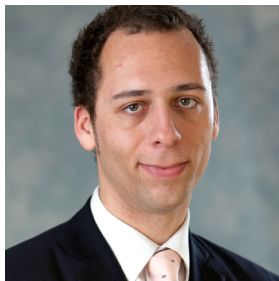


Client Advisory | May 2009

Former City Lawyer Sues Governors of Jesuit School for Record Amount of £5m Alleging Sexual Abuse



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We have reported since July 2008 on a new long-tail liability for insurers - abuse claims. This new long-tail exposure for insurers is the result of the landmark decision of the House of Lords in *A v. Hoare* ([click here](#)) which gave the courts discretion to extend time limits for bringing abuse claims where it was “equitable to do so”. Abuse claims have led to a raft of expensive settlements in the US, notably involving the Catholic Church (which has paid out in excess of £1 billion in settlements), and we look set to face a similar tide in the UK. Since *Hoare* we have seen further developments in this area causing concern for insurers, for example, the decision in *J, K, P v. Archbishop of Birmingham* (QBD 25/07/08) ([click here](#)).

The latest abuse case of concern is the case of *Patrick Raggett v. (1) the Society of Jesus Trust 1929 for Roman Catholic Purposes and (2) the Governors of Preston Catholic College* [2009] EWHC 909 (QB), which involves a claim brought by Mr Raggett against the governors of a Jesuit-run school he attended. Mr Raggett, once a City lawyer, has claimed £5 million in damages for sexual abuse by a priest (now dead) in the 1970s. If successful, Mr Raggett’s claim will smash the previous UK record for damages in respect of sexual abuse (£620,000) and will rival some of the highest payouts made in the US. It would also exceed the UK’s largest award for an asbestos-related injury.

Mr Raggett has, so far in his claim, already established that he was in fact abused and that the governors are vicariously liable

for the same. The governors’ limitation defence was therefore unsurprisingly rejected by the court in exercising its discretion to allow Mr Raggett’s claim to proceed. Next for the court are issues of causation and damages. The insurers of the school governors have confirmed that they are on risk.

Given the courts’ attitude, many more of such cases are expected to be allowed to proceed. Insurers (mainly public liability insurers) should be prepared for a significant long-tail exposure to institutions typically facing such claims (i.e. churches, schools, care homes). The following are some of the coverage issues that may arise:

- if the policy contains an exclusion for deliberate acts, does that apply only to the policyholder itself or also to the acts of the employees? Such exclusion clauses will be particularly relevant in circumstances where the acts of employees can be “attributed” to the insured so that the deliberate acts of the employees are treated as those of the insured.
- abuse is likely to lead to psychiatric rather than physical injury (in Mr Raggett’s case no physical injury ever occurred). Policies are often expressed to cover liability for “bodily injury”; legal authority suggests that bodily injury should be construed to cover psychiatric injury, but the precise wording of the policy would have to be considered.

- there will be difficulties in identifying when an injury has occurred for the purposes of deciding which policy is triggered - the abuse can be said to have caused the injury, but there may be medical evidence that the psychiatric injury does not occur until many years after the abuse has ceased - this would mirror the situation in relation to the trigger of cover for claims involving mesothelioma (a cancer caused by asbestos exposure).
- situations where an individual has abused more than one person or where there are several abusers with the same

employer are likely to give rise to aggregation questions - if the policy contains aggregation provisions, the precise circumstances will have to be analysed in order to apply the deductible, any aggregate limit or other policy limits - abuse claims are likely to raise acute aggregation issues.

Given the possible severity of the problem, insurers would be well-advised to review their books of public liability cover for the last three or four decades. We will continue to report on developments.

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