IN THE

Indiana Supreme Court

Supreme Court Case No. 22S-PL-8

William Ebert, Michelle Ebert, Cora Ebert, Alexandra Ebert, Dan the Man LLC, Daniel Parks, and D&D Saloon LLC,
Appellants/Defendants,

–v–

Illinois Casualty Company,
Appellee/Plaintiff.

Argued: February 24, 2022 | Decided: June 16, 2022

Appeal from the Howard Superior Court
No. 34D02-1807-PL-555
The Honorable Brant J. Parry, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 21A-PL-69

Opinion by Justice David

Chief Justice Rush and Justices Massa, Slaughter, and Goff concur.

David, Justice.

Today, we resolve an appeal from the trial court's grant of summary judgment to Illinois Casualty Company ("Illinois Casualty") in this declaratory judgment action. The underlying dispute between the parties arises from a series of unfortunate events involving an intoxicated patron and his decision to drive after he was served alcohol at Big Daddy's Show Club in Kokomo, Indiana. For our purposes, we examine whether an insurer has a duty to defend and indemnify its insured, such as Big Daddy's, when the policy specifically excludes coverage for bodily injury for which an insured may be liable by (1) causing or contributing to a person's intoxication, or (2) furnishing alcoholic beverages to a person under the influence of alcohol.

In doing so, we adopt the efficient and predominant cause analysis from our Court of Appeals and conclude that the liquor liability exclusion absolves Illinois Casualty of a duty to defend or indemnify its insured under its general businessowners policy. Accordingly, we affirm the trial court's grant of summary judgment in favor of Illinois Casualty.

Facts and Procedural History

On July 5, 2015, William Spence ("Spence") drank alcohol at Big Daddy's Show Club and drove away in his truck.[1] Meanwhile, the Eberts traveled eastbound on Morgan Street until they approached its intersection with Davis Street. They stopped at the flashing red lights marking the four-way intersection before proceeding to cross the street. Spence traveled northbound on Davis Street; when he reached the intersection, he failed to stop at the flashing lights and collided with the Eberts' vehicle. At the time, he had a blood alcohol content of 0.195%.

[1] During the relevant timeframe, Dan the Man, LLC owned Big Daddy's and D&D Saloon, LLC owned Little Daddy's; Appellant Daniel Parks ("Parks") owned both entities. For purposes of clarity, we will refer to the businesses as Big Daddy's and Little Daddy's, respectively.

The designated evidence further elaborates police removed Spence from Big Daddy's earlier in the night because "he got out of hand." Eberts' App. Vol. III at 176. That same night, Christopher France ("France") stopped by the show club to see if the employees needed any help. France ordinarily worked as a bouncer for Little Daddy's, and occasionally worked at Big Daddy's, but he was not on the clock that night. After France noticed Spence lingering in the parking lot, he ordered him to leave. Spence grabbed a pipe from his truck and proceeded to step toward France with the item in hand. France threatened him with bodily harm if he would not leave the property in his truck. Spence then left and collided with the Eberts' vehicle.

The Eberts filed their lawsuit against Big Daddy's, Little Daddy's, and Parks (collectively, "Parks defendants"). In their second amended complaint,[2] they claimed Big Daddy's violated Indiana's Dram Shop Act, Indiana Code section 7.1-5-10-15.5, by serving alcohol to Spence when it knew, or should have known, of his inebriation. The Eberts also claimed the Parks defendants: (a) continued to serve Spence alcohol when they knew, or should have known, he was inebriated and impaired; (b) allowed Spence to drive his vehicle from Big Daddy's when they knew, or should have known, he was inebriated and impaired; (c) failed to notify law enforcement that Spence left Big Daddy's and operated his vehicle in an inebriated state; and (d) failed to obtain alternative transportation for Spence to prevent him from operating his vehicle.

Illinois Casualty had issued separate and identical businessowners and liquor liability policies to each show club; each of these four policies were in effect on the night of the collision between Spence and the Eberts.

