S174016

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SCOTT MINKLER,

Plaintiffs,

vs.

SAFECO INSURANCE COMPANY OF AMERICA, A Corporation,

Defendant.

SAFECO'S ANSWER BRIEF ON THE MERITS

Certified Question from the United States Court of Appeals,
Ninth Circuit (No. 07-56689)

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ISSUE PRESENTED

"Where a contract of liability insurance covering multiple insureds includes a severability clause, does an exclusion barring coverage for injuries arising out of the intentional acts of 'an insured' bar coverage for claims that one insured negligently failed to prevent the intentional acts of another insured?" (See Order dtd. Aug. 12, 2009.)

INTRODUCTION

This Court recently had occasion to construe the coverage grant in a liability insurance policy, concluding that "accidental" conduct must be viewed from the perspective of what the insured intended, not from the perspective of the victim. (*Delgado v. Interins. Exch. of Auto. Club of So. Calif.* (2009) 47 Cal.4th 302.) The issue here also presents a question of perspective: when there is more than one insured under a policy, from which insured's perspective is "intent" to be evaluated under an intentional acts exclusion?

The answer is that, under the language of the exclusion at issue here, perspective does not matter. This policy excludes coverage for all insureds when "an insured" has acted intentionally. This is the uniform rule, and plaintiff here does not dispute it. Indeed, plaintiff effectively has conceded that exclusions broadly prohibiting coverage for the intentional act of "an" or "any" insured is plain and unambiguous.

Instead, plaintiff relies on the policy's severability condition, claiming it overwrites this plainly worded exclusion. But the severability clause was created to deal with a different type of exclusionary provision, one couched not in terms of "an insured's" or "any insured's" intentional act, but "*the* insured's" intentional act. When there are multiple insureds, use of term "the insured" may raise a question regarding to which insured's intent the exclusion is referring. A severability clause answers the question by requiring that coverage be

analyzed from the perspective of the insured seeking coverage under the policy. But it was not designed for situations such as ours, where it does not matter which insured acted intentionally as long as one did. And even when coverage is analyzed from the perspective of the insured claiming coverage, that does not render the intent of the intentionally-acting insured *irrelevant*, nor does it mean that courts now evaluate only the intent, or lack thereof, of the other, *non-perpetrator*, insured. There is still another insured, and that other insured still acted intentionally.

Any other rule would grant the severability condition the unbridled power to trump plain policy language. It would violate the contracting parties' reasonable expectations in favor of a technical provision, applying that provision beyond its intended purpose, and exalting form over substance. Indeed, it would herald a completely ad hoc approach to policy interpretation, because there is virtually no limit to its power, if misused, to nullify plain language in all manner of exclusions and limiting provisions. Instead of bringing clarity to the interpretation of insurance contracts, so contracting parties can reasonably know – from the policy's language – what is covered and what is not, uncertainty would be the order of the day.

And the adverse practical ramifications would be considerable. Here, Betty Schwartz is accused of negligently supervising her adult son David, a child molester. This theory requires that Betty have actually known, or must have known, that David was abusing plaintiff. By nullifying the intentional acts exclusion with respect to Betty, plaintiff's rule would permit supervisors of child molesters to turn a blind eye to known cases of child abuse, yet still be entitled to a defense, typically by independent *Cumis* counsel.

And the ramifications do not stop at the defense obligation. Finding a duty to defend creates serious pressure on insurers to settle

even claims they plainly excluded. Plaintiff's rule even threatens to expose insurers to an indemnity obligation. If the severability provision can render the actual molester's intent irrelevant, would the insurer then owe a duty to indemnify the negligently-supervising insured? Could this create insurer exposure in excess of the policy limits? An insurer's reasonable belief that it owes no coverage is, after all, not a defense to a claim it failed to settle within policy limits. Thus, even insurers who believe, with some justification, that their intentional acts exclusion bars *all* coverage for *all* insureds, could face excess liability, beyond the limits of the insurance policy.

