California Supreme Court Protects California Policyholders for Intentional Acts of Employees

Recently, the California Supreme Court ruled that liability insurers are obligated to cover negligent supervision, hiring, and retention claims against employers resulting from the intentional acts of their employees.

The case, Liberty Surplus Insurance v. Ledesma & Meyer Construction, case no. S236765 (2018), involved an insurance coverage dispute between a construction company, Ledesma & Meyer Construction ("L&M"), and its insurers, Liberty Insurance Underwriters, Inc. ("Liberty") and Liberty Surplus Insurance Corp ("Liberty Surplus"). Liberty was L&M's primary insurer, while Liberty Surplus had the excess policy. L&M had contracted with the San Bernardino Unified School District to renovate a school building while the school was still in session. In a separate action, another court found that an L&M employee sexually assaulted a 13-year-old student while working at the project.

The victim filed multiple claims against L&M, including negligent hiring, supervision, and retention of the employee. L&M tendered to both insurers. The policies included the standard definition of "occurrence" as an "accident." Liberty defended L&M under a reservation of rights, but simultaneously filed a declaratory judgment action against L&M in federal court (the "Coverage Action"). Liberty contended that, based on the terms of the policy, it had no obligation to defend or indemnify L&M.

The Coverage Action went to the U.S. Court of Appeal for the Ninth Circuit, which determined that this was an issue of "exceptional importance" on which the California Supreme Court has yet to decide. Recognizing that existing California law had not adequately addressed this issue, the Ninth Circuit certified the following question to the California Supreme Court:

> "Whether there is an 'occurrence' under an employer's commercial general liability policy when an injured third party brings claims against the employer for the negligent hiring, retention, and supervision of the employee who intentionally injured the third party."

The California Supreme Court agreed to consider the certified question. In its analysis, the Court focused on the definition of "accident" (previously established in California) as "an unexpected, unforeseen, or undersigned happening or consequence from either a known or an unknown cause ." Liberty contended that there was no connection between an accident and negligence, but the Court disagreed, emphasizing that the term "accident" is viewed as "more comprehensive than the term 'negligence' and thus includes negligence." A general liability policy which provides a defense and indemnification for bodily injury that is caused by an accident provides "coverage for liability resulting from the insured's negligent acts," even if it is based on an employee's intentional conduct.

The Court focused on the fact that the allegations of negligence against L&M sought to impose liability on the employer, not the employee. L&M's allegedly negligent hiring, retention and supervision were acts independent from the employee's actions, and it was for its own independent acts that L&M sought coverage under the Liberty policies. Because of this, the Court could not rationalize the denial of coverage and concluded that accepting Liberty's arguments "would leave employers without coverage for claims of negligent hiring, retention, or supervision whenever the employee's conduct is deliberate. Such a result would be inconsistent with California law…" The Court concluded that "absent an applicable

exclusion, employers may legitimately expect coverage for such claims under comprehensive general liability insurance policies, just as they do for other claims of negligence."

This outcome is a sigh of relief for California employers. Despite best efforts to screen employees, it is impossible for employers to ensure that they will never commit harmful intentional acts. California companies can now rest a bit easier, knowing that they are still covered when the unexpected happens, even if an employee's wrongful actions were intended. If your insurance company tries to deny coverage by blending your alleged negligence as an employer with an employee's intentional act, look to see if your state has an equivalent decision to Ledesma & Meyer for support.

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