

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

REGIS INSURANCE COMPANY,	:	August Term 2005
Plaintiff,	:	
v.	:	No. 4387
1717, INC., WOLF STREET CAFÉ,	:	
RICHARD DIGREGORIO AND JOSEPH	:	(Commerce Program)
P. BRIGLIA, ADMINISTRATOR OF THE	:	
ESTATE OF JOSEPH FRANCIS BRIGLIA:	:	Control Number 032175
Defendants.	:	
	:	

**ORDER**

**AND NOW**, this 30<sup>TH</sup> day of January 2007, upon consideration of plaintiff's Motion for Summary Judgment, defendants' response in opposition, the respective memoranda, all matters of record and after oral argument, and in accord with the Opinion being filed contemporaneously with this Order, it is **ORDERED** that plaintiff's Motion is **Granted**.

Regis Insurance Company has no obligation to defend or indemnify 1717 Inc., Wolf Street Café and Richard DiGregorio in connection with the action captioned Joseph P. Briglia v. 1717 Inc. et. al., Court of Common Pleas, Philadelphia, Pennsylvania July Term 2005 No. 608.

**BY THE COURT,**

---

**ALBERT W. SHEPPARD, JR., J.**



On November 16, 2003, Joseph Francis Briglia (“decedent”) while a business invitee at Wolf Street Café was assaulted and stabbed repeatedly by another business invitee Jason McMaster which resulted in Briglia’s death. In July 2005, Joseph Briglia filed a complaint against defendants 1717 Inc., Wolf Street Café and Richard DiGregorio. The complaint alleges a claim for negligence arising from *inter alia* defendants failure to provide safe and secure premises, failure to provide safeguards to prevent the incident giving rise to decedent’s death, failure to train personnel in providing protection and management. The complaint also purports to state a claim under the Liquor Code, 57 P.S. section 4-492, et. seq. for serving some form of alcoholic beverages to Jason McMaster while he was visibly intoxicated.

At the time the incident described in the underlying action occurred, defendants 1717 Inc., Wolf Street Café and Richard DiGregorio were insured by Regis Insurance Company,<sup>1</sup> under a Special Multi-Peril Policy. Although Regis is currently providing a defense pursuant to a reservation of rights, it instituted the instant action seeking a declaration that it does not have a duty to defend or indemnify defendants for the incident described in the underlying action.

Plaintiffs filed this Motion for Summary Judgment on May 8, 2006 relying on the policy’s assault and battery exclusion, liquor liability exclusion and the punitive damage exclusion to preclude coverage.<sup>2</sup>

---

<sup>1</sup> Richard DiGregorio as a shareholder and officer of 1717 Inc. is an insured under the Regis policy. See A-Bodily Injury Liability coverage B-Property Damage Liability, Section II (C).

<sup>2</sup> Because the court finds that the assault and battery exclusion and the liquor liability exclusion bar coverage it is unnecessary to consider the punitive damage exclusion.

In response to the Motion defendants argued that the Motion was premature since discovery was necessary on certain issues, such as whether the exclusions were actually attached to the policy. The court held the Motion under advisement to allow the parties to complete the necessary discovery. Discovery is now complete. The defendants have not submitted a supplemental filing in support of its opposition. The court held oral argument on January 30, 2007.

### **DISCUSSION**

In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Potter v. Herman, 762 A.2d 1116, 1117-18 (Pa. Super. 2000). Summary judgment is proper only when the uncontraverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. Id. In sum, only when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment. Basile v. H & R Block, Inc., 761 A.2d 1115, 1118 (Pa. 2000).

When construing the language of an insurance policy, the goal is to ascertain the intent of the parties as manifested by the language of the written instrument. Madison Constr. Co. v. Harleysville Mut. Ins. Co., 557 Pa. 595, 735 A.2d 100 (1999). If the language is not clear, it is construed in favor of the insured, but where the language of the contract is clear and unambiguous, a court is required to give effect to that language. Id.; Standard Venetian Blind Co. v. American Empire Ins. Co., 503 Pa. 300, 469 A.2d 563

(1983). Contractual terms "are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts." Madison Constr. Co., 557 Pa. at 606, 735 A.2d at 106.

