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Alert

A Regrettable Insurance Decision From The 9th Circ.

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A recent decision from the United States Court of Appeals for the Ninth Circuit creates considerable uncertainty in the evaluation of the rights and obligations of excess casualty insurers in the context of sexual abuse claims.

In *Westport Insurance v. California Casualty Management*,[1] published Feb. 20, 2019, the Ninth Circuit affirmed the Northern District of California's order granting summary judgment for plaintiff Westport Insurance Corp. over defendant California Casualty Management Co. in a diversity insurance contribution case decided under California law.

The coverage action arose out of three underlying lawsuits filed by three students of Moraga School District against the district and three of its school administrators for failing to prevent a teacher from molesting them over various periods in the 1990s, referred to as the underlying actions.

Westport, through a predecessor company, issued primary general liability insurance policies to the district from 1991 to 1997. Westport also issued a series of annual excess policies covering the district and its employees from Oct. 1, 1994, to Oct. 1, 1997. During the same period, California Casualty issued successive annual liability policies to the Association of California School Administrators providing excess liability coverage to the administrators who were sued.

In the underlying actions, Doe 1 alleged that she was molested during policy periods 1993-94, 1994-95 and 1995-96; Doe 2 alleged that she was molested in the 1995-96 and 1996-97 periods; and Doe 3 alleged that she was molested in the 1996-97 period. Westport settled the three underlying actions on behalf of the district and the administrators for a total of $15.8 million, and California Casualty refused to contribute to the settlements. On cross-motions for summary judgment, the district court awarded Westport $2.6 million in contribution from California Casualty, along with $755,637.20 in prejudgment interest.

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