Moreover, plaintiff's rule would encourage lawsuits whereby the molester, plaintiff and the negligent supervisor actively collaborate in an attempt to create a source of insurance compensation despite the exclusion, which prohibits coverage not only for the excluded act itself, but for all parasitic torts, including negligent supervision, arising out of or predicated on the intentional act. This case graphically illustrates the danger. It was abuser David Schwartz, acting as "attorney in fact" for his mother, who signed the stipulated judgment against her in excess of policy limits. He assigned not only his but his mother's claims against Safeco to the plaintiff. These are just some of the many reasons why insurers such as Safeco exclude *all* claims and theories related to, or arising out of, an insured's intentional act.

In short, whatever the severability condition's possible relevance in other situations, it has no application here. This exclusion must be implemented according to its plain language, as the parties intended and as public policy demands.

STATEMENT OF THE CASE

A. The Underlying Complaint.

The underlying facts are not in dispute. In 2003, Minkler filed a complaint against David Schwartz and his mother, Betty Schwartz. (See 1 ER 2.) Minkler alleged that over a two-year period, David sexually abused him, and that some of the molestation occurred in the home where David lived with Betty.[1] (2 ER 51-55.) As against David, Minkler alleged: sexual battery, negligence, negligence per se and intentional infliction of emotional distress, including a claim for punitive damages. (2 ER 52-54, 56.) As against Betty, he alleged only a single claim of negligence, predicated on the theory that she failed to take reasonable steps to stop the molestation from occurring. (2 ER 55-56.)

Minkler alleged that Betty actually knew that David was molesting plaintiff because she walked in on them while the two were engaged in sexual acts: "Betty Schwartz walked *in on [planitiff] and [David] engaging in sexual acts* during the time that [David] resided in the home of Betty Schwartz. Therefore, Betty Schwartz knew of the incidents that were occurring and knew that David Schwartz was engaging in these acts with minor children, namely Plaintiff." (2 ER 52, ¶ 12 (emphasis added, capitalization modified); see also 2 ER 55, ¶33.) Plaintiff also alleged that she knew David provided alcohol and pornography to minor boys in her home, used for the purposes of manipulation and control. (2 ER 52, ¶11.)

[1] For convenience, we will refer to the insureds by their first names.

B. Safeco Denies Coverage And A Defense To Betty On The Ground There Is No Potential Coverage Under The Policy.

At the relevant times, Safeco insured Betty as named insured under a series of consecutive homeowners' policies. David qualified as an "insured" as a relative who lived in Betty's home. (2 ER 65, ¶6 ["Insured" means "you" and relatives residing in "your household"].) The coverage grant of Section II, "Personal Liability," said: "If claim is made or suit is brought against an insured for damages because of bodily injury or property damage caused by an occurrence to which this coverage applies, we will: [¶] 1. pay up to our limit of liability for the damages for which the Insured is legally liable; and [¶] 2. provide a defense at our expense by counsel of our choice even if the allegations, which if true would be covered, are groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate." (2 ER 74-75.) The policy defined the term "occurrence" as: "an accident, including exposure to conditions which results, during the policy period, in bodily injury or property damage." (2 ER 66, ¶8.)

The relevant exclusion here is the first listed in the policy's liability section, which says that the Personal Liability coverage does not apply to bodily injury or property damage:

> "which is expected or intended by an insured or which is the foreseeable result of an act or omission intended by an insured[]" (2 ER 76, ¶1.a].)

Under Section II, Liability, "Conditions," the policy also contained a "Severability of Insurance" clause: "This insurance applies separately to each insured. This condition will not increase our limit of liability for any one occurrence." (2 ER 78, ¶2].)

David and Betty tendered defense of the *Minkler* lawsuit to Safeco. After a thorough investigation, Safeco denied both claims,

relying on the intentional acts exclusion, because "an insured," David, had acted intentionally, and the exclusion precluded coverage for all insureds when one commits an intentional act. (2 ER 91-94.)

C. The Instant Action.

Minkler obtained a default judgment against Betty Schwartz in the underlying action for $5,020,612.20. (2 ER 37, ¶ 31.) David Schwartz, acting as Betty's "attorney in fact," assigned to Minkler any claims that Betty might have against Safeco, including breach of contract and bad faith, in exchange for Minkler's covenant not to execute this default judgment against her.[2] (See 1 ER 3:11-13; 2 ER 37, ¶ 33.) Minkler then filed the present lawsuit against Safeco, for, *inter alia*, breach of contract, bad faith, and as Betty's judgment creditor under Insurance Code section 11580. (2 ER 30-48.) Safeco removed the action to federal court. (2 ER 25-28.)

