

Failure to Prevent Sexual Abuse an “Accident,” Not a “Wrongful Act”

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The Oregon Court of Appeals has ruled that a school district's allegedly negligent failure to prevent the sexual abuse of a student constituted an "occurrence" rather than a "wrongful act" and therefore was subject to the \$50,000 deductible under its "occurrence"-based coverage as opposed to the \$5,000 deductible under its "wrongful act" coverage. See *North Clackamas Sch. Dist. No. 12 v. Oregon Sch. Bds. Ass'n Property and Cas. Trust*, 164 Ore. App. 139, 1999 Ore. App. LEXIS 2107 (Ore. App. Dec. 15, 1999). The school district had purchased a policy covering its legal liability "because of bodily injury or property damage . . . caused by an occurrence." To the extent that coverage did not exist under the "occurrence"-based coverage part, the policy further afforded coverage for liability "resulting from a wrongful act committed by an insured." The parties disputed whether the larger retention for "occurrence" claims applied. The court noted that an "occurrence" required an "accident" under the policy and then explained that whether circumstances constitute an "accident" for insurance purposes under Oregon law depends on whether the resulting harm or injury was intentional. In this case, the claimant alleged that the school district negligently hired, supervised, trained and retained the teacher who abused the student. The court concluded that, because the record contained no evidence that the school district intended to injure the student, the student's injury was an "accident" covered under the "occurrence"-based coverage grant and not the "wrongful act" coverage.

While the policy language and coverage clause at issue in this case are somewhat unique, the case could prove relevant in disputes over whether a general liability or errors and omissions policy applies to a particular claim.