

Weston Hurd Insurance Update - May 2016

Insurer Prevails in Church Lawsuit *Ohio Supreme Court Enforces Abuse and Molestation Exclusion in Commercial Policy*

Prepared By
Monica L. Frantz

In *World Harvest Church v. Grange Mutual Casualty Company*, Slip Opinion 2016-Ohio-2913, decided on May 12, 2016, the Ohio Supreme Court enforced an abuse exclusion in a commercial insurance policy, finding no coverage for damages awarded against an employer found liable for its employee's physical abuse of a child in the care, custody or control of the employer.

Factual and Procedural Background

In 2006, Michael and Lacey Faieta filed suit against World Harvest Church ("WHC") and its employee, Richard Vaughan, alleging that Vaughan beat their two-and-a-half-year-old son while the child was attending WHC's daycare center. WHC settled the Faietas' lawsuit for \$3.1 million and sought to have its commercial carrier, Grange Mutual Casualty Company ("Grange"), reimburse it for a portion of the settlement. Grange denied WHC's insurance claim, and WHC filed suit.

The commercial insurance policy included a corporal punishment endorsement that provided coverage for injuries that result from the corporal punishment of a student administered by or at the direction of the insured. The policy also had an "Abuse or Molestation Exclusion" ("abuse exclusion") which excluded coverage for bodily injury arising from "the actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured" or the negligent supervision of a person for whom any insured is or ever was legally responsible. Grange argued, in part, that the abuse exclusion excluded coverage for WHC's claim.

The trial court sided with WHC, and the Tenth District Court of Appeals affirmed part of the trial court's decision finding Grange had to cover WHC for an amount of compensatory damages, attorney fees, and post judgment interest. The Ohio Supreme Court accepted Grange's discretionary appeal.



Ohio Supreme Court Holding

The Ohio Supreme Court reversed the Tenth District's determination that Grange is responsible for coverage for damages awarded to the Fаетas, finding that the language of Grange's abuse exclusion bars coverage for an award of damages based on WHC's vicarious liability arising from Vaughan's abuse of the child while in WHC's care and custody.

Rationale

The Court concluded that the language of the abuse exclusion encompassed WHC's vicarious liability for Vaughan's intentional infliction of emotional distress arising from the abuse. The Court did not find any language in the abuse exclusion that limits its application to damages awarded for an insured's direct liability, explaining: "The failure to include an express denial of coverage for claims of secondary, or vicarious, liability, does not support the interpretation advanced by WHC, i.e., that the policy must therefore cover vicarious liability. Nor does it render the exclusion ambiguous."

The Court further held that, because the result of its decision was that no claims were covered by the insurance policies, there was no basis to conclude that Grange must indemnify WHC for the attorney fees awarded on noncovered claims, nor was Grange obligated to pay any amount of post judgment interest.

Assessment

This is an important decision that enforces the abuse exclusion that is found in many commercial policies. The Ohio Supreme Court did not disturb the Tenth District Court of Appeals' conclusion that the exclusion unambiguously applies to physical abuse and not just sexual abuse. Importantly, the Court found that the exclusion is not ambiguous, in that it clearly excludes claims for bodily injury arising from secondary, or vicarious, liability.

Please contact your Weston Hurd attorney if you have any questions about this decision.

Ohio Supreme Court Slip Opinion

[World Harvest Church v. Grange Mutual Casualty Company](#)



Monica L. Frantz is an Associate with Weston Hurd LLP. She focuses her practice on litigation with an emphasis on insurance coverage and defense. Monica also represents clients in matters involving construction claims and defects, products liability and workplace intentional tort, legal malpractice, and commercial litigation. Monica can be reached at 216.687.3261 or MFrantz@westonhurd.com.

About Weston Hurd LLP

With offices in Cleveland, Columbus and Beachwood, Weston Hurd LLP provides comprehensive legal counsel to Fortune 500 companies, insurance carriers, financial institutions, healthcare providers, small- and medium-sized businesses, the real estate industry, governmental agencies, non-profit enterprises and individuals.

For additional information regarding Weston Hurd's Insurance publications, please visit the [Publications](#) page on Weston Hurd's web site. Information about Weston Hurd's Insurance Practice Group and its attorneys, can be found on the [Practice Areas](#) page.