From: John Travis
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Gallagher Sharp Newsflash: Ohio Supreme Court Holds No Coverage for Abuse Claim

On May 12, 2016, the Supreme Court of Ohio, in *World Harvest Church v. Grange Mut. Cas. Co.*, Slip Op. No. 2016-Ohio-2913, unanimously held that an abuse or molestation exclusion in a commercial liability policy excludes coverage for an award of damages based on the insured's vicarious liability for a claim arising from its employee's physical abuse of a child in the insured's care and custody. The Court also held that the policy does not provide coverage for a related award of attorney fees or postjudgment interest.

In the underlying lawsuit, Michael and Lacey Faieta sued World Harvest Church and Harvest Preparatory School and its employee, Richard Vaughan, for claims arising from an incident wherein the Faietas' minor son was allegedly beaten by Vaughan with an object. Specifically, the Faietas asserted claims of assault and battery against Vaughan, claims of negligence, and intentional infliction of emotional distress against Vaughan and World Harvest, as well as claims of negligent hiring and supervision and respondeat superior against World Harvest. Grange, which insured World Harvest under a commercial general liability policy and umbrella policy, agreed to defend the suit under a reservation of rights.

At trial, the jury awarded the Faietas $764,235 in compensatory damages and $5 million in punitive damages against World Harvest and $134,865 in compensatory damages and $100,000 in punitive damages against Vaughan. Final judgment was entered against World Harvest for $2,871,431.87, which included $82,365 in damages awarded against Vaughan for which World Harvest was found secondarily liable. The verdict was upheld by the Tenth District Court of Appeals and then settled for $3,101,147.

Subsequently, World Harvest filed a breach of contract and bad faith lawsuit against Grange, alleging that Grange had improperly refused to indemnify World Harvest for any portion of the judgment. The trial court determined that Grange was obligated to indemnify World Harvest for $1,472,677 in compensatory damages, attorney fees, and postjudgment interest, but did not have to pay for punitive damages. On appeal, the Tenth District affirmed in part, ordering Grange to pay World Harvest only the $82,365 in compensatory damages for which it was secondarily liable, the full amount of attorney fees, and only a portion of postjudgment interest. In doing so, the appellate court held that the Grange policy only excluded coverage for damages arising from World Harvest's direct liability.   On reconsideration, the appellate court ordered Grange to pay postjudgment interest on the full amount of the judgment.

The Supreme Court of Ohio reversed the court of appeals decision. First, the Court considered whether the endorsed molestation or abuse exclusion in the Grange policies issued to World Harvest barred coverage for the amount awarded against World Harvest based on vicarious liability. In holding that it did, the Court noted that the abuse exclusion was broad and expressly excluded coverage for "bodily injury" arising out of actual or threatened abuse by anyone as long as the victim was in the care, custody or control of the insured. The Court further found that the exclusion was not limited only to sexual abuse or to an insured's direct liability. Having found no coverage for any of the Faietas' claims, the Court also concluded that Grange was not

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obligated to pay any award of attorney fees or postjudgment interest. Accordingly, the court of appeals decision was reversed.

The opinion can be found at: http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-2913.pdf .

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