

Michigan Court of Appeals Upholds Sexual Molestation Exclusion

February 24, 2010

For the first time in its history, the Michigan Court of Appeals has upheld a broad sexual molestation exclusion in a homeowner's insurance policy.

In its opinion, issued on Jan. 26 in the case *Mother of John Doe v. Citizens Insurance Company of America, et al.*, the court carefully distinguished the sexual molestation exclusion from the intentional acts exclusion, finding that intent is irrelevant.

The plaintiff, a five-year-old boy, who swam at a public beach in Traverse City, Michigan, befriended a 13-year-old boy who, at some point, asked the plaintiff to go to a public restroom. Allegedly, the teen then disrobed the 5-year old, performed oral sex on him, and then had the 5-year reciprocate. Upon leaving the restroom, the plaintiff immediately informed others, and the police were summoned.

The 13-year old's foster parent had a homeowner's insurance policy with Citizens Insurance Company of America. The policy contained both an Intentional Acts Exclusion and a Sexual Molestation Exclusion, the latter precluding coverage for bodily injury "arising out of sexual molestation."

Because the term sexual molestation was not defined in the policy, the court determined that one should use the commonly understood meaning. According to Random House Webster's Collegiate Dictionary, Second Edition, the definition of "molest" includes "to make indecent sexual advances to" and "to assault sexually." The court concluded that the alleged conduct unambiguously fell within that definition.

The court rejected the plaintiff's claim that the sexual molestation exclusion did not apply because the 13-year old was a minor. In its ruling, the court noted that the policy exclusion did not state that the molester had to be an adult.

Finally, the court carefully distinguished the sexual molestation exclusion from the intentional acts exclusion as set forth in *Fire Insurance Exchange v. Diehl*, 450 Mich 678 (1996). The court stated:

"At issue is a separate exclusion for any injury 'arising out of sexual molestation,' and the language of that exclusion does not require that there be an intent to injure or that injury be reasonably foreseeable."

The court's ruling in this case is particularly noteworthy because the sexual molestation exclusion not only bars coverage for the actor, but also for the actor's parents. Furthermore, the court ruled that age or intent is irrelevant for applicability of the exclusion.

MICHIGAN COURT OF APPEALS UPHOLDS SEXUAL MOLESTATION EXCLUSION Cont.

Plunkett Cooney represented Citizens Insurance Company of America in the trial court proceedings and the firm's Appellate Law Practice Group drafted the appellate papers and successfully argued the case for Citizens on appeal.

Should you have any questions about *Mother of John Doe v. Citizens* or similar cases, please contact a member of Plunkett Cooney's Insurance Law Practice Group at (248) 901-4000 or visit the firm's website.