

# A Lesson in Sticking to Your Guns: Court Reverses Course and Finds No Duty to Defend or Indemnify on a Motion for Reconsideration

APPELLATE & TRIAL SUPPORT | MAY 2, 2019



**Christopher B. Freeman**



**Amanda D. Proctor**



**Roben S. West**

On May 1, 2019, the U.S. District Court for the Middle District of Georgia held that a firearms exclusion in a general liability insurance policy applied to bar coverage for an underlying action arising from a shooting at the insured's bar in *Hudson Specialty Insurance Co. v. Snappy Slappy LLC*, No. 5:18-cv-00104-TES (M.D. Ga. May 1, 2019).

In *Snappy Slappy*, a bar patron shot and killed two other patrons. Following the shooting, the mother of one of the decedents filed a wrongful death action against the bar, alleging that it negligently failed to keep its premises safe. Prior to the shooting, Hudson Specialty Insurance Co. had issued a commercial general liability policy to the bar. Subject to its terms and conditions, the policy provided insurance for "'bodily injury' ... caused by an 'occurrence.'" Insurance under the policy, however, was subject to a firearms exclusion, which broadly excluded coverage for "'bodily injury' ... arising out of the ... use of firearms."

On March 26, 2018, Hudson filed a declaratory judgment action in the U.S. District Court for the Middle District of Georgia, seeking a declaration that it had no duty to defend or indemnify the bar for the claims in the wrongful death action because, among other reasons, the firearms exclusion applied to bar coverage. Shortly thereafter, Hudson filed a motion for judgment on the pleadings, asking the court to decide as a matter of law that the firearms exclusion applied. The court, however, denied the motion, finding that the firearms exclusion was ambiguous because it did not specify *who* must use the firearm for the exclusion to apply. According to the court, the exclusion could be interpreted to apply solely to the insured's use of a firearm, as the bar argued in opposition to Hudson's motion.

On September 13, 2018, Hudson moved for reconsideration or, in the alternative, a certification to permit an interlocutory appeal of the court's denial. Therein, Hudson argued that the plain language of the exclusion did not specify an actor because its application was not limited by actor — the firearms exclusion applied whenever bodily injury arises out of the use of a firearm by anyone. Hudson further argued that the insured's narrow interpretation of the exclusion was an attempt to read in limitations not otherwise present on the face of the policy.

In a welcome turn of events, the court reversed course and granted Hudson's motion for reconsideration. The court found that, in its prior order, it improperly "changed the language of the Firearms Exclusion and inserted modifying language not otherwise present in the exclusion agreed upon by the parties." (Order at 5.) The district court acknowledged that "[t]he absence of limiting language as to whose use is excluded does not render the exclusion ambiguous because breadth does not equate to ambiguity." (Order at 6.) Because there was no limiting language, the court found that the exclusion applied to anyone's use of a firearm. Since the underlying action clearly alleged "'bodily injury' arising out of the ... use of firearms," the court found that the firearms exclusion applied to bar coverage.

The district court's decision now falls in line with the two other decisions applying similar firearms exclusions to premises liability actions under Georgia law, creating stronger precedent for future applications of similar exclusions. See *United States Liab. Ins. Co. v. Griffith*, No. 1:16-cv-01735-ELR, 2017 WL 3521644 (N.D. Ga. May 10, 2017); *Powe v. Chartis Specialty Ins. Co.*, 1:16-cv-01336-SCJ, 2017 WL 3525441 (N.D. Ga. June 1, 2017).

contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.