Akerman Lens

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A recent decision from the U.S. District Court for the Eastern District of Pennsylvania reinforces a core coverage principle: the duty to defend depends on the allegations in the underlying complaint as measured against the specific terms, conditions, and exclusions in the policy.

In *Lance's Tavern, LLC d/b/a Skeeter's Pub & Reggie's Inc. v. Sutton Specialty Insurance Co.*, the court considered whether a Commercial General Liability policy required a defense in an underlying state court action alleging that a patron was overserved alcohol at the insured establishment and later sexually assaulted by a third party.

Two provisions were central to the declaratory judgment action. First, the court considered the policy's Liquor Liability Exclusion. Under

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Pennsylvania law, the inquiry focused on whether the negligence claim sought to impose liability on the insured on a basis other than its role as a business that sold and served alcoholic beverages. Because the underlying complaint alleged injuries arising out of the patron being overserved alcohol, the court held that the exclusion precluded coverage and that "it is evident there is no coverage" under the Liquor Liability Exclusion.

Second, the court examined a Limited Assault And Battery Coverage Endorsement stating that the insurer would pay sums the named insured became legally obligated to pay as damages because of injury "arising out of an 'assault or battery incident' *by any insured*." (emphasis added).

The limiting phrase "by any insured" was significant. Because the alleged assault was committed by a third party rather than an insured, the court found that the provision did not create a duty to defend.

The court also rejected the plaintiff's bad faith claim, concluding that the plaintiff failed to establish by clear and convincing evidence that the insurer acted in bad faith. The court granted summary judgment in favor of the insurer, underscoring the importance of comparing the underlying allegations with the plain terms of the policy.

> [C]omparing the four corners of the Underlying State Court Action to the Liquor Liability Exclusion, it is evident there is no coverage.