Minkler acknowledged that California law is clear that, when the underlying complaint alleges that one insured intentionally caused harm, including child molestation, and a second insured negligently failed to prevent that harm, intentional acts exclusions such as Safeco's preclude coverage for both insureds. (OBOM, p. 2.) He argued, however, that the severability clause alters the exclusion, and that David's intentional harm does not allow an insurer to deny coverage/defense to the other insured. (OBOM, pp. 2-3.)

Safeco filed a motion to dismiss, under Rule 12, subdivision (b)(6), of the Federal Rules of Civil Procedure. Trial judge Margaret Morrow granted the motion, issuing a lengthy order. (1 ER 2-18.) Plaintiff appealed the judgment of dismissal, and, after briefing and

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[2] Because this case is at the pleadings stage, the record does not fully reflect what happened to plaintiff's lawsuit against David.

argument, the Ninth Circuit certified the question presented – concerning the effect of the severability clause – to this Court.

LEGAL DISCUSSION

I. POLICY INTERPRETATION RULES

The interpretation of an insurance policy is a question of law. (*Waller v. Truck Ins. Exch., Inc.* (1995) 11 Cal.4th 1, 18.) The fundamental goal of policy interpretation is to give effect the intent of the parties. (*Bank of the West v. Superior Court (Indus. Indem. Co.)* (1992) 2 Cal.4th 1254, 1264.) Though insurance policies have special features, "they are still contracts to which the ordinary rules of contractual interpretation apply." (*Rosen v. State Farm Gen. Ins. Co.* (2003) 30 Cal.4th 1070, 1074 (citations and quotation marks omitted.) California courts interpret policies in such a way as to give meaning to every provision. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473.)

This Court has established not only the rules by which insurance policies must be read and construed, but the order in which those rules should be applied. First and foremost, a policy is given its "plain meaning": i.e., the terms must be read in their "ordinary and popular sense" in the context of the policy as a whole and the circumstances of the case. (See, e.g., *AIU Ins. Co. v. Superior Court (FMC Corp.)* (1990) 51 Cal.3d 807, 821–822.) "Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation ... Such intent is to be inferred, if possible, solely from the written provisions of the contract." (*Ibid.*; see also *Waller, supra*, 11 Cal.4th at p. 18 ["The rules governing policy interpretation require us to look first to the language of the contract in order to ascertain its plain meaning or the meaning a layperson would ordinarily attach to it"].)

Second, if the terms do not have a plain meaning and thus are ambiguous or uncertain, they must be interpreted in the sense the insurer reasonably believed the insured understood them when the policy was issued; i.e., in accordance with the insured's "objectively reasonable expectations." (*Bank of the West, supra*, 2 Cal.4th at pp. 1264–1265; AIU, supra, 51 Cal.3d at p. 822; *State of Calif. v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1018 [ambiguous provisions interpreted to protect insured's "objectively reasonable expectations"].)

Finally, if, and only if, the previous rule fails to resolve the ambiguity or uncertainty, it is resolved against the insurer as the drafter of the policy. (*Powerine Oil Co., Inc. v. Superior Court (Central Nat'l Ins. Co.)* (2005) 37 Cal.4th 377, 391; see Civ.C. § 1654.)

This is the proper sequence for applying the interpretive rules. (*Bank of the West, supra*, 2 Cal.4th at p. 1264 [cautioning against relying on contra-insurer rule "too early in the process"].) Indeed, a leading insurance treatise cautions: "Note the sequence of these three rules: The 'reasonable expectations of the insured' rule should not apply where the issue can be resolved under the 'plain meaning' rule. And the 'contra-insurer' rule should not apply where the ambiguity can be resolved in accordance with the insured's 'objectively reasonable expectations.' (Croskey, Heeseman, Popik & Imre, Cal. Practice Guide: Insurance Litigation, ¶4.5 (Rutter 2009)

With respect to the defense obligation in issue here, the duty to defend an insured is broader than the duty to indemnify, but it is not without limits. (*Quan v. Truck Ins. Exch.* (1998) 67 Cal.App.4th 583, 591.) An insurer "must defend a suit which potentially seeks damages within the coverage of the policy." (*Gray v. Zurich Ins. Co.* (1966) 65 Cal.2d 263, 275; *Delgado, supra*, 47 Cal.4th at p. 308.) The duty to defend arises when the lawsuit against the insured seeks damages on

any theory that, if proved, would be covered. Thus, there is no defense obligation when the third party complaint cannot raise an issue "which could bring it within the policy coverage." (*Montrose Chem. Corp. v. Sup.Ct. (Canadian Universal Ins. Co., Inc.)* (1993) 6 Cal.4th 287, 295; *Gray v. Zurich Ins. Co., supra*, 65 Cal.2d at p. 275, n. 15.)

