

One by Interpretation: Tenth Circuit Finds Repeated Sexual Abuse Constitutes a Single Occurrence

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In *Church of Jesus Christ of Latter-Day Saints v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA* (“LDS”), the 10th Circuit Court of Appeals added to a substantial body of national case law addressing the meaning of “occurrence” in cases involving sexual abuse and molestation by individuals connected to greater organizational structures, finding that repeated offenses by an individual over an extended period of time can still constitute a single “occurrence.”[1]

In 2004, Michael Jensen, a 13-year-old child from a prominent LDS family, was charged with two felonies and pleaded guilty to two misdemeanors for groping two 13-year-old classmates in Utah. After his conviction, Jensen’s family moved to West Virginia. During this period, between 2007 and 2011, the LDS Church presented him as a babysitter to numerous church families. In 2013, Jensen was convicted of sexual assault and sexual abuse. Consequently, his victims and their families sued Jensen’s parents, LDS church officials, and the LDS Church itself. Before a verdict was reached in the underlying litigation, the LDS Church reached a settlement with the victims and their families.

The LDS Church sought coverage from its general liability insurers, National Union Fire Insurance Company of Pittsburgh, PA, and ACE Property and Casualty Insurance Company, for defense and settlement costs associated with the Jensen litigation. The insurers denied coverage, asserting that each instance of abuse of a victim constituted a separate occurrence, such that none of the individual settlements reached with the various victims surpassed the church’s self-insured retention and no coverage was available. The LDS Church sued, arguing that Jensen’s abuse throughout the years constituted one occurrence regardless of the number of victims.

National Union’s policy defined “occurrence” as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions,” consistent with standard ISO CGL policy language, but also included batching language stating that “[a]ll such exposure to substantially the same general harmful conditions will be deemed to arise out of one Occurrence.”

ACE’s policy included substantially the same definition, with even broader batching language. Both policies required the LDS Church to pay its self-insured retention before accessing any coverage from the policies.

The Court explained that it “need not hold that the church’s interpretation is the most reasonable or most plausible interpretation.” With that framework in mind, comparing the two parties’ interpretations of the National Union policy first, the Court found that “[a]n insured could reasonably read the deeming clause to consolidate separate victims’ exposure to that dangerous environment into one occurrence” and held that, “even though the victims were separate children abused at separate times in separate places, the church plausibly reads the policy to count those ‘repeated exposures’ as ‘one Occurrence.’”

Turning to the ACE policy, the Court stated that “[t]he church’s interpretation fits ACE’s policy even better.” Considering that definition’s further clarification, which added “regardless of the frequency or repetition thereof, or the number of claimants,” the Court explained that “[t]o the church, this means that there was one occurrence when separate victims were exposed at separate times in separate places to the dangerous environment created by the church’s alleged negligence.”

Finally, the Court underscored the principle that in coverage disputes between insurers and insureds, ambiguity is interpreted in favor of the insured. Dismissing the lower court’s concerns about insureds being able to shift the meaning of “occurrence” to always fit the particular claim in front of them, the Court emphasized the burden on the insurance companies to draft clear provisions and avoid the “high price” of ambiguous provisions.

With this opinion, the 10th Circuit has added another strong pro-policyholder opinion to the body of case law that has developed around these organizational oversight claims tied to underlying instances of abuse and molestation, many of which have developed through extensive litigation involving churches, youth organizations, and educational institutions. Although the specific policy language in the policy at issue will always control, as it did here, the language addressed here is largely consistent with standard ISO CGL policy language, meaning many insureds finding themselves facing a similar claim will be able to utilize this opinion to their benefit.

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