

District Court Holds No Coverage for School That Knew Teacher Was Abusing Students

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On June 1, 2017, the United States District Court for the District of New Jersey granted summary judgment in favor of American Guarantee & Liability Insurance Company, holding that American Guarantee is not obligated to defend the Montville Township Board of Education for a lawsuit in which a student at another school, "Child M," alleges she was sexually abused by a former Montville teacher. See *Montville Township Board of Education v. Zurich American Insurance Company*, 16-cv-04466 (D.N.J. June 1, 2017). The opinion makes clear that American Guarantee's policy language governs the scope of coverage, and broad exclusionary language ("arising out of"; "relating in any way to") will be applied as written despite the policyholder's creative attempts to argue that a negligence allegation trumps the language of an Abusive Act Exclusion.

In the underlying action, Child M alleged that Montville knew the teacher was sexually abusing students while he was a teacher at Montville, but did not report him to the proper authorities, and, because of a termination agreement between Montville and the teacher, did not inform his subsequent employer about the abuse. Child M alleged that Montville's negligent failure to take the proper actions with regard to the teacher allowed him to abuse her at the subsequent school that employed him.

At issue in the cross-motions was the interpretation of an "Abusive Act Exclusion" in the CGL policy that precluded coverage for any claim for bodily injury "arising out of or relating in any way to an 'abusive act.'" The Court resoundingly held that the Exclusion applies and stated that the allegations in Child M's complaint "'relate to' abusive acts, not just in 'any way,' but in every way that matters.'" (Emphasis in original.)

Focusing on the cause of Child M's injury, the Court rejected Montville's argument that the claims against it were for negligent supervision and negligent misrepresentation, and, therefore, not related to abusive acts. The Court held that the sole cause of Child M's injuries was the abuse committed by the teacher, and distinguished *Flomerfelt v. Cardiello*, 202 N.J. 432 (2010), in which the plaintiff alleged concurrent causes of injury, one of which was covered and one of which was not. The Court stated: "That Child M seeks to recover from *more than one defendant* based on *more than one theory of liability* is not the same thing as saying that *more than one cause*, one covered and one not, combined to inflict an indivisible injury." (Emphasis in original.) The Court also had "no difficulty finding a sufficiently close causal connection between Montville's misrepresentations or negligence and Fennes's abusive, injury-causing acts" such that the Abusive Act Exclusion would apply.

The Court also addressed a separate "Abusive Act Coverage Part," and held that coverage was not available because of an exclusion for "any claim or 'suit' based upon, arising out of or attributable... to any 'abusive act' of which any insured, other than the insured actually committing the 'abusive act', has knowledge prior to the effective date of this Coverage Part." The Court held that exclusion applied because Montville's prior knowledge is the "very essence" of Child M's claim against it, and even though Montville claimed it had no knowledge that the teacher was abusing students while he was employed by

Montville.

This decision is significant for multiple reasons. First, the Court gave a very broad reading to the “arising out of” and “relating in any way to” language in the Abusive Act Exclusion, consistent with New Jersey law. Second, the Court’s holding that Flomerfelt does not apply here because there was only one cause of Child M’s injury, namely the sexual abuse, is significant as policyholders in sexual molestation cases and non-molestation cases frequently attempt to circumvent clear exclusions on the basis that they did not commit the acts excluded, but were simply negligent.

Coughlin Midlige & Garland LLP represented Zurich/American Guarantee in this matter.

If you have any questions about the decision, please feel free to contact Lorraine M Armenti, (973) 631-6008, larmenti@cmg.law or Shayne W. Spencer, (973) 631-6061, sspencer@cmg.law.