II. THERE IS NO POSSIBILITY OF COVERAGE HERE

A. This Intentional Acts Exclusion Bars Coverage For All Insureds When Any Insured Has Acted Intentionally.

1. Under this exclusion, the identity of the particular insured who acted intentionally is irrelevant.

It is undisputed here that sexual molestation of a child is an intentional and inherently harmful act. (See *J.C. Penney Cas. Ins. Co. v. M.K.* (1991) 52 Cal.3d 1009, 1020–1021, n. 8 [no coverage for an insured's molestation – which is always intentional, harmful, and wrongful].) Therefore, plaintiff concedes that David Schwartz is not entitled to indemnity or a defense. That is not open to debate. The only question is whether Betty Schwartz, sued on a negligent supervision theory, is entitled to a defense.

Insurers are only required to defend against claims of the nature and kind covered by the policy. (See, e.g., *Quan, supra*, 67 Cal.App.4th at p. 591, citing *La Jolla Beach & Tennis Club, Inc. v. Industrial Indemnity Co.* (1994) 9 Cal.4th 27, 39.) An insurer may contractually preclude any obligation to defend or indemnify insureds against their intentional acts. Indeed, Insurance Code section 533, the statutory version of the intentional acts exclusion, is read into every insurance contract as a matter of public policy, in order to discourage willful torts

and deny coverage for willful wrongs. (*J.C. Penney, supra*, 52 Cal.3d at pp. 1020–1021, n. 8.)

Historically, liability forms couched the intentional acts exclusion in terms of "*the* insured's" intentional act. (See, e.g., Croskey, Heeseman, Popik & Imre, *supra*, Cal. Practice Guide: Insurance Litigation, ¶7:241.1 (emphasis original) ["Some policies exclude only intentional injuries by '*the* insured' rather than "any insured"].) Indeed, "the current CGL form excludes 'bodily injury *expected* or *intended* from the standpoint of *the* insured.'" (*Ibid.* (emphasis original), citing CG 00 01 12 07, Sec. I, Coverage A, ¶ 2.a.)

Courts construing California law have interpreted exclusions referring to "*the* insured's" intentional act as barring coverage only for the insured who *actually committed* that act. (See, e.g., *American States Ins. Co. v. Borbor by Borbor* (9th Cir. 1987) 826 F.2d 888, 893-894 (applying Calif. law); see *id.* at 894 ["Had American States intended that the wrongful act of any insured would void the policy, it could have unambiguously drafted and included such language in the contract]; *National Union Fire Ins. Co. v. Lynette C.* (1991) 228 Cal.App.3d 1073, 1084-1085 (*Lynette C.*); see *Arenson v. Nat. Automobile & Cas. Ins. Co.* (1955) 45 Cal.2d 81, 83-84 [construing exclusion referring to "the insured"].) Such exclusions do not preclude coverage when the non-perpetrator insured, who did not act intentionally,[3] is sued on a theory such as negligent entrustment, or negligent supervision of the insured who did. (See, e.g., *Lynette C., supra*, 228 Cal.App.3d at pp. 1084-1085 [discussing difference between exclusion barring coverage for "the" insured versus "an" or "any" insured].)

[3] To avoid confusion, we will refer to the insured who did not commit the abuse, but who is sued on a negligent supervision or similar theory, as the "non-perpetrator insured" or "non-abuser insured."

