



## APR - ALTERNATIVE MARKETS

### DEDICATED TO PUBLIC ENTITY

#### LESSONS FROM LOSSES – NEGLIGENT HIRING AND FAILURE TO DISCLOSE

*“The only mistake in life is the lesson not learned.”— Albert Einstein*

#### DESCRIPTION

An elementary school hired an out of state teacher. The teacher had a history of molesting students that was a matter of public record. The hiring elementary school failed to conduct an adequate background check and offered the teacher a contract.

During the first two years at the new school, the teacher’s performance ratings were mixed. After a field trip to a museum, an employee at the museum notified the principal of the school that docents had observed inappropriate contact between the teacher and students. The school completed investigations and interviews with students that validated the complaints. The principal failed to notify law enforcement or child protective services; but worked out a voluntary resignation with the teacher that included agreement to notate the misconduct in the permanent file.

A few months later, the same teacher was hired by a neighboring school district that also failed to recognize the troubling background. During the first two years, fellow staff members reported concerns regarding inappropriate behaviors; keeping the blinds closed in the classroom, holding hands with female students and always ensuring that girls were sitting next to him. One of the girls sitting next to him reported that the teacher had touched her inappropriately and kissed her ear. She did not report it until one year later, when a friend confided in her a similar situation. The parents called the police, filed a report, and the state did not renew the teacher’s license.

Because the child was a minor, the statute of limitations was tolled, and suit was filed 8 years after the incident. The complaint was the first notice to the excess carriers. The excess carrier had changed multiple times during the 8-year period. Each of them was put on notice after the suit was received, none of the applications disclosed potential liability for molestation claims.

#### THE RESULT

The school district settled the claim for \$3 million - all paid from school funds. The insurance carriers disclaimed coverage and declined to pay based on the triggering event outside the coverage period and failure to disclose knowledge of potential liability.

#### THE PROBLEM

The two subsequent school districts failed to complete or address background checks and though the information was a matter of record, the teacher was hired, children harmed, and liability for negligent hiring was imputed upon the employer. All three school districts should have reported the potential of a claim to their respective carriers.



Policyholders have the duty to report claims. The insurance policy defines which claims require reporting to the carrier and a policyholder is also bound to use good judgment. Typically, claims that require reporting to the excess carrier include the following, regardless of whether facts are substantiated, or liability determined:

- Catastrophic Injuries: Fatality, loss of sight, head and brain injuries, spinal cord injuries, amputation, serious burns, massive internal injuries, significant disfigurement or permanent injuries.
- Breach of civil rights.
- Sexual abuse and molestation
- Class actions
- Claims under high public scrutiny
- Suits that directly name the insurer

Applications for insurance may ask whether the insured is aware of any circumstances that are likely to give rise to a claim. Here, the policyholder should have reported the case on the application regardless of whether a formal claim was made because of the nature of the allegations, the teacher's history, the police report and subsequent suspension of teacher's license. Failure to disclose material facts on the application, may be considered concealment and void the policy.

#### LESSONS LEARNED

The process of completing a thorough background check on each new employee, and scrutinizing the results are vitally important in the hiring process. When staffing is short and workloads high, it is tempting to forego a full background check and decline to hire an otherwise qualified applicant; however, the decision to do so may create a harmful environment and result in liability for the employer. Additionally, failure to recognize and disclose claims to the insurance carrier, may negate coverage and expose the public entity to direct liability that may have otherwise been covered.

In order to comply with contractual obligations and protect the public entity financial assets, it is recommended that the following actions be implemented:

- Create a workflow to partner with a reputable investigation company for expedient and thorough background checks. Include contractual risk transfer in the agreement if inaccurate results are reported.
- Report claims immediately as they occur. Stay in communication with the excess carrier.
- Disclose potential claims on insurance applications.

***Note: Although the statements above are based on an actual loss, some of the facts may have been altered for the purpose of illustration and education.***



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