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Pennsylvania Joins New York and New Jersey in Expanding Statutes of Limitations for Sex Abuse Claims

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On November 26, Pennsylvania followed New York and New Jersey in enacting legislation (House Bill 962[1]) extending the period in which victims of sex abuse and molestation can sue their aggressors — and the institutions that employed them. Commentators expect the statutory changes to result in victims filing thousands of lawsuits against institutions in the three states. Plaintiff law firms are actively advertising for and soliciting plaintiffs.

New York's Child Victims Act extended the statute of limitations such that a plaintiff has until age 55 to bring a claim. Where a claim would have already been barred by the old statute of limitations, claimants now have a one-year window — beginning August 14, 2019 — to commence a suit. Hundreds of lawsuits have already been filed, with more expected.

The New Jersey statute has two essential components. First, the statute of limitations for sex abuse was extended to age 55, or within seven years of realization of incurred harm by the victim. Second, victims whose claims were already time-barred now have a two-year window (beginning December 1, 2019) to bring suit. Hundreds of suits are expected in the immediate future.

In Pennsylvania, individuals who were victims of abuse when they were minors now have 37 years after their 18th birthday to bring claims. Previously, the statute required claims to be brought within 12 years of their 18th birthday. Individuals who were abused between the ages of 18 and 23 have until age 30 to bring a claim. This amendment, like those in New Jersey and New York, is expected to substantially increase the number of claims brought in Pennsylvania.

What This Means for Policyholders

Policyholders should cast a broad net when evaluating which insurance policies may potentially respond to a claim.

While policyholders might think first of commercial general liability policies as the natural place to look for coverage for abuse claims, other types of insurance policies may cover these claims as well. More than one type of policy, and often many different policies, may cover defense costs and potential liabilities stemming from

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abuse claims. Liability policies that may respond include above-mentioned commercial general liability, employment practices liability, and directors and officers insurance policies.

When faced with a claim of abuse or molestation, or any other type of claim, policyholders should move quickly to notify their insurance companies. Notice can generally be provided either directly by the policyholder or through an insurance broker.

Prompt notification of claims can be essential to having an insurance company defend and pay a settlement. Under New York law, late notice of a claim can be fatal to coverage. While Pennsylvania and New Jersey have a more relaxed late-notice standard that requires prejudice to the insurance company, late notice can still be a threat to coverage. Giving prompt notice ensures that an insurance company cannot readily deny coverage based on the timing of notice alone.

Given the substantially expanded time to bring claims of sexual abuse, it is more critical than ever for policyholders to take steps to preserve their historical insurance policies and other documents related to their insurance program. Working with insurance brokers, insurance archaeologists, and other trusted insurance coverage professionals and advisors to help reconstruct the historical insurance program before claims land can help put policyholders in the best position to access insurance in response to claims.

Looking Ahead

Policyholders should consult with their insurance brokers about the availability of insurance policies that may cover future claims. While some policies cover claims based on when the abuse itself allegedly happened, it may be possible to access coverage that is triggered when a claim is made and reported. Understanding how, when, and if an insurance policy may respond and cover a claim is critically important when the period of potential liability has been radically extended.

Policyholders should also consult with trusted coverage counsel who can assist in responding to insurance company correspondence and challenging denials where warranted, and who can help understand which of their insurance policies covers claims of abuse.

Insurance coverage exists for institutions against claims of sexual abuse and molestation. Anderson Kill is ready to help institutions navigate through the thicket of defenses that insurance companies pose to insurance coverage for these claims.

ENDNOTES

[1] *https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=962*

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