

Greg Van Houten for Law360: Refuting Insurer Denials Linked to Employee Misconduct

By Greg Van Houten | April 24, 2018

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Because of the long-overdue spotlight placed on sexual harassment and abuse in the United States, a growing number of corporate and nonprofit entities face significant legal costs associated with their employees' misconduct. To mitigate their legal costs, such entities often turn to their liability insurers and the insurance coverage they purchased for significant premiums. Many policyholders have found, however, that instead of receiving the coverage they bargained for, they receive a denial letter from their insurer citing a sexual abuse exclusion. When faced with a denial, policyholders should never assume that their insurer's interpretation is correct; and in fact, some policyholders are well-positioned to refute such denials, especially when the cited exclusion fails to define "abuse" or is otherwise vague.

Coverage can be an uphill battle when "abuse" is specifically defined and the alleged misconduct fits squarely within the definition. For example, in *Tolson v. The Hartford Financial Services Group*, the court found that an underlying alleged sexual battery triggered a sexual abuse exclusion that broadly defined "sexual abuse" and listed seven specific examples of sexual abuse including sexual molestation, voyeurism and the use of sexually suggestive language. The exclusion also provided that it applied to bodily injury claims based on the failure to investigate or report sexual abuse, or the failure to supervise or protect others from sexual abuse. Considering the broad and clearly defined exclusion in *Tolson*, the underlying allegations could have been far less reprehensible — for example, the use of sexually suggestive language — and they still may have triggered the exclusion.

But, broad and robust abuse exclusions, like that in *Tolson*, are not found in every policy. ...

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