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Insurer Has Duty to Defend Sexual Abuse Claims Where Negligence of Partner Is Alleged

Insurance Law Update

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In *State Auto Property and Cas. Ins. Co. v. Kincaid,* 2011 WL 344086 (C.D. Ill. February 1, 2011), the U.S. District Court for the Central District of Illinois, applying Illinois law, found that a commercial general liability (CGL) insurer had a duty to defend a hair salon and a business partner over a lawsuit filed against the other business partner alleging sexual abuse of a minor who worked at the hair salon.

State Auto issued a business liability policy to "Steve Collins and Paul Kincaid DBA The Hair Clinic." Kincaid sexually abused a minor who worked at the hair salon both at the hair salon premises and Kincaid's residence, which Kincaid shared with Collins. Kincaid was criminally prosecuted and sentenced to prison. The abused minor filed a lawsuit against Kincaid, Collins and the hair salon alleging, among other things, that: Collins was negligent because he failed to protect the minor from Kincaid and Collins knew or should have known of Kincaid's illegal activities; Collins participated in a fraudulent conveyance of assets designed to prevent a minor from obtaining assets previously held by Kincaid; and the hair salon was liable for negligent hiring, retaining and supervising Kincaid. Collins and the hair salon sought coverage for the minor's lawsuit from State Auto.

State Auto filed an action for a declaratory judgment that it had no duty to defend Collins and the hair salon. Seeking summary judgment, State Auto argued that it had no duty to defend Collins because Collins knew of Kincaid's abusive behavior, and thus Collins "expected" Kincaid's actions. State Auto also argued it had no duty to defend the hair salon because it was not a distinct entity from Collins but a "doing business as" entity, and because the insurance policy did not contemplate that sexual abuse would take place at the hair salon premises.

The district court denied State Auto's motion and instead independently entered summary judgment in favor of Collins and the hair salon. The court first recognized the general rule under Illinois law

that insurance companies have no duty to defend insureds who sexually abuse minors because the resulting harm is “expected” and therefore no longer an accidental “occurrence” covered by the policy. However, the court held that because the minor’s underlying complaint alleged that Collins negligently allowed the abuse at the hair salon to occur, the minor’s allegations of negligence, negligent hiring, and negligent supervision were potentially covered by the policy. The court found that nothing in the complaint showed that Collins “expected” or “intended” the minor’s injuries, and thus the injuries were by definition “accidental” and constituted an “occurrence” that triggered the insurer’s duty to defend Collins. The court also found that the insurer had a duty to defend the hair salon because Collins and the hair salon were one in the same such that a suit against the hair salon was a suit against Collins. Finally, the court held that the triggering of the duty to defend as to one claim required the insurer to defend all of the claims alleged against Collins and the hair salon.

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