IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSHUA GRAVES,	)	
	)	No. 77, 2005
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for Kent County
	)	
CMC, INC., t/a Froggy's Bar & Grille,	)	C.A. No. 04C-03-050
	)	
	)	
Plaintiff Below,	)	
	)	
REGIS INSURANCE COMPANY,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: July 20, 2005
Dated: August 16, 2005

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

O R D E R

This 16th day of August 2005, on consideration of the parties' briefs, it appears to the Court that:

1. Joshua Graves appeals from an order of the Superior Court granting summary judgment in favor of Appellee Regis Insurance Company. Graves challenges a Superior Court judge's holding that Regis's insurance policy covering CMC Inc., t/a Froggy's Bar & Grille, explicitly excluded Graves's personal injury claim arising from Regis's insured's employee's assault on Graves. Because the

policy unambiguously excludes coverage for damages resulting from assault and battery, we find that the trial judge properly granted summary judgment. Accordingly, we affirm.

2. In March 2004, Regis sought a declaratory judgment that it was not required to defend or indemnify its insured, Froggy's, in an underlying tort action Graves brought against Froggy's. In that action, Graves sought damages for injuries he suffered as a result of a fight between two people outside of Froggy's. Although Graves was not involved in the fight, a Froggy's bouncer jumped on his back and injured him. In his complaint, Graves claimed that Froggy's had negligently trained the bouncer.

3. Regis insured Froggy's under a liability insurance policy. The policy was in effect when the assault occurred. After Froggy's notified Regis of Graves's complaint, Regis defended Froggy's under a full reservation of rights. Regis then filed a declaratory-judgment action in the Superior Court to resolve whether its policy covered Graves's underlying tort claim. Regis moved for summary judgment, and the trial judge granted that motion, holding that the policy's "Assault and Battery Exclusion Endorsement" excluded coverage for claims of personal injury arising from assault and battery. Graves appeals from the order granting summary judgment.

4. Under the policy, Regis has the duty to defend and indemnify Froggy's for any claim for personal injury or property damage arising out of an "occurrence." The policy defines the term *occurrence* as "an accident . . . which results in bodily injury or property damage neither expected or intended from the standpoint of the insured."[1] The policy also contains an additional endorsement, titled "Broad Form Comprehensive General Liability Endorsement." Section XI of the Endorsement expands the definition of "occurrence" to include "any intentional act by or at the direction of the insured which results in bodily injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property."[2]

5. The policy also includes an exclusion for certain tortious conduct. Titled "Assault and Battery Exclusion and Coverage Deletion Endorsement," it provides that:

> Actions and proceedings to recover damages for "bodily injury" or "property damage" or "personal injury" arising, in whole or part, from the following are excluded from coverage and the Company is under no duty to investigate, defend or indemnify an insured in any action or proceeding alleging such causes of action and damages:
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> > 1. Assault and Battery or any actor [sic] omission in connection with the prevention, suppression, or result of such acts;

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[1] Regis Insurance Co., Special Multi-Peril Policy (Feb. 18, 2002), at 3.

[2] Regis Insurance Co., Broad Form Comprehensive General Liability Endorsement, (Feb. 18, 2002), at 4.

. . .

> This exclusion applies regardless of the degree of culpability or intent without regard to:
>
> . . .
>
> > 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.[3]

The A&B Exclusion further provides that: "If this policy contains the Broad Form Comprehensive General Liability Endorsement . . . , [which, as noted above, it did] Paragraph XI, Extended Bodily Injury Coverage, is deleted from that endorsement and rendered null and void."[4]

6. When the trial judge granted Regis summary judgment, he found that the policy excluded Graves's negligent-training claim because the A&B Exclusion barred coverage for claims "arising in whole or in part from assault and battery." The trial judge reasoned that Graves's negligence claim was based on Froggy's failure to prevent the assault and battery, and was therefore "fundamentally premised on the assault and battery itself."[5] On appeal, Graves contends that the policy provides coverage for his claim because the A&B Exclusion does not precisely state that claims for negligent "training" are encompassed by the

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[3] Regis Insurance Co., Assault and Battery Exclusion and Coverage Deletion Endorsement, (Feb. 18, 2002) (no page numbers in original).

