

California Court: All Claims Arise out of Sexual Molestation, So Coverage Barred

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The California Court of Appeal, First District, has ruled that a sexual molestation exclusion in a professional liability policy bars coverage for several suits against a school district filed by parents and students alleging that a teacher had sexually molested the students over a period of years. The court reasoned that all causes of action "arising out of" the acts of sexual molestation—including the alleged failure to supervise teachers and students—were barred under the exclusion. *Berkeley United School District v. United National Ins. Co.*, No. A093578, 2002 Cal. App. LEXIS 1375 (Cal. Ct. App. Feb. 5, 2002).

Former students and parents of former students of the Arts Magnet School in the Berkeley Unified School District filed suit against the school district and one of its teachers alleging that the teacher had sexually molested the students over a number of years. In addition, the suits alleged that the School District and certain of its employees had committed acts and omissions—such as negligent retention and supervision—that put the children at risk of sexual abuse. The School District sought coverage under its professional liability policy for the claims against it. The School District acknowledged that the claims against the teacher were not covered based on the sexual molestation exclusion, but contended that the exclusion was ambiguous as to whether it applied to the claims against the School District for negligence. The insurer disclaimed coverage, contending the exclusion barred coverage for all claims "arising out of" the acts of sexual molestation. The exclusion provided: "[t]his insurance does not apply to any claims or suits seeking damages... arising directly or indirectly from any actual or alleged participation in any act of sexual misconduct, sexual molestation, or sexual abuse, physical or mental, or any person by the Assured, any employee of the Assured or any volunteer worker."

The California court agreed with the insurer, holding that the exclusion barred coverage for the claims against the School District. In so holding, the court rejected the policyholder's argument that the exclusion was ambiguous as to whether it applied to insureds who were not direct participants in the sexual misconduct. The provision "excluded from coverage not only claims for damage for injuries inflicted by an employee, such as those inflicted on the claimants by [the teacher], but also claims for damages for the negligent employment or supervision of employees such as [the teacher]" because these claims "arise from" the improper conduct of the employee. Because all of the claims arose directly or indirectly from the teacher's acts of sexual molestation, no coverage was provided. The court also rejected the School District's argument that the exclusion did not apply because the teacher was not acting within the scope of his duties, reasoning that this

interpretation would render the exclusion meaningless because no act of sexual molestation would ever be considered within the scope of an employee's duties.