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SEXUAL ABUSE LITIGATION & COVERAGE CONFERENCE

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FINDING COVERAGE FOR SEXUAL ABUSE CLAIMS AND COVERAGE LITIGATION UPDATE



Moderator:
E. Lacey Rice, Esq.
Ropers Majeski



Kristen Drake
President
PolicyFind



Danielle Valliere, Esq.
Kennedys



Eileen Voegele Fay
SVP, Head of Casualty Claims
Palomar

Overview

1. What types of coverage may apply?
2. What happens if you find incomplete policies or evidence of potential policies?
3. Coverage litigation update for sex abuse and sex trafficking claims
4. Questions

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What Types of Coverage May Apply?

Commercial General Liability (CGL)

- Unintended, unexpected bodily injury to others
- Damage to others' property

Other Types of Coverage

- Professional Liability/Errors & Omissions (E&O)
- Directors and Officers (D&O)
- Employment Practices Liability (EPLI)
- Broadform Educators' Liability
- Hospital Professional/Med Malpractice
- Manuscripted or ISO Misconduct/Abuse Coverage
- Specialty Tail/M&A Wrap Coverage

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What Types of Coverage May Apply?

THE RULE

Criminal liability and intentional torts not covered as matter of public policy

BUT

Even when criminal and intentional conduct at issue, claims can trigger coverage

"Personal injury" offenses may be covered even if the offense is not accidental

- "Personal injury" under "Advertising and Personal Injury"
- Not to be confused with "bodily injury" caused by an "occurrence"
- "Personal injury" coverage for certain enumerated "offenses":

False imprisonment

Violation of the right of privacy

Slander

Invasion of the right of private occupancy

- Whether various alleged torts are "inseparably intertwined" with alleged sexual assault

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A claim from decades ago. Where is the insurance?

- Reviver statutes can bring claims against schools, churches, municipalities, and nonprofits decades after the alleged conduct
- Historical liability policies may provide funding for defense and resolution
- Insurance Archaeology looks for proof of coverage when the policy file is missing

TAKEAWAY *"We don't have the policy" is where the search begins.*

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What if the policy is incomplete?

The lead

A certificate, ledger, board minute, or broker letter may identify an insurer or policy year.

The search

Insurance Archaeology follows those leads through institutional, broker, and insurer records.

The result

A documented coverage history that shows both the evidence and the gaps.

TAKEAWAY

One piece of paper can lead to potential coverage no one knew to look for.

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Start before the search becomes urgent

1

Evidence fades

Records disappear, and people who remember the insurance program become harder to reach.

2

Time to investigate

An early search gives counsel time to investigate missing years and policy terms.

3

Better-informed strategy

The resulting coverage history can inform how a claim is handled.

TAKEAWAY

The best time to look for old coverage is before the claim depends on finding it.

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Coverage A vs. Coverage B – Insuring Agreement

Peerless Indem. Ins. Co. v. Tilma, Inc., Case No. 25-1980 and Case No. 25-2033 (4th Cir.)

- Eastern District of Virginia found duty to defend under Coverage B because the definition of "personal injury" includes false imprisonment. 2025 WL 2052479 (E.D. Va. July 22, 2025)
- Insurer appealed, arguing that any "personal and advertising injury" is "inextricably linked" with claims for "bodily injury," which fall within Coverage A, but the underlying lawsuit does not allege an "occurrence"
- Oral argument before the Fourth Circuit Court of Appeals on September 15, 2026

Red Roof Inns, Inc. v. Liberty Mut. Fire Ins. Co., 2026 WL 775589 (S.D. Ohio Mar. 19, 2026)

- Duty to defend under Coverage A – "occurrence"
- The insured could be found liable under the civil provisions of the Trafficking Victims Protection Reauthorization Act ("TVPRA") without evidence of an intent to cause harm

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Coverage A vs. Coverage B – Insuring Agreement (cont.)

Westchester Fire Ins. Co. v. Roman Catholic Bishop of Orange, 2026 WL 1945162 (C.D. Cal. June 1, 2026)

- Umbrella insurer had a duty to defend
- "Occurrence" defined as a "happening or event" and covered "shock, mental anguish and mental injury" as well as the "invasion of the rights of privacy" vs. primary policy that defined "occurrence" as an accident and covered physical injury

Houston Cas. Co. v. Inspirit Athletics Inc., 2026 WL 532484 (W.D. Wash. Feb. 26, 2026)

- No duty to defend because underlying complaints that did not allege that the perpetrator touched the victims did not allege "bodily injury" or "personal and advertising injury"

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Exclusions

Samsung Fire & Marine Ins. Co. Ltd., et al. v. RI Settlement Trust, et al., 360 A.3d 895 (Pa. 2026)

- Finding that Pennsylvania does not have a public policy against sex trafficking such that an insurer's duty to defend and/or indemnify is abrogated when an insured is alleged to have enabled or profited from such trafficking
- Up to insurers to put exclusions into the policies

Bramblett v. Allied World Specialty Ins. Co., 2026 WL 925516 (9th Cir. Apr. 6, 2026), amended and rehearing denied, 2026 WL 2124211 (9th Cir. July 23, 2026)

- Washington law – exclusions construed narrowly; benefit of the doubt to the insured in determining coverage
- Sexual harassment allegations covered under a policy could be separated from sexual abuse allegations excluded from coverage

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Trigger of Coverage

Markel Ins. Co. v. Secret Harbor, 2025 WL 745566 (W.D. Wash. Mar. 7, 2025)

- Left open the question on continuing injury following initial year of abuse
- Stayed due to a receivership proceeding, but the stay was lifted on June 16, 2026

Philadelphia Indem. Ins. Co. v. Eubanks, 927 S.E.2d 518 (Ga. Ct. App. 2026), cert. denied (Sept. 9, 2025)

- Insurers not responsible for alleged misconduct occurring decades before their policies were written
- Continuing mental anguish cannot trigger coverage after the abuse ended and the perpetrator was no longer employed by the insured

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Number of Occurrences

Church of Jesus Christ of Latter-Day Saints v. National Union Fire Ins. Co. of Pittsburgh, Pa., 182 F.4th 1278 (10th Cir. 2026)

1 **The facts**

Underlying lawsuit involved separate victims and abuse at different times.

2 **The settlements**

The insured settled with the underlying claimants. No single settlement met the retained limits, but when added together, the settlements exceeded those limits.

3 **The policy language**

Definitions of “occurrence” ambiguous.

4 **The holding**

Plausible that the underlying lawsuit could be considered a single “occurrence.”

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Questions?

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