But the result is different when the exclusion, instead of barring coverage for the intentional act of "*the* insured," refers to the intentional act of "an" insured, or "any insured."[4] Under this broader type of exclusion, if any insured has committed an intentional act, then no insured is entitled to policy benefits. (See, e.g., *Allstate Ins. Co. v. Gilbert* (9th Cir. 1988) 852 F.2d 449, 454 (applying Calif. law) ["'an insured' refers to all insureds under the policy"]; *Fire Ins. Exch. v. Altieri* (1991) 235 Cal.App.3d 1352, 1361 [bars coverage for claim against parents for negligent supervision of son who intentionally assaulted schoolmate]; *Western Mut. Ins. Co. v. Yamamoto* (1994) 29 Cal.App.4th 1474, 1486–1487; *Zelda, Inc. v. Northland Ins. Co.* (1997) 56 Cal.App.4th 1252, 1263; see also *California State Auto. Assn. Inter-Ins. Bureau v. Warwick* (1976) 17 Cal.3d 190, 195 [policy unambiguously referred to "any insured," i.e., all persons named or unnamed receiving coverage under the policy], distinguishing *State Farm Mut. Auto. Ins. Co. v. Jacober* (1973) 10 Cal.3d 193 [policy referred to "the insured"].)

In California, this rule is not open to debate: "[W]here, as here, the policy excludes coverage for bodily injury intended or expected by 'an' or 'any' insured, the cases have *uniformly* denied coverage for all claims . . . ." (*Altieri, supra*, 235 Cal.App.3d at p. 1361 (emphasis added); see also Croskey, Heeseman, Popik & Imre, *supra*, Cal. Practice Guide: Insurance Litigation, ¶7:324 ["An exclusion that bars coverage for defined conduct by 'an' insured extends to the related liability of all other insureds"].)

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[4] There is no practical difference in California between the terms "an insured" and "any insured." (See, e.g., Croskey, Heeseman, Popik & Imre, *supra* Cal. Practice Guide: Ins. Litigation, ¶7:324 ["These terms are functionally equivalent and refer to all persons, named or unnamed, receiving coverage under the policy"].)

Safeco's intentional acts exclusion is of this broader type, which bars coverage for intentional acts by "an" insured:

> "'bodily injury' ... which is expected or intended by *an* insured or which is the foreseeable result of an act or omission intended by *an* insured ...." (2 ER 76, ¶1.a, emphasis added.)

Under this broader exclusion, there is no coverage for any insured if one acts intentionally. It is irrelevant which one did so. Such an exclusion operates to exclude all possible theories that could be alleged against any insured in connection with or arising out of the excluded intentional act. It does not matter that the non-perpetrator insured is sued on a derivative or parasitic theory, i.e., for negligent entrustment to or supervision of the intentional actor, or that the non-perpetrator has allegedly breached an independent duty to the plaintiff. (See, e.g., *Altieri, supra*, 235 Cal.App.3d at p. 1361 [excludes claim for negligent supervision of intentional actor]; *Gilbert, supra*, 852 F.2d at p. 453 (applying Calif. law) [since "a person insured" means any insured, no coverage for wife alleged to have negligently supervised husband molester]; *Yamamoto, supra*, 29 Cal.App.4th at pp. 1486–1487 [no coverage for father sued on negligent supervision theory for son's shooting of friend under policy excluding liability for injury "expected or intended by an insured"]; *Zelda, Inc., supra*, 56 Cal.App.4th at p. 1263 [excludes claims of derivative or vicarious liability].) The insurer owes no duty to indemnify or defend even the non-perpetrator coinsured.

Thus, beyond reasonable dispute, Safeco's intentional acts exclusion bars coverage based on the *nature* or *type* of the act that has been committed – here, on the fact that the act is *intentional* - not based on the identity of the particular actor/insured who acted intentionally. Plaintiff concedes he has "no quarrel" with this rule. (OBOM, p. 2.)

2. The exclusion bars coverage for all derivative or parasitic theories that could be raised against a non-perpetrator insured in connection with the other insured's intentional act.

As shown above, the exclusion in issue here bars coverage for even those insureds who did not commit an intentional tort and who are sued on a derivative or parasitic theory. There is a compelling reason why this must be so. An essential element of parasitic or derivative torts, such as negligent supervision or entrustment, is that another person acted wrongfully. The negligent entrustor/supervisor can be liable only if the underlying actor – the one who was negligently supervised or to whom the instrumentality was negligently entrusted - committed a tort. (See, e.g., *Safeco Ins. Co. v. Gilstrap* (1983) 141 Cal.App.3d 524, 531, citation omitted ["essential element" of negligent entrustment is "negligent operation of the vehicle itself"]; see *id.* at p. 530 ["Until [insureds'] son incompetently operated and used the motorcycle and caused injury, no liability against the entrustors arose"]; *Jeld-Wen, Inc. v. Superior Court* (2005) 131 Cal.App.4th 853, 864 [negligent operation of vehicle by employee a necessary element of negligent entrustment claim against employer].)

