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The Limits of Personal Liability Coverage

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Many homeowners' insurance policies include coverage for personal liability. This means that if the policy holder is sued for causing bodily injury or property damage to someone, the insurance company will pay to defend the lawsuit, and will pay out any damages owing in the end.

Understandably, insurance policies typically limit personal liability coverage to cases involving unintentional injury or property damage; a policy holder cannot rely on an insurance company if they caused damage intentionally. However, the fine print of a policy may also limit coverage in certain cases if injury was caused through negligence or inaction. Such limits can become profoundly important, particularly for policy holders that have minors in their care.

In *Unifund Assurance Company v. D.E.* (2015 ONCA 423), the Ontario Court of Appeal considered a case involving a Grade 8 girl who was alleged to have bullied a classmate, causing the classmate physical and psychological injuries. A lawsuit was brought against the parents of the alleged bully, claiming that they had failed to control their daughter, thereby allowing the bullying to occur.

The claim against the parents was clearly one of negligence. The allegation was that they had failed to prevent the bullying, not that they had actively done anything to encourage or allow the bullying. Nevertheless, the parents' insurance policy excluded liability coverage for any claim based on the "failure of any person insured by this policy to take steps to prevent sexual, physical, psychological or emotional abuse, molestation or harassment or corporal punishment". The insurance company thus refused to cover the lawsuit.

The parents went to court to try and force their insurance company to provide coverage for the claim. At trial the judge held that the exclusion clause was ambiguous because it did not specify whether it excluded only an intentional failure to prevent abuse, or a negligent one as well. However the Ontario Court of Appeal disagreed, holding that the clause was clearly meant to exclude coverage for exactly this kind of claim: a negligent failure to prevent physical, psychological, or emotional harassment.

In *D.J.F. v. B.L.* (2008 CanLII 39786) the court considered whether an insurance policy covered a lawsuit against a babysitter whose failure to supervise a child resulted in the child being sexually assaulted by another party. The relevant exclusion clause stated that the policy would not apply to claims against an insured party for failing to prevent abuse or molestation. The court concluded that the claim in that case was clearly excluded by the wording of the policy.

In each of the above cases, the courts refused to invalidate the exclusion clause based on technicalities such as whether the claim was in contract or tort, or whether the alleged



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negligence was intentional or not. Instead the courts looked at the plain meaning of the words in the exclusion clause, and did not hesitate to uphold them. Thus in both cases, the insured parties were left on their own to defend the lawsuits that had been brought against them.

While people with personal liability insurance would likely expect not to be covered if they cause damage or injury intentionally, they should also be aware that some negligence claims may also be excluded from their policy. This can particularly be the case when a minor under the supervision of the insured person is involved. In both of the above cases the courts applied the exclusion clauses strictly and with reference to the plain wording of the policies.

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