[2] On November 4, 2020, the Eberts filed, and the trial court granted, a motion for leave to file a third amended complaint. According to our review of the record, it does not appear that any of the parties moved to designate the third amended complaint as evidence in the summary judgment proceedings. Therefore, our review is limited to the allegations set forth in the Eberts' second amended complaint. *See Manley v. Sherer*, 992 N.E.2d 670, 673 (Ind. 2013) ("An appellate court reviewing a challenged trial court summary judgment ruling is limited to the designated evidence before the trial court, *see* Ind. Trial Rule 56(H)[.]").

Accordingly, Illinois Casualty initially agreed to defend the Parks defendants.

However, on July 19, 2018, the insurance company filed a separate declaratory action seeking a judgment that it did not owe a duty to defend or indemnify the Parks defendants in the underlying lawsuit. As support, Illinois Casualty relied on language in its businessowners policies excluding coverage for claims of bodily injury for which an insured may be liable by reason of causing or contributing to the intoxication of any person or furnishing alcoholic beverages to a person under the influence of alcohol. Illinois Casualty argued that the liquor liability policy issued to Big Daddy's was the only potential source of indemnification.

Illinois Casualty moved for summary judgment, which the trial court granted in its favor, finding the insurer did not owe the Parks defendants "any duty to defend or duty to indemnify with respect to the underlying lawsuit" under the liquor liability policy issued to Little Daddy's and the businessowners policies for both clubs. Parks Defendants' App. Vol. III at 63. Nevertheless, the trial court concluded Illinois Casualty did owe a duty to defend or indemnify the Parks defendants under the Big Daddy's liquor liability policy.

The Eberts and Parks defendants appealed. The Court of Appeals concluded "the trial court erroneously interpreted the insurance contracts at issue," slip op. at 3, and the businessowners policies imposed a contractual duty on Illinois Casualty to defend the show clubs.

Illinois Casualty sought transfer, which we granted, vacating the Court of Appeals' opinion. Ind. Appellate Rule 58(A).

Standard of Review

Our standard of review for a grant or denial of a motion for summary judgment is the same as the trial court. *Sheehan Const. Co., Inc. v. Continental Cas. Co.*, 935 N.E.2d 160, 165 (Ind. 2010). In determining whether summary judgment is proper, we consider only the evidentiary matter the parties specifically designated to the trial court. *Reed v. Reid*,

980 N.E.2d 277, 285 (Ind. 2012) (citing Ind. Trial R. 56(C), (H)). We construe all factual and reasonable inferences in favor of the non-moving party. *Auto-Owners Ins. Co. v. Harvey*, 842 N.E.2d 1279, 1282 (Ind. 2006) (citing *Reeder v. Harper*, 788 N.E.2d 1236, 1240 (Ind. 2003)). The interpretation of an insurance policy is primarily a question of law for the court, and therefore well-suited for summary judgment. *Wagner v. Yates*, 912 N.E.2d 805, 808 (Ind. 2009).

Discussion and Decision

We restate the primary issue on appeal as whether the liquor liability exclusion set forth in Illinois Casualty's businessowners policies absolves the insurance company of a duty to defend or indemnify the Parks defendants against the claims in the underlying lawsuit.

First, we determine whether the liquor liability exclusion is ambiguous. Second, in concluding that the exclusion is unambiguous, we analyze whether it excludes coverage for the claims set forth in the Eberts' second amended complaint. *E.g.*, *Prop.-Owners, Ins. Co. v. Ted's Tavern, Inc.*, 853 N.E.2d 973 (Ind. Ct. App. 2006).

