

# California Supreme Court affirms employers' insurance coverage for negligent employment practices

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## Facts

## Decision

## Comment

The California Supreme Court recently held that employers' general liability insurance coverage for accidents includes coverage for claims of negligent hiring, retention and supervision of employees who intentionally injure third parties.

## Facts

In *Liberty Surplus Insurance Corp v Ledesma & Meyer Construction Co*, the defendant construction company was retained to manage construction at a school. A student later sued the company, claiming that its employee had sexually abused her. The construction company submitted a claim under its general liability insurance policy, which provided coverage for any "bodily injury" caused by an 'occurrence' – defined in the policy as "an accident". The insurer asserted that the claim was not covered by the policy and refused to defend or indemnify the company. A federal district court sided with the insurer, concluding that the company's allegedly negligent acts were too attenuated from the employee's intentional conduct to be covered by the policy.

## Decision

The US Court of Appeals for the Ninth Circuit certified the question to the California Supreme Court. The California Supreme Court disagreed with the district court's conclusion and explained that the relevant inquiry in interpreting whether the incident was an accident is to consider the employer's point of view rather than the intentionality of the employee's conduct. Thus, although the employee's intentional act was the direct cause of the student's injury, the insured employer's negligence in hiring, retaining or supervising that employee could be considered an indirect cause of that injury. Applying these principles, the court found that the student's injury was a covered accident under the construction company's policy. The court emphasised that "employers may legitimately expect coverage for [negligent hiring, retention, and supervision] claims under comprehensive general liability insurance policies, just as they do for other claims of negligence", absent some specific exclusion in their policies.

## Comment

Previously, there was some uncertainty among California state and federal courts about whether coverage for accidents under general liability insurance policies extended to claims for negligent employment practices. *Liberty Surplus* makes clear that such claims are covered and expresses a strong policy preference in favour of that coverage. This decision should thus give employers some comfort that their insurance policies will cover negligent employment practices claims in California, provided that the policies include the relevant accident language and that other exclusions do not apply. Of course, insurers may respond by inserting specific exclusions of employment practices negligence from their policies, so continued review is advisable.

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