

In her Complaint, Copson alleges that she was “assaulted and battered by Carl Shultz” during an altercation. Shultz counterclaims that he was hit and pushed by Copson and such “constitutes assault and battery”. Under either version, the policy exclusion clearly applies.

Defendants argue that summary judgment is not appropriate until depositions are taken, and also assert that summary judgment may not be entered with respect to the duty to indemnify, as such is separate from the duty to defend, citing Britamco Underwriters, Inc. v. Grzeskiewicz, 639 A.2d 1208 (Pa. Super. 1994). The Court in Britamco, however, specifically states that to determine whether a claim may potentially come within the coverage of the policy, the court must “analyze the allegations in the complaint.” Id. at 1210. And, after doing so in the case before it, the Court there reversed the trial court’s order denying summary judgment, thus entering summary judgment on both issues, the duty to defend and the duty to indemnify. It appears the Court points out the distinction merely to emphasize that the duty to defend is broader than the duty to indemnify.<sup>2</sup> It thus follows that if there is no duty to defend, there can be no duty to indemnify. Summary judgment on both is therefore appropriate.

### **ORDER**

AND NOW, this 26<sup>th</sup> day of April 2010, for the foregoing reasons, the Motion for Summary Judgment filed by Plaintiff is hereby GRANTED. Judgment is entered in favor of Plaintiff and against all Defendants.

BY THE COURT,

Dudley N. Anderson, Judge

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<sup>2</sup> The Court notes that “the insurer agrees to defend the insured against any suit arising under the policy “even if such suit is groundless, false or fraudulent.”” Britamco Underwriters, Inc. v. Grzeskiewicz, 639 A.2d 1208, 1210 (Pa. Super. 1994).