A. The liquor liability exclusion in the businessowners policies is unambiguous.

In Indiana, insurance contracts are subject to the same rules of interpretation as other contracts. *Nuckolls*, 682 N.E.2d at 537–38 (citing *Eli Lilly and Co. v. Home Ins. Co.*, 482 N.E.2d 467, 470 (Ind. 1985), *cert. denied*, 479 U.S. 1060 (1987)). Ordinarily, we construe ambiguous policy provisions in favor of the insured, especially if the "provisions limiting coverage are not clearly and plainly expressed." *Meridian Mut. Ins. Co. v. Auto-Owners Ins. Co.*, 698 N.E.2d 770, 773 (Ind. 1998). In doing so, we further the policy's basic purpose of indemnity and recognize the disparate positions between the insurer and insured. *Id.*; *see also Am. Econ. Ins. Co. v. Liggett*, 426 N.E.2d 136, 142 (Ind. Ct. App. 1981) ("The insurance companies write the policies; we buy their form or we do not buy insurance.")

On the other hand, we give clear and unambiguous language in a policy its plain and ordinary meaning. *Meridian Mut.*, 698 N.E.2d at 773. A policy is unambiguous if reasonable persons cannot honestly differ as to its meaning. *Eli Lilly and Co.*, 482 N.E.2d at 470, *cert. denied*. Reasonable persons might differ if the language is susceptible to more than one interpretation. *Meridian Mut.*, 698 N.E.2d at 773. However, a policy is not ambiguous simply because the parties assert contrary interpretations. *Beam v. Wausau Ins. Co.*, 765 N.E.2d 524, 528 (Ind. 2002).

Here, Illinois Casualty issued separate businessowners policies to each show club. The policies obligate Illinois Casualty to pay "those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury,' 'property damage', or 'personal and advertising injury' to which [the] insurance applies." Parks Defendants' App. Vol. II at 77, 201. The policies "appl[y]: (1) To 'bodily injury' and 'property damage' only if: (a) The 'bodily injury' or 'property damage' is caused by an 'occurrence' that takes place in the 'coverage territory'[.]" *Id.* The policies further provide that Illinois Casualty "will have no duty to defend against any 'suit' seeking damages for 'bodily injury' . . . to which this insurance does not apply," and excludes coverage for certain circumstances, such as liquor liability. *Id.* The liquor liability exclusion states:

> B. Exclusions
>
> 1. Applicable To Business Liability Coverage
>
> This insurance does not apply to:
>
> * * *
>
> c. Liquor Liability
>
> "Bodily injury" or "property damage" for which any insured may be held liable by reason of:
>
> (1) Causing or contributing to the intoxication of any person;
> (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion – c.(1), c.(2), and c.(3), applies even if the claims allege negligence or other wrongdoing in:

(a) The supervision, hiring, employment, training, or monitoring of others by an insured; or
(b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

If the "occurrence" which caused the "bodily injury" or "property damage" involved that which is described in Paragraph (1), (2), or (3) above.

Id. at 80–81, 204–05.

During summary judgment proceedings, the Parks defendants argued that the trial court should, at minimum, find the policy language is ambiguous, requiring that it "be construed strictly against the insurer." Eberts' App. Vol. III at 127 (citing *Am. States Ins. Co. v. Kiger*, 662 N.E.2d 945, 947 (Ind. 1996)). Further, they contended that the exclusion "cannot be twisted and contorted to include every possible allegation that could occur at a bar," or such an interpretation would render coverage "illusory." *Id.*

We disagree that the language in the exclusion is ambiguous, and we do not infer ambiguity simply because it is broad in scope. Of course, insurers have the right to limit their coverage of certain risks and, therefore their liability, by imposing exceptions, conditions, and exclusions. *Sheehan Const. Co., Inc.*, 935 N.E.2d at 169. In this matter, Illinois Casualty clearly did so. Like other courts, we do not find that reasonable people would honestly differ as to the meaning of the term "intoxication" or the phrase "under the influence." *Ted's Tavern, Inc.*, 853 N.E.2d at 979. Instead, the policy plainly and unambiguously excludes coverage for claims of bodily injury for which any insured may be liable

by reason of *causing or contributing to the intoxication of any person or furnishing alcohol to a person under the influence*, even if the claims allege negligence or other wrongdoing in the supervision or monitoring of others by an insured or in failing to provide transportation to a person who might be under the influence of alcohol.

