

Sexual Misconduct by Teacher Does Not Constitute "Educational Employment Activity"

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A Kentucky appellate court has held that sexual misconduct by a teacher is not "educational employment activity" as defined by an educator's liability policy. *Wilson v. Horace Mann Ins. Co.*, Nos. 2000-CA-001826-MR & 2001-CA-001033-MR, 2003 WL 1406998 (Ky. Ct. App. Mar. 21, 2003). The court also held that the insurers were not liable to the underlying plaintiffs for extra-contractual claims arising out of the handling of the claim.

Plaintiffs, as alleged third-party beneficiaries, sued a number of insurers seeking to recover a \$451,000 judgment entered in the plaintiffs' favor against a teacher for sexual abuse, as well as attorneys' fees and costs. The insurers provided coverage to the teacher pursuant to an educator's liability policy. The policy at issue provided coverage for losses arising from "educational employment activities." The policy defined "educational employment activities" to include "activities of the insured performed...pursuant to the express or implied terms of his or her employment by an educational unit...at the express request or with the express approval of his or her supervisor,...or as a member of a state board or commission...."

The court held that no coverage existed for sexual abuse by the teacher because such acts did not constitute "educational employment activities" within the plain meaning of the educator's liability policy. In addition, the court noted that public policy demanded such a result because otherwise an insurer would be subsidizing the sexual abuse of children. The court rejected the plaintiffs' argument that coverage for sexual abuse should exist just as coverage is afforded to sexual harassment of women in the workplace, reasoning that the majority of courts have found that in child molestation cases there is an "inferred intent" to injure and that courts have consistently held that teachers who sexually molest their students are not engaging in "educational employment activities."

The court also rejected a series of extra-contractual claims by the plaintiffs. The court first rejected the plaintiffs' statutory bad faith claim reasoning that the claim was not available in the absence of an obligation to provide coverage. The court also rejected plaintiffs' arguments that the insurers were liable for wrongful use of civil proceedings by authorizing and financing a counterclaim against plaintiffs during the underlying litigation. The court explained that an essential element of this tort is that the defendant acted without probable cause. Here, the court noted, the trial court in the underlying proceeding had found as a matter of law that the teacher had probable cause to bring a counterclaim against one of the plaintiffs for perjury, which the plaintiff admitted to committing.

Finally, the court rejected the plaintiffs' argument that insurers were estopped from asserting a reservation of rights because they did not disclose this reservation to the plaintiffs. The court reasoned that estoppel requires that the claimant have been prejudiced, which plaintiffs did not allege. The court also noted that there was no authority indicating that an insurer is required to notify underlying plaintiffs of its reservation of rights to the insured.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130