

SUPREME COURT OF LOUISIANA

No. 97-C-1074

ANGELA ARMSTRONG HICKEY
AND SHAWN EDWARD HICKEY

Versus

CENTENARY OYSTER HOUSE, ET AL

JOHNSON, J., Dissenting

The majority has decided to ignore the expressly stated legislative purpose of protecting the public by requiring private security agencies to have general liability insurance coverage.

The statutory requirement for general liability coverage, *La. R.S. 37:3270 et seq.*, expressly states that one of the legislative purposes of the Private Security Regulatory and Licensing Law is to assure some recovery for individuals injured as a result of legally liable private security agents or businesses. *La. R.S. 37:3272(12)*, defines "security guard" as follows:

"Security guard" means an individual who is principally employed by a contract security company whether armed or unarmed, who is principally employed to protect a person or persons or property or both, and whose duties include but are not limited to the following:

- (a) Prevention of unlawful intrusion or entry.
- (b) Prevention of larceny.
- (c) Prevention of vandalism.
- (d) Protection of property or person.
- (e) Prevention of abuse.
- (f) Prevention of arson.
- (g) Prevention of trespass on private property.
- (h) Control, regulation, or direction of the flow or movements of the public, except on public streets, whether by vehicle, on foot, or otherwise.
- (i) Street patrol service or merchant patrol service, which is any contract security company that utilizes foot patrols, motor vehicles, or any other means of transportation in public areas or on public thoroughfares in the performance of its security functions.

As defined by the statute, a security guard's duties include, among other

things, protection of property or persons. The assault and battery exclusion, as written in this policy of insurance, excludes from coverage the security guard's actions and failures to act under nearly all circumstances, including his failure to provide an environment safe from assault and battery and the failure to warn of an unsafe environment. Such a provision conflicts, in my mind, with his duty of protection of persons. Therefore, I am of the opinion that the exclusion conflicts with the duties of a security guard, as defined by statute. *See La. R.S.*

37:3272(12)(d). See also, Ledbetter, 665 So. 2d at 1169, citing Reynolds, 634 So. 2d at 1183.

The presence of an armed security guard in uniform at an establishment or location creates an expectation that such person will provide protection for individuals' safety. Under the assault and battery exclusion in this policy, the security guard could stand by and watch an altercation or robbery ensue or in progress, fail to act, yet be completely shielded from liability. The purpose of any compulsory insurance statute is primarily to provide compensation to innocent victims who suffer injuries. The majority asserts that, "the Private Security Regulatory and Licensing Law does not expressly mandate specific elements of liability coverage (such as omnibus coverage) that must be provided." It would be inconsistent for the state legislature to mandate general liability insurance coverage to protect the public and then allow insurers to deny, by exclusions in the policy, coverage for the very risk which they contracted to insure against. Strictly construing the assault and battery exclusion against the insurer, I find that the exclusion conflicts with the stated legislative policy of the Private Security Regulatory and Licensing Law.

The majority has chosen to overlook the legislative purpose and to put the

safety, health, and well-being of the Louisiana citizenry at risk. For reasons expressed herein, I would hold that the assault and battery exclusion of the insurance policy in the present case is contrary to the legislative purpose of the Private Security Regulatory and Licensing Law, *La. R.S. 37:3270 et seq.*, and I respectfully dissent.