Concluding the exclusion is unambiguous, we turn to whether the policy excludes coverage for the claims asserted in the Eberts' second amended complaint.

B. The unambiguous language of the Big Daddy's businessowner policy excludes coverage for the Eberts' claims.

An unambiguous insurance policy must be enforced according to its terms, even if those terms limit an insurer's liability. *Sheehan Const. Co., Inc.*, 935 N.E.2d at 169. Whether an insurer has a duty to defend a particular lawsuit is determined by examining the nature of the underlying complaint. *Transamerica Ins. Servs. v. Kopko*, 570 N.E.2d 1283, 1285 (Ind. 1991). And an insurer's duty to defend is broader than its duty to indemnify. *Seymour Mfg. Co., Inc. v. Com. Union Ins. Co.*, 665 N.E.2d 891, 892 (Ind. 1996). Consequently, if an insurer does not have a duty to defend, then it does not have a duty to indemnify.

We find that the unambiguous language of the businessowners policy excludes coverage for the claims asserted in the Eberts' second amended complaint. In doing so, we adopt and apply the efficient and predominant cause analysis set forth by our Court of Appeals. *See Ted's Tavern, Inc.*, 853 N.E.2d at 980; *Wright v. Am. States Ins. Co.*, 765 N.E.2d 690, 697 (Ind. Ct. App. 2002); *Ill. Farmers Ins. Co. v. Wiegand*, 808 N.E.2d 180, 189 (Ind. Ct. App. 2004), *trans. denied*.

1. The businessowners policy expressly excludes coverage for claims that Big Daddy's carelessly and negligently served alcohol to and failed to obtain alternative transportation for Spence.

As an initial matter, we examine which theories of negligence set forth in the Eberts' second amended complaint are expressly excluded by the terms of the businessowners policy.

First, in Count III, the Eberts claim Big Daddy's carelessly and negligently violated Indiana's Dram Shop Act by continuing to serve Spence alcohol when it knew, or should have known, he was inebriated, resulting in their injuries. However, this claim falls squarely within the language of the liquor liability exclusion. Parks Defendants' App. Vol. II at 81.

Second, the Eberts claim Big Daddy's carelessly and negligently continued to serve Spence alcohol and failed to obtain alternative transportation for him when they knew, or should have known, of his inebriation and impairment. Yet, the policy expressly excludes from its coverage bodily injuries for which any insured may be liable by reason of "contributing to the intoxication of any person" and "furnishing . . . alcoholic beverages to a person . . . under the influence of alcohol . . . even if the claims allege negligence or wrongdoing in . . . failing to provide transportation with respect to any person that may be under the influence of alcohol." *Id.* Accordingly, such claims are expressly excluded by the businessowners policy issued to Big Daddy's.

Therefore, we must determine whether the exclusion applies to the Eberts' remaining claims against the Parks defendants.

2. The businessowners policies either exclude or do not provide coverage for the remaining claims.

In concluding whether the liquor liability exclusion applies to the Eberts' remaining claims, we apply the efficient and predominant cause analysis originally set forth by our Court of Appeals. *See Ted's Tavern, Inc.*,

853 N.E.2d at 980; *Wright*, 765 N.E.2d at 697; *Wiegand*, 808 N.E.2d at 189, *trans. denied*. In doing so, we adopt the guidance set forth in *Ted's Tavern*.

The facts giving rise to *Ted's Tavern* are as follows: on July 9, 2004, Carole Stine filed suit against Big Jim's, its owner, and two employees. 853 N.E.2d at 976. Stine alleged two bartenders served Alan Wickliff four Long Island Ice Teas, and shortly after Wickliff left Big Jim's, his vehicle collided with her husband's vehicle, causing fatal injuries. *Id.* Stine's complaint asserted claims of (1) negligence; (2) negligently hiring, training, and supervising employees; (3) violations of Indiana's Dram Shop Act; and (4) nuisance. *Id.*

The tavern's insurer, Property-Owners, filed a declaratory action seeking a judgment that it did not have a duty to defend or indemnify Big Jim's because of the liquor liability exclusion set forth in its Commercial General Liability Policy. *Id.* After the insurer and Stine filed cross-motions for summary judgment, the trial court granted partial summary judgment to each moving party, concluding Property-Owners did not have a duty to defend or indemnify Big Jim's for the negligence and Dram Shop claims, but it did owe a duty for the remaining claims of negligently hiring, training, and supervising employees and nuisance. *Id.* at 976–77. Property-Owners appealed. *Id.* at 977.

