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Diocese Slams Insurer In Sex Abuse Claims Row At 2nd Circ.

By Rick Archer

Law360, New York (January 24, 2018, 8:38 PM EST) -- The Archdiocese of Hartford, Connecticut, on Tuesday asked the Second Circuit to find that Interstate Fire and Casualty Co. has a duty to cover settlements with victims who say they were sexually abused by priests, rebutting the insurer's argument that those claims were excluded from the policy.

The archdiocese said the panel should uphold a district court's decision that Interstate had to pay the claims but should overturn the lower court's finding that the failure to pay did not violate the Connecticut Unfair Insurance Practices Act, saying the court had set "too high a bar" for a violation of the act.

The lawsuit covers four cases filed on behalf of individuals that were each settled for at least \$200,000. Three different archdiocese priests were accused of abuse, which allegedly took place from the late 1970s to the mid-1980s.

Interstate had said it did not have to cover the settlements because of an exclusion for assault and battery claims, a failure to provide requested documents and because the abuse did not count as an unexpected "occurrence" under the policy, as based on prior complaints against the priests involved, the archdiocese knew or should have known the abuse would occur.

The archdiocese **filed suit in 2012** seeking coverage, and in 2016, the district court agreed that the assault and battery exclusion only covered direct assaults and not the negligent supervision claims made in the suits, dismissing that defense. Interstate then **appealed that decision**, along with the decision that a subjective judgment of the archdiocese's intent should be used to judge whether the abuse was unexpected and unintended, and therefore covered.

The archdiocese argued those rulings should be upheld, saying the "plain language" of the policy and Connecticut law supported coverage for the negligent supervision claims, and that Interstate's argument for an objective standard of intent was confusing tort liability with insurance law.

However, it said the district court had erred when it found that Interstate's actions regarding this and similar claims did not rise to the level of a "general business practice" and thus did not violate the Connecticut Unfair Insurance Practices Act.

The archdiocese said the lower court found that Interstate had failed to affirm or deny coverage in a timely manner for five or six sex abuse claims made by other U.S. dioceses. This was between 9 and 11 percent of the sampled claims, over the threshold set by both prior court decisions and the National Association of Insurance Commissioners to establish a business practice, it argued.

"At least three Connecticut federal court judges have held that three or four other instances are sufficient to satisfy the general business practice requirement," the archdiocese said.

In a phone interview on Wednesday, archdiocese counsel David Friedman said that while there have been multiple standards used to establish a business practice, most Connecticut practitioners have understood that more than one similar case is sufficient.

"We feel that no matter what standard is used, we should prevail," he said.

Counsel for Interstate declined to comment.

The archdiocese is represented by David P. Friedman, Marilyn B. Fagelson and Melissa A. Federico of Murtha Cullina LLP

Interstate is represented by Richard L. Neumeier of Morrison Mahoney LLP.

The case is The Hartford Roman Catholic Diocesan Corp. v. Interstate Fire and Casualty Co., case numbers 16-2999 and 17-2484, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Juan Carlos Rodriguez. Editing by Catherine Sum.

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