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## **CGL Firearms Exclusion Precludes Coverage for Negligence Claims**

By Ronald J. Clark

A recent Washington Court of Appeals opinion demonstrates that, when it comes to a policy exclusion, less can be more. The case is titled *Capitol Specialty Insurance Corp. v. JBC Entertainment Holdings*, Case No. 68129-0 (Wash. Ct. App. Dec. 10, 2012).

In 2010, an unidentified person fired a gun in a Seattle nightclub, injuring the claimant. The claimant filed a lawsuit for damages against JBC Entertainment, the operator of the nightclub. "[The claimant's] claims included negligent hiring, training and supervision and negligent failure to provide adequate security. All claims relate to the shooting itself; [the claimant] did not claim any negligence occurred after the shooting."

JBC tendered the defense to Capitol Specialty, its CGL insurer. Capitol agreed to defend under a reservation of rights and filed a declaratory judgment action to determine if the policy provided coverage. Capitol argued that no coverage was owed because of the policy's Firearms Exclusion. The exclusion precludes from coverage "'[b]odily injury' or 'property damage' that arises out of, relates to, is based upon, or attributable to the use of a firearm(s)."

The trial court granted Capitol's motion for summary judgment, holding that the Firearms Exclusion precluded coverage for the claims. The Washington Court of Appeals affirmed. The court of appeals rejected the argument that, because the claims for negligent hiring, training, supervision and security alleged a "concurrent and independent cause," they fell outside the Firearms Exclusion. The court concluded: "JBC's alleged liability for negligence is wholly dependent upon the shooting, an occurrence that is specifically excluded from coverage."

The court also rejected an argument that the Firearms Exclusion was ambiguous because an "average purchaser of insurance could fairly conclude that the firearms exclusion applies only if the insured itself uses a firearm in connection with its business." Likewise, the exclusion was not found ambiguous on the basis that "Capitol could have added clarifying language if it intended to exclude coverage for claims arising out of the use of a firearm by someone other than the insured."

One lesson from *JBC Entertainment* is that if an insurer does not want to assume any exposure, in any way, shape, or form for a loss associated with a firearm (or for any other specified peril), then it should say just that. The case also provides an obstacle for claimants who attempt to plead into coverage by including negligence claims. *JBC Entertainment* can be cited as authority for disclaiming coverage where the alleged liability for negligence is "wholly dependent" on an occurrence that is specifically excluded from coverage. We note, however, that because this is an intermediary appellate court decision, there is a possibility that it could be appealed to the Washington Supreme Court.