After determining the policy was unambiguous, the Court of Appeals concluded the allegations within the claims of negligently hiring, training, and supervising employees and nuisance "are general 'rephrasings' of the core negligence claim for causing/contributing to Wickliff's drunk driving," and the claims were "so inextricably intertwined with the underlying negligence that there [was] no independent act that would avoid [the] exclusion." *Id.* at 983. Because "the immediate and efficient cause of the injuries was drunk driving precipitated by the negligent service of alcohol," the trial court committed reversible error by concluding the policy provided coverage for these counts. *Id.* at 983–84.

In resolving the case at bar, we find the efficient and predominant cause analysis instructive. Accordingly, like the Court of Appeals in *Ted's Tavern*, we begin by reviewing the Eberts' second amended complaint,

which starts with an identification of the relevant parties and statement of the factual allegations. The Eberts continue to allege:

> 9. On July 5, 2015, Defendant William Spence was drinking alcohol at Big Daddy's Show Club and was visibly intoxicated. Defendant Spence drove his automobile from Daddy's Show Club that evening.
>
> 10. On July 5, 2015, the Plaintiffs were traveling eastbound on Morgan Street. They approached the intersection with Davis Street, stopped at the four-way flashing red light, and then proceeded to cross the intersection eastbound on Morgan Street. The Defendant, William Spence, was travelling northbound on Davis Street approaching the intersection with Morgan Street. At such time, the Defendant, William Spence, failed to stop at the four-way flashing red light at the intersection of Davis and Morgan, striking the Plaintiffs.
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> 11. At the time of the collision, the Defendant, William Spence, was operating his vehicle with a blood alcohol content of 0.195%.

Eberts' App. Vol. III at 100.

In line with the foregoing, we restate the Eberts' allegations as follows: Big Daddy's served Spence alcohol, and he subsequently drove his vehicle from the premises while intoxicated and collided with the Eberts' vehicle. Thus, the efficient and predominant cause of the collision was Spence's drunk driving after he was served alcohol at Big Daddy's.

At the trial level, the Parks defendants argued, "The Eberts' allegations are not 'inextricably intertwined' with dram shop liability because the Parks Defendants could be liable regardless of whether they provided any alcohol to Spence." *Id.* at 123. As an example, the Parks defendants contended they could still be liable for failing to prevent Spence from driving or calling the police if he arrived intoxicated from narcotics or made violent threats to another patron.

The Court of Appeals similarly noted that "[t]he critical commonality to all the counts in *Ted's Tavern* was not *just* that the patron was intoxicated,

but that the bar and its employees had *caused* the patron to be intoxicated." Slip op. at 19–20. The Court of Appeals distinguished the present circumstances from *Ted's Tavern*, because while "all of the Eberts' claims *relate factually* to Spence's intoxication, some of them do not *legally rely* on the bar causing or contributing to that intoxication," as required to fall within the exclusion. *Id.* at 20. By contrast, liability could attach under the failure to intervene theories if Spence had arrived at Big Daddy's already intoxicated or suffered impairment from "an epileptic seizure, the throes of delusion, or a diabetic incident." *Id.*

But the Eberts have not alleged such hypotheticals in their second amended complaint. Rather, they alleged, "On July 5, 2015, Defendant William Spence was drinking alcohol at Big Daddy's Show Club and was visibly intoxicated," and "[a]t the time of the collision, the Defendant, William Spence, was operating his vehicle with a blood alcohol content of 0.195%." Eberts' App. Vol. III at 100. Thereafter, the Eberts incorporated by reference the paragraphs immediately preceding each count. And the businessowners policy expressly provides that there is no duty to defend or indemnify an insured that may be liable by reason of "[c]ausing or contributing" to a person's intoxication or "furnishing of alcoholic beverages to a person . . . under the influence of alcohol." Parks Defendants' App. Vol. II at 81.

