California Supreme Court Finds Valid Insurance Coverage Claim Even If Employee Intentionally Caused Injury

The Recorder

The California Supreme Court has ruled that when a third party sues an employer for the negligent hiring, retention, and supervision of an employee who intentionally injured that third party, the suit can allege an "occurrence" under the employer's commercial general liability insurance policy.

The Case

Ledesma & Meyer Construction Company, Inc., and its principals, Joseph Ledesma and Kris Meyer collectively, "L&M") contracted with the San Bernardino Unified School District to manage a construction project at a middle school.

L&M hired an assistant superintendent and assigned him to the project. Thereafter, a 13-year-old student at the school sued in state court, alleging that the assistant superintendent had sexually abused her. The student's claims included a cause of action against L&M for negligently hiring, retaining, and supervising the assistant superintendent.

L&M tendered the defense to its insurers, Liberty Surplus Insurance Corporation and Liberty Insurance Underwriters, Inc. together, "Liberty"). Liberty defended L&M under a reservation of rights. It also sought declaratory relief in federal court, contending that it had no obligation to defend or indemnify L&M.

The district court granted summary judgment to Liberty on the cause of action for negligent hiring, retention, and supervision.

The district court reasoned that the student's injury had not been caused by an "occurrence" because the "alleged negligent hiring, retention and supervision were acts antecedent to the sexual molestation. . . . While they set in motion and created the potential for injury, they were too attenuated from the injury-causing conduct" allegedly committed by the assistant superintendent.

The district court was not persuaded by the argument that L&M's supervision and retention of the

assistant superintendent continued until the time of the molestation. “First, the supervision and retention are still not the injury-causing acts. Second, courts have rejected the argument that the insured’s intentional acts of hiring, supervising, and retaining are accidents, simply because the insured did not intend for the injury to occur.”

On appeal, L&M argued that the district court had misapplied California law.

The U.S. Court of Appeals for the Ninth Circuit asked the California Supreme Court to decide whether, when a third party sues an employer for the negligent hiring, retention, and supervision of an employee who intentionally injured that third party, the suit can allege an “occurrence” under the employer’s commercial general liability insurance policy.

The California Supreme Court’s Decision

In its decision, the court explained that the meaning of the term “accident” in a liability insurance policy is settled in California. An accident, the court stated, is “an unexpected, unforeseen, or undesigned happening or consequence from either a known or an unknown cause.” Under California law, the court continued, the word “accident” in the coverage clause of a liability insurance policy refers to the “conduct of the insured for which liability is sought to be imposed.” Accordingly, the court said, an insurance policy providing a defense and indemnification for bodily injury caused by “an accident” promises coverage for liability resulting “from the insured’s negligent acts.”

The court added that a cause of action for negligent hiring, retention, or supervision seeks to impose liability on the employer, not the employee. Therefore, the court said, although sexual misconduct is a willful act beyond the scope of insurance coverage, an employee’s allegedly intentional conduct did “not preclude potential coverage for L&M” because “L&M’s allegedly negligent hiring, retention, and supervision were independently tortious acts” that formed the basis of its claim against Liberty for defense and indemnity.

Absent an applicable exclusion, employers “may legitimately expect coverage” for claims of negligent hiring, retention, or supervision under CGL insurance policies, just as they do for other claims of negligence, the court concluded.

The case is Liberty Surplus Ins. Corp. v. Ledesma & Meyer Construction Co., No. S236765 Cal. June 4, 2018). Attorneys involved include: Shernoff Bidart Echeverria, Michael J. Bidart, Ricardo Echeverria; The Ehrlich Law Firm and Jeffrey I. Ehrlich for Defendants and Appellants. Steven W. Murray as Amicus Curiae on behalf of Defendants and Appellants. Kasowitz Benson Torres and Brian P. Brosnahan for Franciscan Friars of California, Inc., and Province of the Holy Name, Inc., as Amici Curiae on behalf of Defendants and

Appellants. Weinstein & Numbers, Barron L. Weinstein, Charles H. Numbers and Shanti Eagle for California Catholic Conference and Association of Christian Schools International as Amici Curiae on behalf of Defendants and Appellants. Andrade Gonzalez, Sean A. Andrade, Stephen V. Masterson; Jones Day, David W. Steuber and Tara C. Kowalski for the Los Angeles Unified School District as Amicus Curiae on behalf of Defendants and Appellants. IP BusinessLaw and Antonio R. Sarabia II for National Center for Victims of Crime as Amicus Curiae on behalf of Defendants and Appellants. Covington & Burling, David B. Goodwin, Michael S. Greenberg and Marienna H. Murch for United Policyholders as Amicus Curiae on behalf of Defendants and Appellants. McCormick, Barstow, Sheppard, Wayte & Carruth, Patrick Fredette and Christopher Ryan for Plaintiffs and Respondents. Crowell & Moring and Brendan V. Mullan for Complex Insurance Claims Litigation Association and American Insurance Association as Amici Curiae on behalf of Plaintiffs and Respondents.