Insurer Exposure Limited in Suit Involving "Fight Club" Daycare

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A Delaware court recently decided that a daycare was limited to $100,000 in coverage for tort claims made by the parents of two children who alleged that the daycare's employees forced their children to fight. In so ruling, the court rejected the argument that the commercial liability policy's global molestation and abuse exclusion and the coverage limitations of a separate "buy-back" molestation endorsement were vague, ambiguous and contradictory.

In *United States Underwriters Insurance Company v. The Hands of Our Future, LLC*, a daycare, its owners and employees sought coverage for tort claims made against them for allegedly forcing two toddlers to fight and recording the melee on a cellphone. Although the daycare's policy contained a global coverage exclusion for injuries sustained as a result of child molestation or abuse, the daycare had purchased an endorsement providing limited coverage to the daycare and its owners for molestation and abuse claims. This "buy-back" endorsement, however, strictly excluded coverage for the individuals who committed, or were alleged to have committed the molestation or abuse. The buy-back endorsement further limited coverage to $100,000 per occurrence, including defense costs. The policy defined an occurrence to include "multiple acts of 'child molestation or abuse' of one or more children committed by any one person or . . . committed by more than one person acting in concert."

Despite the clear language in the buy-back endorsement excluding coverage for the individual perpetrators, the accused employees sought coverage under the policy. They argued that the exclusion should to be construed against the insurer because the term "abuse" has two meanings—"to commit sexual assault" or "to treat in a harmful or injurious way." The court rejected the employees' contention by harmonizing the terms of the policy. The employees did not dispute that "molestation" meant improper sexual contact, thus the court reasoned that the term "abuse" must include harmful physical or verbal contact. Otherwise "abuse" would be uselessly repetitive when read in conjunction with the term "molestation." What's more, the court concluded that because the buy-back endorsement was meant to override the global molestation and abuse exclusion, the definition of molestation or abuse in the buy-back coverage must cover claims that would have been otherwise precluded by the global exclusion. If the term "abuse" in the global exclusion only excluded coverage for improper sexual contact, then purchasing buy-back coverage for claims arising from harmful physical or verbal contact would be senseless.

After the court gave the term "abuse" its plain meaning, it found that the $100,000 per occurrence coverage limit was unambiguous and applied here so that the involvement of more than one employee and the claim that abuse had occurred over the course of many weeks or months was only one occurrence under the policy. Accordingly, the insurer was required to provide only $100,000 in costs eroding coverage to the daycare and its two principals.

The ruling in *United States Underwriters Insurance* reaffirmed Delaware's long-standing rules regarding insurance contract interpretation. First, the interpretation of an insurance contract requires that all of the pertinent provisions of the policy be read as a whole, rather than a single provision in isolation. Second, an interpretation that gives effect to each term of a policy is preferable to any interpretation that would result in a conclusion that some terms are uselessly repetitive. Finally, the language of a policy must be given its plain meaning when it is clear and unambiguous.

White and Williams LLP represented United States Underwriters Insurance Company in this matter. For further information, please contact John D. Balaguer (302.467.4501; balaguerj@whiteandwilliams.com) or James S. Yoder (302.467.4524; yoderj@whiteandwilliams.com).

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