Here, the claims that the Parks defendants were negligent in allowing Spence to leave Big Daddy's in his vehicle and failing to call police "are so inextricably intertwined with the underlying negligence," *Ted's Tavern, Inc.*, 853 N.E.2d at 983, and could not have resulted in injury but for Spence's driving while intoxicated after Big Daddy's served him alcohol. *See also Wiegand*, 808 N.E.2d at 191. Plainly, the Eberts essentially claim the Parks defendants were negligent for failing to intervene. But we cannot ignore the circumstance necessitating intervention in the first place: the service of alcohol to an intoxicated Spence. Therefore, like the trial court, we find that Spence's intoxication was the efficient and predominant cause of the Eberts' injuries. *See also Wright*, 765 N.E.2d 690.

Further, in affirming the trial court, we are not persuaded by the Eberts' argument that summary judgment was improper on the issue of coverage

under the Little Daddy's businessowners policy. The Eberts concede the Little Daddy's liquor liability policy does not apply to their claims because neither France nor Little Daddy's served Spence any alcohol. Instead, they argue that because material questions of fact exist regarding the scope of France's employment on the night in question, and neither France nor Little Daddy's caused or contributed to Spence's intoxication or furnished any alcohol to him, Illinois Casualty may owe a duty to defend the Parks defendants under the businessowners policy issued to Little Daddy's.

First, even if France acted as an employee of Little Daddy's as he ordered Spence to leave Big Daddy's (but for reasons explained *infra*, he did not), its policy would still exclude coverage for the Eberts' claims—not because Big Daddy's served alcohol to Spence, but because the second amended complaint alleges Little Daddy's contributed to Spence's intoxication and failed to obtain alternative transportation for him. Eberts' App. Vol. III at 110. It is undisputed that such allegations fall squarely within the language of the liquor liability exclusion. And the remaining allegations against Little Daddy's—that is, Little Daddy's allowed Spence to leave Big Daddy's in his vehicle and failed to notify law enforcement—are inextricably intertwined with the allegations that Little Daddy's caused or contributed to Spence's intoxication. Because "[t]he duty to defend is determined solely by the nature of the complaint," the Little Daddy's policy clearly excludes coverage for the claims in the second amended complaint. *Kopko*, 570 N.E.2d at 1285.

But the designated evidence also supports finding that France did not act as an employee of Little Daddy's when he ordered Spence to leave Big Daddy's. For purposes of the businessowners policies, an "employee" is an insured "but only for acts within the scope of their employment . . . or while performing duties related to the conduct of [the] business." Parks Defendants' App. Vol. II at 90—91, 214—15. According to the record before us, after France left Little Daddy's, he stopped by Big Daddy's as a "patron" for a "social visit" and to help as necessary. Eberts' App. Vol. III at 175, 206–07. He ordinarily popped into the bar when he was "off duty" to see "what['s]…going on." *Id.* at 205. He also testified he visited Big Daddy's because he was "not scheduled to work" at Little Daddy's. *Id.* at 224. And, significantly, he was not paid any compensation for his

presence at Big Daddy's. Accordingly, France was not an insured for purposes of the Little Daddy's businessowners policy, and this policy does not provide coverage for the Eberts' claims.