Finally, the insurer's obligation to defend an action against the insured "is fixed solely by the allegations in the underlying complaint. As long as a complaint alleges an injury which may be within the scope of the policy, the insurer must defend its insured until the claim is confined to a recovery the policy does not cover." Erie Ins. Exch. v. Fidler, 808 A.2d 587, 590 (Pa. Super. 2002). Moreover, to determine if there is coverage, we must look to the facts alleged in the underlying complaint, not the cause of action pled. Donegal Mut. Ins. Co. v. Baumhammers, 893 A.2d 797, 811 (Pa. Super. 2006) (en banc), appeal granted, 908 A.2d 265 (Pa. Aug 29, 2006). Indeed, "to allow the manner in which the complainant frames the request for redress to control in a case such as this one would encourage litigation through the use of artful pleadings designed to avoid exclusions in liability insurance policies." Mutual Ben. Ins. Co. v. Haver, 555 Pa. 534, 539, 725 A.2d 743, 745 (1999).

Here, the pertinent policy contains an endorsement entitled Assault and Battery Exclusion and Coverage Detection, which provides in part:

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

1. Assault and Battery or any actor [sic] omission in connection with the prevention, suppression or results of such acts;
2. Harmful or offensive contact between or among two or more persons;
3. Apprehension of harmful or offensive contact between or among two or more persons; or
4. Threats by words or deeds.

5. This exclusion applies to “bodily 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, 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.

The exclusion further states

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 persons;
- 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 hold any such conduct or to medically treat or obtain such treatment for any injuries or damages sustained.

The complaint in the underlying action seeks damages for decedent’s death arising from defendants alleged negligence in failing to supervise and train personnel in providing protection to decedent, failing to adopt security measures to protect and safeguard decedent’s life and failing to implement and provide security measures to protect decedent. The policy language specifically excludes coverage arising from defendants’ failure to properly supervise, hire, control any person. The policy language excludes each averments of negligence despite the degree of culpability or intent averred in the complaint. In light of the unambiguous policy language in the assault and battery

exclusion, the court finds that Regis does not have a duty to defend or indemnify defendants for Counts I through III in the underlying action.<sup>3</sup>

Furthermore, Regis does not have a duty to defend or indemnify defendants for the liquor liability claim asserted in Count IV of the underlying action. The policy by Regis contains an exclusion for liability for the sale or service of alcoholic beverages. The policy provides in part:

This insurance does not apply:

...

(h) to bodily injury or property damage for which the insured or his indemnitee may be held liable

(1) as a person or organization engaged in the business of manufacturing distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as owner or lessor of premises used for such purposes, if such liability is imposed

- (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
- (ii) by reason of selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (ii) of this exclusion does not apply with respect to the liability of the [insured] or his indemnitee as an owner or lessor described in (2) above.

The underlying complaint alleges that defendants sold, dispensed and or/made available alcoholic beverages to Jason McMaster while he was visibly intoxicated in violation of the statutes and laws of the Commonwealth of Pennsylvania. These allegations contained in Count IV fall outside the coverage provided by the Regis policy. Consequently, Regis does not have a duty to defend or indemnify defendants in the underlying action.

---

<sup>3</sup> The court finds that the instant matter is distinguishable from QBE Ins. Corp. v. M & S Landis Corporation, 2007 Pa. Super. 12, 207 Pa. Super. Lexis 15 (2007).

## CONCLUSION

For the foregoing reasons Plaintiff Regis Insurance Company's Motion for Summary Judgment is granted and Regis has no obligation to defend or indemnify defendants in connection with the action captioned Joseph P. Briglia v. 1717 Inc. et. al., Court of Common Pleas, Philadelphia, Pennsylvania July Term 2005 No. 608. A contemporaneous Order consistent with this Opinion will be entered of record.

**BY THE COURT,**

---

**ALBERT W. SHEPPARD, JR., J.**