

# Assault and Battery Exclusion, Trigger of Coverage Update

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## Assault and Battery Exclusion – Ohio

***Jerome Badders v. Century Ins. Co.***

2019-Ohio-1900, 2019 WL 2156625 (Ohio App. May 17, 2019)

The Ohio Court of Appeals held that an assault and battery exclusion plainly applied to preclude coverage to Jerome Badders (Badders), the owner of a bar, for personal injuries to Tatyana Belenky (Belenky), a bar patron, that took place when Marvin Schalk (Schalk), another bar patron, drove his truck through the front of the building shortly after the bar closed. The policy at issue excluded coverage for personal injury or property damage “arising out of or resulting” from “any actual, threatened or alleged assault or battery[.]” Badders asserted that the trial court erred in concluding that the exclusion applied to preclude coverage as a matter of law because there was a genuine issue of material fact regarding whether Schalk intended to injury Belenky when he drove his truck through the front of the building.

The appellate court disagreed with Badders’ argument, concluding that the plain meaning of the term “assault” was “[a]n attack or violent onset, whether by an individual [person], a company, or an army.” In other words, the term “assault” in the exclusion included both the common law tortious definition as well as the criminal definition. Accordingly, the appellate court determined that “the exclusion of coverage for personal injuries and property damage ‘arising out of or resulting’ from ‘any actual, threatened or alleged assault or battery’ unambiguously applies to exclude coverage for personal injuries and property damage that result from any legally cognizable form of assault, without respect to whether the assault is criminal or tortious.”

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## Trigger of Coverage – Fifth Circuit (Mississippi Law)

***Travelers Indem. Co. v. Mitchell***

--- F.3d ---, 2019 WL 2276694 (5th Cir. May 29, 2019)

The U.S. Court of Appeals for the Fifth Circuit held that two insurers must provide a defense to their insured in a wrongful conviction suit. In the underlying case, the families of three deceased men, who were wrongfully imprisoned, brought suit against Forrest County, Mississippi for wrongfully coercing the men into confessing to a murder they did not commit. Forrest County tendered the suit to its

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insurers (the “Insurers”), which refused to provide a defense on the grounds that Forrest County’s wrongful acts took place before the law enforcement liability policies at issue were in effect.

The U.S. District Court for the Southern District of Mississippi held that, regardless of when Forrest County’s wrongful conduct took place, the Insurers had a duty to defend because the three men suffered physical and emotional injuries during the relevant policy periods. On appeal, the U.S. Court of Appeals for the Fifth Circuit affirmed the judgment of the trial court, reasoning that while the wrongful convictions took place before the subject policies were issued, the resulting injuries occurred during the policy periods. Specifically, the appellate court stated that “[b]ecause the estates’ complaint alleges those injuries during the relevant time periods, both insurers have a duty to defend Forrest County and its officers[.]” Therefore, the Insurers were required to provide a defense to Forrest County.

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