

“Bodily Injury” and “Assault and Battery” Exclusions Held Inapplicable to Claims against School Board After Teacher Molested Student

December 2003

A Kentucky appellate court, in an unpublished opinion, has held that an insurer that issued an educators legal liability insurance policy to a school board had a duty to defend the school board in a suit brought by a student after he was allegedly molested by a teacher even though the policy contained exclusions for claims arising out of bodily injury and out of assault and battery. *Kentucky Sch. Bd. Ins. Trust v. Bd. of Educ.*, 2003 WL 22520018 (Ky. App. Nov. 7, 2003).

An insurer issued an educators legal liability insurance policy to a school board that provided coverage for "any civil claims" that any members of the board of education became "legally obligated to pay...because of a wrongful act." The policy contained exclusions for "[a]ny claim based upon or arising out of bodily injury, sickness, disease or death, mental or emotional injury or distress" and "[a]ny claim based upon or arising out of false arrest, assault and battery, detention or imprisonment."

The insured was sued by a former student at the county high school, who alleged that he had been enrolled in special education classes taught by a teacher who coerced him into having a sexual relationship. The complaint asserted that the board of education was liable for violation of his substantive due process right to be free from sexual molestation by his teacher, violation of his right to bodily integrity, negligent hiring and failure to provide a safe school environment. The complaint further contended that the board knew or should have known about the sexual molestation and about the fact that the teacher had a history of drug abuse and behavioral problems when she was hired. After the board tendered the claim to the insurer, the insurer denied coverage and refused to defend on the grounds that the allegations against the board were excluded because they arose out of bodily injury and assault and battery. The school board then filed suit against the insurer.

The appeals court held that coverage was available notwithstanding the exclusions in the policy. The court rejected the insurer's argument that the phrase "arising out of" in the policy requires only a causal connection between the assault and battery and the lawsuit's allegations. Relying on *Yeller v. Nationwide Mutt's Fire*

Insurance Co., 824 S.W.2d 855 (Ky. 1992), the court explained that the policy's exclusionary language required the claim to result directly from the assault and battery or the mental or bodily injury in order for the exclusion to apply. Here, there was no allegation that the school board had engaged in the excluded behavior. The court cited support for its reasoning from a factually similar case, *Board of Public Education v. National Union Fire Insurance Co.*, 709 A.2d 910 (Penn. 1997), in which the Pennsylvania Supreme Court had held that an underlying plaintiff's claims for negligent supervision did not "arise out of" an assault and battery or bodily injury, as defined by an insurance policy issued to the school board. The court concluded, quoting *Watkins Glen Central School District v. National Union Fire Insurance Co.*, 732 N.Y.S.2d 70 (App. Div. 2001), that "[b]ecause the alleged liability of the Board is predicated upon its conceptually independent negligent supervision, application of the subject exclusions would 'effectively eviscerate [the policy] altogether.'"

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