

California Judge: Coverage Not Barred By Policy's Molestation Exclusion

SAN FRANCISCO — A California judge on April 24 found that coverage for underlying negligence claims against an insured and its officers is not precluded by a commercial general liability insurance policy's molestation exclusion, denying the insurers' motion for summary adjudication (Society for Creative Anachronism, et al. v. Fireman's Fund Ins. Co., et al., No. 10-498672, Calif. Super., San Francisco Co.).

(**Order available.** Document #13-120503-032R.)

Molestation Claims

In February 2010, a lawsuit was filed against the Society for Creative Anachronism (SCA), three of its officers, Elizabeth Amick, Jamey Oliff and Paul Zona, and Benjamin Schragger and his parents in the Lehigh County, Pa., Court of Common Pleas.

The plaintiffs alleged that the defendants' negligence and failures allowed Schragger to sexually molest three minors at SCA-sponsored events.

SCA argued that the activities in question were not SCA activities and that SCA and its officers never had care, custody or control of the victims when the alleged molestation occurred.

The lawsuit eventually settled in principle.

Coverage Dispute

SCA and its officers sued commercial general liability insurers Fireman's Fund Insurance Co., The American Insurance Co., National Surety Corp. and Great American Insurance Co. in the San Francisco County Superior Court.

The plaintiffs alleged breach of contract and bad faith claims against the insurers and sought declaratory relief as to coverage for the underlying settlement.

The insurers cross-complained, seeking reimbursement of the defense costs incurred in defending the underlying lawsuit. The insurers moved for summary adjudication.

Potential For Coverage

Judge Marla J. Miller found that the insurers have failed to establish that no potential for coverage existed.

"Under Pennsylvania law, SCA and the individual insureds could be found to owe a duty to the molestation victims even though the victims were not in their care, custody or control when the molestation occurred. A negligence claim based on breaching this duty would fall within the coverage grant but would not be excluded by Part 1 of the molestation exclusion. Further, it is undisputed for purposes of this motion that SCA was never legally responsible for Benjamin Schragger, and thus Part 2 of the exclusion does not bar this negligence claim," the judge explained.

The judge concluded that the insurers have failed to satisfy their burden to demonstrate that they had no duty to defend against the underlying action.

"As to the duty to indemnify, by the same reasoning, SCA has met its burden of establishing that facts could be proven at trial which would bring the claim within the policy's coverage grant but would not trigger the exclusion," the judge noted.

Counsel

Vedica Puri, Philip L. Pillsbury Jr. and Ingrid S. Leverett of Pillsbury & Levinson in San Francisco represent the plaintiffs.

Alex E. Potente and Benjamin E. Shiftan of Sedgwick in San Francisco represent the defendants. ■