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Does Insurance Cover California Employers for Intentional Acts of Employee Violence?

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For reasons unknown, your employee has attacked a customer with a weapon, causing grievous bodily injury. Now, you as the employer have been sued in a personal injury lawsuit. The theory is that you negligently hired a dangerous person and your failure to adequately supervise the employee allowed him or her to commit battery against a customer.

Will your commercial general liability insurance—which generally provides coverage for bodily injury claims—offer coverage to you as the employer in this situation?

Under California law, the answer depends on the specific language of exclusions your policy may contain. The California Supreme Court recently held that employers are entitled to commercial general liability coverage for allegations that they negligently failed to supervise employees who have engaged in intentional conduct. The rationale, of course, is that the employer's alleged negligence is a concurrent cause of the customer's injuries.

Things become trickier, however, when commercial general liability policies purport to contain exclusions relating to employee violence claims, including assault and battery and weapon exclusions. These exclusions often attempt to limit coverage for employers based on underlying violent conduct by their employees.

The presence of such exclusions, however, does not mean that no possibility for

employer coverage exists.

Assault and battery exclusions, for example, often only purport to apply to an insurer's duty to pay settlements or judgments (i.e. an insurer's indemnity obligation) as opposed to the insurer's obligation to pay counsel to defend against the allegations of negligent supervision, etc. (i.e. an insurer's defense obligation). Since insurers have separate duties to defend and indemnify, a situation could exist where an insurer would still have to defend the employer.

Self-defense and reasonable force issues also exist. Just because an employee has been accused of battery does not mean that such an allegation is true, and a scenario could exist under which the employee engaged in self-defense or used reasonable force under the circumstances. Such non-intentional conduct generally does not implicate policy exclusions for assault and battery. Furthermore, insurance policies often exempt the use of reasonable force from intentional acts exclusions.

Likewise, the involvement of a weapon in an act of employee violence does not necessarily defeat employer coverage for negligent supervision, etc. in the presence of a weapon exclusion. California courts have determined that weapon-related exclusions do not bar coverage for claims of negligent supervision, hiring, etc. where such negligence constitutes a concurrent cause of the alleged bodily injury from a weapon.

Accordingly, if an insurer attempts to evade its duty to defend you as the employer from negligence claims premised upon intentional acts of employee violence, a best practice is to carefully consider the applicability and enforceability of purported exclusionary language and not assume that your insurer's position is correct. It also makes sense on the front end to work with your broker and your counsel to determine if the policies offered contain potentially problematic exclusions in the face of employee violence claims.