Builder Gets Help In Insurance Fray At Calif. High Court

Law360

A policyholder advocacy group and two Christian organizations urged California's high court Wednesday to rule that an employer's negligent hiring or supervision of a worker who intentionally injures a third party is an accidental "occurrence" under a general liability insurance policy, saying state precedent supports that conclusion.

The issue came before the California Supreme Court via a certified question from the Ninth Circuit in an insurance dispute involving Ledesma & Meyer Construction Co. Inc.

L&M, which contracted with San Bernardino County Unified School District in April 2002 to complete work on Cesar E. Chavez Middle School, has argued that its policy with Liberty Surplus Insurance Corp. should cover claims that its former employee, Darold Hecht, sexually abused a student at the school during the course of the project. Liberty, meanwhile, has countered that a negligent supervision claim against a company can never be a covered accident if an employee of the business intentionally harms someone.

On Wednesday, L&M got support in the form of two amicus briefs, one of which was filed by nonprofit group United Policyholders and the other by the California Catholic Conference and the Association of Christian Schools International.

The Christian organizations, which together oversee hundreds of private schools and universities in California, said that a decision by the California Supreme Court endorsing Liberty's position could potentially be devastating to schools and houses of worship, noting that such institutions are vulnerable to claims of physical and sexual abuse against children and rely on insurance to cover the costs of such claims. In many of those cases, the alleged perpetrator doesn't have the means to pay any resulting judgment, so claimants target the entity that hired that person, according to the Christian groups' brief.

"As long as the insured's negligent act is a substantial cause of the plaintiff's injury, regardless of whether a third party's intentional act may also be a substantial cause, there is coverage under a general liability policy," the groups argued.

UP took a similar stance, asserting that a ruling adopting Liberty's proposed rule would eliminate insurance coverage for the accidental consequences "of a host of intentional acts," not just negligent hiring or supervision claims asserted against the employers of workers who allegedly commit sexual assault. For instance, under Liberty's position, a person who intentionally swings a golf club but accidentally hits someone standing in the vicinity would not be covered for claims resulting from the bystander's injuries, the nonprofit argued.

"That has never been the rule in California, and this court should reject Liberty's attempt to rewrite the [commercial general liability] policies that Liberty and scores of other insurers have sold to California businesses and individual consumers," UP contended.

An attorney for Liberty did not immediately respond to a request for comment.

L&M's contract with the middle school provided that the construction company would defend and indemnify "the owner, its officers, employees and agents" from all claims resulting from its negligence, errors, acts and omissions, court documents show.

Allegations later arose that one of L&M's project assistants, who was hired in 2003, sexually abused a 13-year-old student at the school during the course of the project. The victim filed numerous claims, including negligent hiring and supervision, against both the school district and construction firm in 2010.

Liberty Surplus had issued L&M a commercial general liability policy for the relevant time period and agreed to take up the construction company's defense, but denied a defense to the school district on the grounds it wasn't covered under the policy, forcing L&M to pay the school's defense costs on its own.

The insurer then followed up with a lawsuit seeking a declaration that it wasn't obligated to defend or indemnify either L&M or the school district in the victim's underlying action, while the construction company hit back with its own breach of contract counterclaim.

In 2014, a California district court granted summary judgment in favor of Liberty Surplus, finding that

“L&M’s negligent hiring, retention and supervision of” Hecht was “too attenuated from the injury-causing conduct” to constitute an occurrence.

The construction company appealed, and in August, a Ninth Circuit panel determined that the question of whether claims of negligence in hiring, retaining and supervising an employee who commits sexual abuse fall within the policy’s coverage for an occurrence had never before been looked at by a California court, so the state’s Supreme Court should weigh in.

L&M is represented by Michael J. Bidart, Ricardo Echeverria and Steven Schuetze of Shernoff Bidart Echeverria Bentley LLP.

Liberty Surplus is represented by Patrick Fredette and Christopher Ryan of McCormick Barstow Sheppard Wayte & Carruth LLP.

United Policyholders is represented by David B. Goodwin, Michael S. Greenberg and Marienna H. Murch of Covington & Burling LLP.

The California Catholic Conference and Association of Christian Schools International are represented by Barron L. Weinstein and Charles H. Numbers of Weinstein & Numbers LLP.

The case is Liberty Surplus Insurance Corp., et al. v. Ledesma and Meyer Construction, et al., case number S236765, in the California Supreme Court.

–Additional reporting by Kat Sieniuc. Editing by Alyssa Miller.