Thus, an exclusion barring coverage for "an" or "any" insured's intentional act *necessarily* bars coverage for derivative or parasitic claims, such as negligent supervision against the insured who did not act intentionally. (See, e.g., *Altieri, supra*, 235 Cal.App.3d at p. 1361; *Zelda, Inc., supra*, 56 Cal.App.4th at p. 1263 [excludes claims of derivative or vicarious liability]; *Yamamoto, supra*, 29 Cal.App.4th at p. 1486-1487 [that claim against intentional actor's parents premised on negligent supervision, not intentional conduct, is irrelevant under an exclusion barring coverage for intentional act of "an" or "any" insured].) Indeed, the "an" or "any" insured exclusion bars coverage for

all theories against any insured that depend upon or arise out of the excluded act or event. (*Atlas Assur. Corp. v. McCombs Corp.* (1983) 146 Cal.App.3d 135, 148 (emphasis added) [any injury from claim of negligent design of excluded motor vehicle/instrumentality "*necessarily arose*" out of operation or use of the motor vehicle"].) [5]

The majority of courts agree. A plaintiff cannot state a "complete cause[] of action [against a supervisor] without alleging the molestation and resulting injuries. Thus the penal violation exclusion *necessarily* applies." (*All American Ins. Co. v. Burns* (10th Cir. 1992) 971 F.2d 438, 443 (applying Okl. law) (emphasis added.) Even where non-perpetrator insureds "have only negligence claims asserted against them, the personal injuries for which these claims are asserted *arose out* of the willful violation of a penal statute [child sexual abuse] committed by an insured. The fact that these Defendants were 'upstream' in the chain of causation does not bring them within the terms of the policy." (*Id.* at p. 442, emphasis added.) For these reasons, *All American* rejected the claim that the non-perpetrator's act of negligence was independent and thus covered, because "the [excluded] sexual violations and resulting injuries therefore cannot be disregarded." (*Ibid.*) The Tenth Circuit recognized this as the majority view. (See *id.* at p. 443, n. 1 and authorities collected.)

This Court applied a similar analysis when it held that an actual abuser may be entitled to a defense if plaintiff alleges commission of parasexual acts that are *"separable"* from the excluded act of abuse

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[5] As *Atlas* explained it, "[n]o liability can arise from the claimed risk in negligently hiring a thief unless the thief actually steals something. It is the basing of liability specifically on the negligent hiring of a thief which renders [the employer's] alleged negligent act *dependent* upon the excluded theft as concurrent causes of the loss." (*Id.* at p. 149, emphasis added.)

itself. (*Horace Mann Ins. Co. v. Barbara B.* (1993) 4 Cal.4th 1076, 1078.) There, the parasexual misconduct alleged against the teacher/abuser – paying special attention to the student, calling her pet names, etc. - was not *necessarily* part of the molestation. It could have been performed in connection with the teacher's "educational activities." *(Id.* at p. 1083, emphasis added.) "Neither precedent nor logic dictates that a molester cannot also be liable for torts of negligence against the victim which are *apart* from, and *not integral to*, the molestation." (*Ibid.*, emphasis added.)

But plaintiff's entire theory against Betty is inextricably related to David's molestation. The fact she is alleged to have breached an independent supervision duty to plaintiff does not make the claim against her "separable" from David's excluded intentional act. She has been sued for failing to prevent David's abuse. Absent alleging that David *actually molested* plaintiff, plaintiff could not even state a cause of action against Betty. (See, e.g., *Mark K. v. Roman Catholic Archbishop* (1998) 67 Cal.App.4th 603, 612-613 [Diocese's breach of duty was not by itself an injury-causing event that satisfied all elements of negligent supervision claim; cause of action for negligent supervision does not arise until the abuser actually abuses because actual molestation is a necessarily element of that claim].)

