

## **Third Circuit Rules No Duty to Defend School District Based on Prior Knowledge of Sexual Abuse of Students**

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On July 26, 2019, the United States Court of Appeals for the Third Circuit held in favor of Coughlin Midlige & Garland's client, an insurer, affirming summary judgment that the insurer had no duty to defend a school district against claims of sexual abuse by a teacher. The three-judge panel unanimously affirmed the order of District Court Judge Kevin McNulty. The District Court order held that the insurer had no duty to defend the insured because the allegations of the underlying complaint were within the policy's Prior Known Acts Exclusion.

The underlying action alleged that a school district knew about its former employee's sexual abuse of students, but allowed him to resign without notifying the authorities. The underlying action also alleged that the school district agreed, in writing, to withhold the teacher's history of sexual abuse from his prospective employers. The teacher was hired at a new school and was later convicted of abusing another student at the subsequent school. While the policy specifically included coverage for "abusive acts," it excluded coverage for claims "based upon, arising out of, or attributable, in whole or in part, to any abusive act" of which the school had knowledge prior to the effective date of the policy.

The Third Circuit undertook an analysis of New Jersey duty to defend case law, specifically in the context of alleged extrinsic evidence, and held that the policy language was unambiguous, and the "allegations in the Complaint unequivocally brings them within the ambit of the Prior Known Acts Exclusion." Further, the Third Circuit held that while the school district waived its ability to rely on extrinsic evidence outside the underlying complaint, looking to the merits of this position, any alleged extrinsic evidence did not change the nature of the underlying plaintiff's claims.

The appeal was argued by Lorraine M. Armenti. The case is *Montville Twp. Bd. of Educ. v. Zurich Am. Ins. Co.*, 2019 U.S. App. LEXIS 22375

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