IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

WHISKEY TANGO, INC.,	:	MAY TERM, 2006
	:	
Plaintiff,	:	NO. 3026
	:	
v.	:	COMMERCE PROGRAM
	:	
UNITED STATES LIABILITY INSURANCE GROUP,	:	Control No. 100376
	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 15th day of May, 2007, in accord with the Opinion issued contemporaneously, it is hereby **ORDERED** that the Motion for Summary Judgment of defendant United States Liability Insurance Group ("USLIG") is **GRANTED**.

It is further **ORDERED** that, under the terms of the Liquor Liability Policy attached as Exhibit E to the Motion, USLIG has no duty to defend or indemnify plaintiff Whisky Tango, Inc. or any other party named as a defendant in the action known as McQuoid v. Whisky Tango, Inc., June Term 2005, No. 2161, Court of Common Pleas for Philadelphia County, with respect to the July 20, 2003 incident involving Shawn McQuoid at Whisky Tango Inc.'s premises.

BY THE COURT,

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MARK I. BERNSTEIN, J.

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OPINION

Plaintiff Whiskey Tango, Inc. ("Whiskey Tango"), the owner of the Whiskey Tango Tavern, brought this action against its insurer, defendant United States Liability Insurance Group ("USLIG") seeking defense and indemnity from USLIG under a Liquor Liability Insurance Policy (the "Liquor Policy"). Whiskey Tango is a defendant in an action entitled McQuoid v. Whiskey Tango, Inc., (the "Underlying Action"),[1] in which Shawn McQuoid seeks damages from Whiskey Tango for injuries he allegedly sustained in a bar brawl. USLIG has moved for summary judgment asking the court to declare that USLIG has no duty to defend or indemnify Whiskey Tango under the Liquor Policy.

As stated by the Supreme Court of Pennsylvania in General Accident Ins. Co. of America v. Allen, "a court's first step in a declaratory judgment action concerning insurance coverage is to determine the scope of the policy's coverage."[2] In this case, the Liquor Policy provides as follows:

[1] The Underlying Action is docketed as June Term, 2005, No. 2161, Court of Common Pleas, Philadelphia County.

[2] 547 Pa. 693, 706, 692 A.2d 1089, 1095 (1997).

> We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply.[3]

The Liquor Policy covers the insured's liability for wrongful acts under the Dram Shop Act, which is codified at 47 P.S. §§ 4-497 and which says

> No licensee shall be liable to third persons on account of damages inflicted upon them off of the licensed premises by customers of the licensee unless the customer who inflicts the damages was sold, furnished or given liquor or malt or brewed beverages by the said licensee or his agent, servant or employee when the said customer was visibly intoxicated.

This liability may be excluded under general commercial liability policies.[4]

Under Whiskey Tango's Liquor Policy, coverage is limited to those instances where Whiskey Tango is found liable for injury as a result of having sold, served, or furnished alcohol to someone. Whiskey Tango argues that it was told by the insurance agent and it believed that it would be covered for assault and battery as well as liquor liability. It is covered, so long as the assault and battery also involved the selling serving or furnishing of alcohol. In other words, Whisky Tango received what it was promised – a Liquor Policy without an assault and battery exclusion. It is immaterial that Whiskey Tango would have liked a policy that covered assault and battery not involving alcohol.

In this case the coverage was limited to liability for injuries, including assault and battery, imposed on the Whiskey Tango by reason of the selling, serving or furnishing of any alcoholic

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[3] Liquor Policy attached to the Motion for Summary Judgment as Exhibit E at p. 1.

[4] *See* Curbee, Ltd. v. Rhubart, 406 Pa. Super. 505, 511, 594 A.2d 733, 736 (1991) (as a result of the standard liquor liability exclusion, the general liability policy "did not provide coverage to a licensee for liability arising from providing alcohol for consumption. The insureds evidently understood this exclusion because they procured a separate policy . . . which specifically covered liability arising from such activity.").

beverage. There is nothing unclear or inconspicuous about the extent of coverage provided, so Whiskey Tango is presumed to have read and understood it.[5] Furthermore, as a commercial insured, Whisky Tango is not entitled to claim in the face of such unambiguous policy language that it reasonably expected to obtain coverage different than that set forth in the Liquor Policy.[6]

In General Accident Ins. Co. of America v. Allen, the Supreme Court said that "after determining the scope of coverage, the court must examine the complaint in the underlying action to ascertain if it triggers coverage. If the complaint against the insured avers facts that would support a recovery covered by the policy, then coverage is triggered and the insurer has a duty to defend until such time that the claim is confined to a recovery that the policy does not cover."[7] In his Complaint, McQuoid alleges:

> On July 20, 2003, [McQuoid] was a patron of the Whiskey Tango Tavern . . . when Defendant, Jeff Dooley, and other persons, whose names are currently unknown, proceeded to strike, hit, punch, kick and/or otherwise touch [McQuoid] in a harmful and offensive manner causing [McQuoid] to sustain personal injuries hereinafter described.[8]
>
> * * *
>
> On July 20, 2003, the Defendant, Jeff Dooley, was an agent, servant, workmen [sic] and/or employee of the Defendant, Whiskey Tango, Inc., and at the time of the aforesaid physical attack upon [McQuoid] was acting in the course and scope of his agency and/or employment for the Defendant, Whiskey Tango, Inc.[9]
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> * * *

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[5] *See* Standard Venetian Blind Co. v. American Empire Ins. Co., 503 Pa. 300, 307, 468 A.2d 563, 567 (1983) ("where, as here, the policy limitation relied upon by the insurer to deny coverage is clearly worded and conspicuously displayed, the insured may not avoid the consequences of that limitation by proof that he failed to read the limitation or that he did not understand it.")

[6] *See* Matcon Diamond v. Penn Nat'l Ins. Co., 815 A.2d 1109, 1114 (Pa. Super. 2003) ("This Court has noted that, generally, courts cannot invoke the reasonable expectation doctrine to create an ambiguity where the policy itself is unambiguous. Our Supreme Court has identified only two limited exceptions to this principle: (1) protecting non-commercial insureds from policy terms which are not readily apparent; and (2) protecting non-commercial insureds from deception by insurance agents.")

[7] 547 Pa. 693, 706, 692 A.2d 1089, 1095 (1997).

[8] Complaint in Underlying Action attached to Motion for Summary Judgment as Exhibit A at ¶ 6.

[9] Complaint at ¶ 11.

> On July 20, 2003, the other persons who struck, hit, punched, kicked and/or otherwise touched [McQuoid] in a harmful and offensive manner were agents, servants, workmen and/or employees of the Defendant, Whiskey Tango, Inc., and at the time of the aforesaid physical attack upon [McQuoid] were all acting in the course and scope of their agency and/or employment for the Defendant, Whiskey Tango, Inc.[10]

Based on these allegations, McQuoid asserts claims against Whiskey Tango for negligent use of excessive force, negligent training and supervision, negligent hiring, negligent failure to protect, and intentional battery.[11]

The Complaint in the Underlying Action contains no allegation that McQuoid's injuries resulted from Whiskey Tango's selling, serving, or furnishing alcohol to anyone. According to the Complaint, the only cause of McQuoid's injuries was Whiskey Tango's employees' intentional beating of McQuoid. USLIG has no duty under the Liquor Policy to defend or indemnify Whiskey Tango in the Underlying Action. Summary Judgment is granted.

BY THE COURT,

MARK I. BERNSTEIN, J.

[10] Complaint at ¶ 15.

[11] Complaint, Counts I and II.