Thus, when the negligent entrustor's/supervisor's own direct negligence is inextricably tied to a molester's excluded intentional act, there can be no coverage for either. By barring coverage for all insureds when one acts intentionally, Safeco's exclusion operates to exclude all possible liability theories that could be alleged against any insured in connection with or arising out of the excluded intentional act. That precludes coverage for the derivative, parasitic tort of negligent supervision against Betty here.

The wording of Safeco's exclusion here removes all doubt. In addition to precluding coverage for all insureds when one acts intentionally, it bars coverage for all *harms* that *foreseeably* arise from an insured's intentional act: injury "*foreseeable* or intended by an insured *or* which is the *foreseeable result* of an action or omission intended by an insured." (2 ER 76, ¶1.a, emphasis added.) There is no possibility of coverage for Betty under a foreseeability analysis, for two independent reasons.

First, if *David* could foresee harm from his molestation, the exclusion bars coverage for Betty because the exclusion is framed in terms of what is foreseeable by *an* insured. As a matter of law, David not only foresaw harm, he *knew* his abuse was harmful. (*J.C. Penney, supra,* 52 Cal.3d at p. 1025 [child sexual abuse is "always harmful"].)

Second, Betty is not entitled to potential coverage for negligent supervision because an essential element of her liability for that tort is that *she* must have *foreseen* the abuse and harm. (*Chaney v. Superior Court (Kennedy)* (1995) 39 Cal.App.4th 152, 157 [wife's duty of care to child depends on whether "husband's behavior was reasonably foreseeable"]; *Margaret W. v. Kelly R.* (2006) 139 Cal.App.4th 141, 153 [harm must be foreseeable]; *J.L. v. Children's Institute, Inc.* (2009) 177 Cal.App.4th 388, 396 ["[t]he existence and scope of any duty . . . depends on the foreseeability of the harm"]; and see discussion *id.* at 396-398.) To plead a cause of action for negligent supervision of a child abuser, "[i]t is not enough to allege that the sexual misconduct was conceivable. The plaintiff must allege facts showing that it was *foreseeable* . . . ." by the negligent supervisor. (*Chaney, supra*, 39 Cal.App.4th at p. 158, emphasis original.) "Without knowledge of her husband's deviant propensities, a wife will not be able to foresee that he

poses a danger and thus will not have a duty to take measures to prevent the assault." (*Id.* at p. 157, emphasis added.)

Plaintiff alleges Betty knew sufficient facts that she must have foreseen what David was doing. (2 ER 55, ¶ 32 [Betty knew of David's "deviant behavior and harmful propensities"]; 2 ER 52, ¶13 [Betty "knew, had reason to know or was otherwise on notice" of David's unlawful sexual conduct].) By pleading foreseeability on Betty's part, as a necessary element of his underlying negligent supervision claim, plaintiff has also shown there is no possibility of coverage for her.[6] The only possible basis for Betty's liability is expressly excluded by the policy.

Safeco's exclusion does not limit foreseeability to the actor who committed the intentional act. It neither suggests nor implies that the insured who acted intentionally need be the same as the one who foresaw the harm from that act.[7] It broadly states that harm from the

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[6] Actually, Plaintiff's complaint alleges far more than Betty merely did or could *foresee* harm. He alleges she "walked in on [plaintiff] and [David] engaging in sexual acts . . . ." and thus "*knew*" David "was engaging in these acts with minor children, namely Plaintiff." (2 ER 55, ¶33 (emphasis added, capitalization modified; 2 ER 52, ¶12; 2 ER 55, ¶ 32, emphasis modified.) Because Betty knew David was abusing, as a matter of law she had imputed actual knowledge that David was harming plaintiff. (See *J.C. Penney, supra,* 52 Cal.3d at p.1025.) *J.C. Penney's* imputed knowledge rule – that child abuse is always harmful – logically applies to anyone with actual knowledge that child molestation is occurring.

[7] Indeed, it is the absence of any such limitation on who must have foreseen the abuse/harm that bars all claims and theories based on foreseeability that may arise out of the intentional act. (See, e.g., *Castro v. Allstate Ins. Co.* (S.D. Cal. 1994) 855 F.Supp. 1152, 1154-1155 (applying Calif. law) [rejecting insured's claim that exclusion did not "clarify" *whose* intentional acts were excluded from coverage, it is the "very absence of [such] a qualification" that clarifies rather than obscures the scope of the exclusion"].)

intentional act must have been foreseen or expected by an insured. The exclusion thereby excludes all possible theories a plaintiff could advance against a non-perpetrator insured.

