

**NEVADA FEDERAL COURT FINDS NO COVERAGE FOR MOLESTATION ALLEGATIONS**

June 13, 2013 *John H. Podesta*

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Judge James Mahan of the U.S. District Court in Las Vegas, Nevada, has granted Discover Property and Casualty Insurance Company's motion for summary judgment, finding that the allegations against the defendant of sexually assaulting a 12 year old boy did not trigger the insurer's duty to defend or indemnify under a general liability policy.

The ruling was supported on three different grounds:

- (1) the injuries were not the result of an "occurrence", meaning an accident;
- (2) coverage was barred pursuant to the "intentional act" exclusion; and
- (3) the "abuse and molestation" exclusion in the general liability policy applied.

In addition to the substantive ruling, the case is also significant in that the court ruled based upon language of the underlying complaint, adopting the "four corners" or "complaint" rule.

**Background**

The plaintiff had sued William Scudier, seeking damages because of various acts of alleged sexual mis-conduct and restraint of the plaintiff against his will when he was 12 years old. The complaint alleged several examples of offending conduct by Mr. Scudier that were, frankly, disturbing. At the time of the incidents, Mr. Scudier was a maintenance person working for a Las Vegas homeowners' association, who allegedly had befriended the young boy and gained his confidence in order to carry out the abuse.

Discover argued in its motion for summary judgment that the complaint and other filed documents by the plaintiff demonstrated liability existed against the insured, if at all, based upon non-accidental conduct. The court followed the Nevada Supreme Court decision in *Beckwith v. State Farm Fire and Casualty Company*, 120 Nev. 23, 27 (2004), which found that if defendant intended the acts that caused the injury, any resulting injury was not the result of an "occurrence."

The court also granted Discover's motion on the ground that the "intentional act" exclusion applied, rejecting the plaintiff's argument that there was a triable issue whether he had "consented" to the sexual contact. The court found that as a matter of law a minor could not consent to sex with an adult.

Finally, the Discover policy had an exclusion specific to abuse and molestation, which were undefined terms. Using ordinary definitions in the "plain ordinary and popular connotations" of the words used, and relying upon the Nevada Supreme Court decision in *Fire Insurance Exchange v. Cornell*, 120 Nev. 303, 306 (2004), Judge Mahon ruled that sex with an underage boy constituted "abuse" and "molestation" under Nevada law.

**The Significance of the Ruling**

This case is significant in two respects.

First it emphasizes the "four corners" or "complaint" rule to determine coverage or a duty to defend. This provides guidance to parties and lawyers pursuing insurance litigation.

Second, the case emphasizes interpretation of insurance contracts in a commonsense approach.

The case is *Discover Property and Casualty Insurance Company v. William Scudier*, No. 2:12-CV-836 JCM (CWH) Document No.

39 (May 16, 2013).

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