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Insurer liable for coverage for company employee's intentional acts, state high court rules

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The case hinged on the question of what could be considered an "occurrence" under a general liability policy. The court found the hiring of an assistant construction superintendent who then committed a crime was an accident from the company's perspective. Liberty Surplus Insurance Corporation v. Ledesma & Meyer Construction Company Inc., 2018 DJDAR 5349.

Ledesma was hired by the San Bernardino Unified School District to manage a middle school construction project. The company hired Darold Hecht in 2003; a student sued the district and Ledesma in 2010, claiming Hecht sexually abused her.

The company then tendered the case to Liberty, which defended the girl's claims but separately convinced a district court judge it had no liability for Ledesma's negligent hiring and management. It argued the hiring itself was not the act that caused harm, and the insurer was "too attenuated" from the acts of the employee.

Ledesma appealed the ruling to the 9th U.S. Circuit Court of Appeals, which referred the case to the state Supreme Court.

Justice Carol A. Corrigan wrote that "Hecht's intentional conduct does not preclude potential coverage," adding, "a liability policy refers to the conduct of the insured."

"Liberty's arguments, if accepted, would leave employers without coverage for claims of negligent hiring, retention, or supervision whenever the employee's conduct is deliberate," Corrigan wrote. "Such a result would be inconsistent with California law, which recognizes the cause of action even when the employee acted intentionally."

Corrigan drew on the definition of an accident adopted under Delgado v. Interinsurance Exchange of Automobile Club of Southern California (2009) 47 Cal.4th 302, 308 and subsequent cases: "An accident ... is never present when the insured performs a deliberate act unless some additional, unexpected, independent, and unforeseen happening occurs that produces the damage."

She found Hecht's actions met that test from Ledesma's perspective.

"It leaves a lot of questions unanswered, but it's clear in some respects and definitely has potential to shake things up quite a bit," said Jeffrey I. Ehrlich of the Ehrlich Law Firm, who argued for Ledesma in the high court in March. "What's clear is that unless policies have specific exclusions for negligent hiring, those policies will be construed to provide coverage."

Ehrlich said the ruling contradicts numerous appellate decisions that have held "unintended consequences are never an accident." But he added it remains to seen where courts will draw the new line in particular novel circumstances.

The case will now go back to the 9th Circuit, which is expected to return it to district court, Ehrlich said.

Justice Goodwin H. Liu offered a separate concurring opinion that sought to clarify some of these questions for appellate courts.

Aaron M. Cargain, an attorney with Kaufman Dolowich & Volluck LLP in San Francisco who is not involved with the lawsuit, said the "limited" case does not appear to conflict with prior appellate decisions.

"Ledesma provides causation is established for purposes of California tort law if the defendant's conduct is a 'substantial factor' in bringing about the plaintiff's injury," Cargain said.

Patrick Fredette, a partner with McCormick, Barstow, Sheppard, Wayte & Carruth who argued the case for Liberty Surplus Insurance, did not return a call seeking comment on Monday afternoon.

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