We find additional support for this conclusion by examining the definition of a "volunteer worker" under the Big Daddy's businessowners policy. The policy provides that "volunteer workers" qualify as an insured "but only while performing duties related to the conduct of [Big Daddy's]." Parks Defendants' App. Vol. II at 91. A "volunteer worker" is a person "who donates his . . . work and acts at the direction of and within the scope of duties determined by [Big Daddy's], and is not paid a fee, salary or other compensation by [Big Daddy's] or anyone else for work performed for [Big Daddy's]." *Id.* at 99. Under this definition, it appears to us that France was a volunteer worker for *Big Daddy's*, and thus an insured for purposes of its policy. As he testified, he was "an errand boy," there to make sure people did not "tear up the bar" and help the manager as necessary. Eberts' App. Vol. III at 206. Even though he occasionally received compensation for his work at Big Daddy's, he was not paid the night of July 5, 2015. For these reasons, France was an insured under the Big Daddy's businessowners policy. And because each of the Eberts' allegations, including those that might implicate France's actions on the night in question, are "inextricably intertwined" to Big Daddy's causing or contributing to Spence's intoxication, the show club's liquor liability exclusion applies to their claims.

Though "a valiant effort to procure coverage, the creative pleading of the [remaining counts] cannot hide the reality that the immediate and efficient cause of the injuries was drunk driving precipitated by the negligent service of alcohol." *Ted's Tavern, Inc.*, 853 N.E.2d at 983; s*ee also Nautilus Ins. Co. v. JDW Inc.*, 2021 WL 5083716 (N.D. Ind. 2021) (concluding an identical liquor liability exclusion applied to "different (and broader) theories of negligence," including, but not limited to, failure to provide adequate security to patrons, after a bar ousted an intoxicated patron who subsequently injured someone in a motor vehicle accident, because the claims were inextricably intertwined with the core negligence claim excluded by the policy).

In adopting the efficient and predominant cause analysis, we find support from the District Courts in our State. *See Nautilus Ins. Co.*, 2021 WL 5083716; *Certain Underwriters at Lloyd's London v. Vandivier Mgmt., Inc.*, 2012 WL 4358747 (S.D. Ind. 2012) (setting forth a detailed analysis of *Ted's Tavern* in assessing a "causing intoxication" exclusion). *Cf. Prop.-Owners Ins. Co. v. Virk Boyz Liquor Stores, LLC*, 219 F.Supp.3d 868, 874 (N.D. Ind. 2016) (distinguishing *Ted's Tavern* by holding that an identical liquor liability exclusion did not apply to allegations that the tavern was negligent for failing to intervene or call the police when its bartender assaulted an intoxicated patron, hiring the assaulting bartender when it should have known he was incompetent and unfit for employment, and failing to train the assaulting bartender to prevent the assault, because such claims were neither "inextricably intertwined" with the negligent service of alcohol nor implicated the sale of alcohol at all).

Finally, it is significant that the liquor liability exclusions in the businessowners policies are even broader than the exclusion in *Ted's Tavern*. For example, the exclusion applies to allegations of negligence or other wrongdoing in the monitoring of others by an insured or failing to provide transportation for a person who might be under the influence of alcohol. While the Court of Appeals remarked, "If Illinois Casualty wished to exclude coverage for any and all claims arising from intoxication generally or from intoxicated patrons, then it would have drafted a contract that said so," slip op. at 20, we cannot ignore the unambiguous language of the exclusion in relation to the allegations pled by the Eberts. *See Kopko*, 570 N.E.2d at 1285; *Cincinnati Ins. Co. v. Mallon*, 409 N.E.2d 1100, 1105 (Ind. Ct. App. 1980) ("In other words, it is the nature of the claim and not its merits that determines the duty to defend.").

We find that the efficient and predominant cause of the Eberts' injuries was drunk driving precipitated by the negligent service of alcohol, and because the insurance policy excluded coverage for claims of bodily injury after causing or contributing to a person's intoxication or furnishing alcohol to a person under the influence of alcohol, the policy excludes the Eberts' claims from its coverage.

Conclusion

Consistent with our findings, we conclude that Illinois Casualty does not owe a duty to defend or indemnify the Parks defendants under the businessowners policies issued to either show club and the liquor liability policy issued to Little Daddy's. Accordingly, we affirm the trial court's grant of summary judgment in Illinois Casualty's favor.

Rush, C.J., and Massa, Slaughter, and Goff, JJ., concur.

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