

CITATION: Jack-O’s Sports Bar v. US Liability Insurance Co, 2024 ONSC81
COURT FILE NO.: CV-22-126-A1
DATE: 2024/01/04

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
GUY KELLOWAY)
) Gordon Harris, for the Plaintiff
Plaintiff)
)
– and –)
)
HAROLD DOUGLAS EAKINS operating) James R. Morgan and Miketic Ognjen, for
as JACK-O’S SPORTS BAR, HAROLD) the Defendants Harold Douglas Eakins and
DOUGLAS EAKINS, and JACQUELYNN) Harold Douglas Eakins o/a Jack-O’s Sports
DIANE STUART) Bar
)
Defendants)
)
– and –)
)
BROKERLINK INC. and UNITED) Lindsay Rodenburg, for the Third Party
STATES LIABILITY INSURANCE) Brokerlink Inc.
COMPANY)
)
Third Parties) Anthony Gatensby for the Third-Party
) United States Liability Insurance Company
)
) **HEARD IN WRITING:** January 3, 2024

TRANQUILLI J.

ENDORSEMENT RE TERMS OF ORDER

[1] By reasons released October 24, 2023, I granted the third-party insurer’s motion for summary judgment dismissing the defendant bar’s (“Jack-O’s”) and defendant Eakins’ third-party claim against the insurer United States Liability Insurance Company (“USLI”) for contribution and indemnity in providing a defence and indemnity to the plaintiff’s claim for personal injuries allegedly sustained while the plaintiff was a patron of the defendant bar.

- [2] The parties are unable to settle the terms of the order. I directed that they provide written submissions as to the concerns of the order.

The Proposed Order

- [3] USLI prepared a draft order for approval by the defendants participating on the motion. The parties can agree on all but one term of the draft order. Eakins and Jack-O's object to paragraph 1 of the draft order:

***THIS COURT HEREBY DECLARES** that USLI has no legal obligation to defend or indemnify the Eakins Defendants in the main action brought against said defendants by Guy Kelloway, pursuant to the terms and conditions of a commercial package policy of insurance, bearing police no. CP 6222916A ("the Policy").*

Positions of the Parties

- [4] The motion defendants Eakins and Jack-O's submit this paragraph is overly broad and improperly excludes any possible claims in negligence for which there may be a duty to defend and indemnify. As examinations for discovery have yet to take place, they submit there may yet be claims in negligence for which there will be a duty to defend. These defendants also contend that the court merely dismissed the third-party claim and did not also grant the declaratory relief as sought in USLI's notice of motion. They propose alternative wording that does not expressly negate the possibility of indemnity under the policy depending on what the evidence demonstrates.
- [5] USLI submits that summary judgment dismissing the action against must have necessarily incorporated a finding that it owed no duty to defend and no duty to indemnify these defendants in this action.

Decision

- [6] The draft order as proposed by the moving third party USLI should issue. Notwithstanding the silence in my disposition as to the declaratory relief sought in the motion, that relief was indeed implicitly granted through granting summary judgment dismissing the coverage action in the third-party claim in its entirety as against USLI.
- [7] The motion defendants' contention that there might still be a negligence claim that will emerge in the evidence and attract coverage cannot pass muster given the analysis in my decision.
- [8] My reasons found that neither the statement of claim nor the amended statement of claim reveal the possibility of coverage under the USLI policy, even if negligence is found to be a cause of compensable injury. As explained in my judgment, the USLI policy wording is such that any compensable claim arising from negligence cannot be severed from the broad exclusionary wording, as set out in paragraphs 38-40 of my reasons.

[9] The draft order as proposed by the third party USLI shall accordingly issue.

A handwritten signature in blue ink that reads "K. Tranquilli J." with a period at the end.

Justice K. Tranquilli

Released: January 4, 2024

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

GUY KELLOWAY

Plaintiff

– and –

HAROLD DOUGLAS EAKINS operating
as JACK-O'S SPORTS BAR, HAROLD
DOUGLAS EAKINS, and JACQUELYNN
DIANE STUART

Defendants

– and –

BROKERLINK INC. and UNITED
STATES LIABILITY INSURANCE
COMPANY

Third Parties

ENDORSEMENT

Justice K. Tranquilli