"Intent" Not Required for "Sexual Molestation"

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Foster Swift Insurance E-News

March 30, 2010

The Michigan Court of Appeals approved for publication its *per curiam* January 26, 2010 decision in *Doe v Citizens Insurance Company of America, et al* (Court of Appeals No. 288776).

Five-year-old John Doe was on a public beach. Defendant Hand, age 13, was also on the beach. Hand and Doe both went to the public restroom where, at Hand's request, Doe and Hand performed fellatio on each other. Doe brought suit against Hand and Boyle, with whom Hand resided. In a separate action, Doe sought a declaratory judgment that Citizens owed defense and indemnification to Hand and Boyle pursuant to Citizens' homeowners insurance policy. Citizens argued that a "sexual molestation" exclusion precluded coverage.

In affirming the grant of summary disposition to Citizens, the Court of Appeals held first that although the term "sexual molestation" was not defined in the policy, the "commonly understood meaning" of that term was sufficient to exclude the conduct of Hand.

The *Doe* court also rejected plaintiff's argument that "sexual molestation" only refers to actions by an adult against a child. None of the cases presented to the Court stood for the proposition that a molester must be an adult.

Finally, *Doe* rejected plaintiff's argument that *Fire Insurance Exchange v Diehl*, 450 Mich 678; 545 NW2d 602 (1996), mandated reversal. The *Diehl* court held that when an action is based upon a minor performing sexual acts on another minor, intent cannot be inferred as a matter of law. In *Doe*, however, the plaintiff's underlying complaint alleged sexual molestation. The "sexual molestation" exclusion in the Citizens policy is a separate exclusion from exclusions for intentional acts and/or injuries. The "sexual molestation" exclusion did not require that there be intent to injure or that injury be reasonably foreseeable, and thus Hand's intent or lack of intent was irrelevant.

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