[4] *Id.* (quotation marks omitted and punctuation altered).

[5] *Regis Insurance Co. v. Graves*, 2005 WL 273239 (Del. Super.), at *3.

exclusion and specifically excludes only claims for negligent "hiring, supervision, retention, or control." Graves argues that the exclusion is therefore at least ambiguous, and should be read narrowly to exclude a claim of negligent training. We review *de novo* the interpretation of language in contracts, including insurance contracts.[6]

7. Although ambiguous language in an insurance policy is construed against the insurer,[7] if the policy language is unambiguous, the parties are bound by its plain meaning.[8] In addition, other jurisdictions have held that the language barring coverage for claims based on acts or omissions in connection with prevention, suppression, or result of an assault and battery unambiguously include actions for negligence in causing or failing to prevent the assault and battery.[9]

8. The trial judge held that the A&B Exclusion barred coverage for injuries arising in whole or in part from an assault and battery. Based on that

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6 *Twin City Fire Ins. Co. v. Del. Racing Assn.*, 840 A.2d 624, 626 (Del. 2003).

7 *Aetna Casualty and Surety v. Kenner*, 570 A.2d 1172, 1174 (Del. 1990).

8 *Emmons v. Hartford Underwriters Insur. Co.*, 697 A.2d 742, 745 (Del. 1997).

9 *See, e.g., United Nat'l Ins. Co. v. Entertainment Gp. Inc.*, 945 F.2d 210, 214 (7th Cir. 1991) (A&B exclusion barred coverage for claims that insured negligently failed to provide adequate security or lighting and failed to supervise patrons); *Stiglich v. Tracks*, 721 F. Supp. 1386, 1388 (D.D.C. 1989) (A&B exclusion precluded coverage of claim that insured was negligent in failing to hire sufficient security personnel); *Littrell v. Colony Ins. Co.*, 492 S.E.2d 299, 300 (Ga. Ct. App. 1997) (A&B exclusion barred coverage for claim that insured negligently failed to prevent customer from obtaining "bar gun" and shooting another patron); *Essex Ins. Co. v. Fieldhouse Inc.*, 506 N.W.2d 772, 777 (Iowa 1993) (policy containing A&B exclusion that excluded coverage for "act or omission in connection with the prevention or suppression" of an assault and battery barred negligent-training claim).

language, the trial judge reasoned that because Graves sought to recover for injuries arising from the assault and battery, the policy, by its terms, excluded his claim. The trial judge based his holding on decisions by other Delaware courts that reached similar conclusions.[10] Although the trial judge's reasoning supports his conclusion, we base our decision today on a different analysis of the A&B Exclusion language that we believe more specifically addresses Graves's claim.[11]

9. In addition to assault-and-battery claims, the A & B Exclusion eliminates coverage for claims alleging "any act or omission in connection with the prevention, suppression, or result of such acts." Graves's claim fits within this language because Graves alleges that Froggy's negligent failure to "train" its bouncer directly caused the assault and battery. The provision also excludes coverage for claims "asserting the alleged failure of the insured or his officers, employees, agents, or servants in the hiring, supervision, retention or control of any [employee]." Training of an employee is one specific element of the "supervision" and "control" of an employee. Therefore, Graves's claim for negligent training fits squarely and unambiguously within the exclusion.

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[10] *See Terra Nova Insurance Co. v. Nanticoke Pines*, 743 F. Supp. 293 (D. Del. 1990); *Regis Insurance Co. v. Consenza*, 2001 WL 238150 (Del. Super.).

[11] *See Lemos v. Willis*, 858 A.2d 955, 959 (Del. 2004) ("This Court has the authority to affirm a judgment on the basis of a different rationale than the one that was relied upon by the trial court.").

10. Because the A&B provision excludes claims for negligent "supervision and control," we find Graves's claim that the policy is ambiguous to be unpersuasive. Accordingly, we hold that the plain meaning of the A&B Exclusion bars coverage for Graves's claim based on negligent training.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice