

SUMMARY JUDGMENT IN DECLARATORY ACTION: ASSAULT AND BATTERY CLAIM DOES NOT CONSTITUTE AN "OCCURRENCE" UNDER LIABILITY POLICY

STATE FARM FIRE AND CASUALTY CO. V. GLOVER ET AL., USDC WYO 08-VC-084J

A State Farm insured was sued for damages arising out of an assault and battery. The Plaintiff/Claimant in the underlying action attempted to plead alternatively that the insured had used unreasonable force in an effort to suggest a potential claim based on negligence. However, they also plead that insured had been convicted of misdemeanor assault in a related criminal action. Plaintiffs also tried to inject additional facts into the record by filing a copy of the insured's deposition. Court agreed that the pleadings asserted a claim for intentional assault, which would not trigger either a duty to defend or a duty to indemnify. There was no alleged "occurrence" and any potential coverage was also subject to the exclusion for intentional harm. Plaintiff/Claimant's attempt to suggest a negligence claim was belied by both the alleged facts as well as the additional facts contained in the insured's deposition, all of which simply showed that the insured had intentionally inflicted injury. The Court's award of summary judgment was not appealed.

George Powers handled this case for the firm.