

A Knockout for Insurers – BCSC Confirms Exclusion for Failure to Prevent Assault

In *Reeves v Co-Operators General Insurance Company*, 2022 BCSC 2258, the court considered whether the defendant insurer owed a duty to defend the parents of a young man charged with assaulting a classmate. At issue was the interpretation of an insurance policy clause excluding coverage for "failure of any insured to take steps to prevent" an assault. This was the first time a British Columbia court had interpreted such an exclusion.

The insureds' son was alleged to have assaulted a female student at school. The victim sued the son, his parents and the school officials, alleging prior incidents of violent behaviour by the son and negligence on the part of his parents and the school for failing to take steps to prevent further violence. The insurer refused coverage to the parents under their general liability policy on the basis of an exclusion, which read as follows:

Loss or Damage Not Insured

We do not insure claims made against you, nor do we provide voluntary payments under this policy, arising from or in relation to:

- sexual, physical, psychological or emotional abuse, assault, molestation or harassment, including corporeal punishment by, or at the direction of, or with the knowledge of any insured; or failure of any insured to take steps to prevent sexual, physical, psychological or emotional abuse, assault, molestation, harassment or corporal punishment.

The parents argued that the clause should not apply to allegations of negligence, but only to failures to act where the insured had knowledge that an assault was about to occur.

The court disagreed. It held the "failure to take steps" language was clear and unambiguous, and did not require a finding of intentional conduct or knowledge. The allegations against the parents, which was that they failed to anticipate another occurrence of violence, take reasonable steps to avoid a reoccurrence of violence, and to supervise and discipline their son, clearly fell within the exclusion. As a result, the insurer did not have a duty to defend.

This case underscores that, while a duty to defend is broader than a duty to indemnify, a court will still look to the plain language of the policy in determining whether a claim is covered.