In sum, there is no possible coverage here for Betty. First, Safeco excluded coverage for all insureds when "an insured" has acted intentionally. Second, plaintiff's cause of action against Betty is inextricably tied to David's excluded act, arose out of it, and cannot stand alone. Third, the exclusion bars all coverage that "an insured" foresees may arise from an intentional act, and foreseeability of harm from an intentional act is a critical element of plaintiff's only cause of action against Betty. There is no possibility of coverage here.

B. The Severability Of Interests Condition Does Not Rewrite This Intentional Acts Exclusion, Nor Render It Ambiguous.

1. The severability clause was designed to resolve ambiguity in exclusions barring coverage for "the insured's" intentional acts, by clarifying which insured's intentional act precludes coverage.

Plaintiff does not contend that the exclusion's use of the phrase "an insured" is in any way ambiguous. (See OBOM, p. 2.) To the contrary, he concedes he has "no quarrel with th[e] rule" expressed by the many courts construing the phrases "an" insured" or "any insured" as barring coverage for all when one commits an intentional act. (*Ibid.*)

Instead, plaintiff argues that another policy provision affects the scope and interpretation of the intentional acts exclusion. Plaintiff calls this the "severability" clause. It is more accurately described as the "severability of *interests*," or "separation of *interests*" clause, because it requires a separate analysis of each insured's individual *interest* in

coverage under the policy. (See, e.g., 8 Couch on Ins. §§114:48, 114:28; 2 Couch on Ins. §23:2.) It is a condition, not an exclusion, and it appears in an entirely different section of the policy than the exclusions. (Compare: 2 ER 76 [exclusions]; 2 ER 78 [conditions].)

The severability clause was first added to insurance policies in the mid-1950's, in response to a particular unintended consequence. (See discussion *in Alaska Dept. of Trans. & Public Facilities v. Houston Cas. Co.* (Alaska 1990) 797 P.2d 1200, 1205-1206, Mathews, C.J., conc.) Commercial liability insurers often provided coverage for many companies under a single policy. One entity was the named insured; others qualified as 'omnibus' insureds by virtue of their relationship to that named insured.[8] But exclusions in those policies barred coverage for claims made by employees of "the insured." (See *ibid*, and authorities collected.) Insurers had intended only to exclude coverage for personal injury claims made against an insured by its *own* employees. Nonetheless, courts were interpreting exclusions for "employees of the insured" to bar coverage if the injured plaintiff was an employee of any company insured under the policy, even though the personal-injury claimant was not an employee of the particular insured who was seeking coverage for the employee's lawsuit. [9]

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[8] These entities are often called "omnibus" insureds because they are not named in the policy. They qualify as insureds by virtue of their status or relationship, i.e., they satisfy one of the conditions for being an "insured." (See, e.g., 9 Couch on Ins, §126:7.) For example, David was an "insured" because he was a relative of named insured Betty and lived on the premises.

[9] As Justice Matthews explained, "by 1940, it was clearly understood by the insurance companies participating in the standard provisions program that, as stated above, 'the insured' meant only the person claiming coverage, and that the employee exclusion denied coverage to any insured only with respect to injury to his employee. By 1954, a

Insurance commentators described the reason for creating the severability condition in similar fashion:

> "The term 'the insured,' without further qualification, could be regarded as a class term, collectively embracing all who might qualify within the term. *If so construed the result would be to exclude coverage for all insureds if coverage is excluded for any one of them. That is not the intent.* Accordingly, the definition of 'insured' specifically states that the insurance afforded applies *separately to each insured against whom claim is made or suit is brought.* The one exception is with respect to limits of liability."

(Randall L. Smith and Fred A. Simpson, "The Mixed Action Rule And Apportionment/Allocation Of Defense Costs And Indemnity Dollars," 29 T. MARSHALL L. REV. 97, 178 (Fall 2003) (hereafter "Smith") (emphasis added), citing George H. Tinker, "Comprehensive General Liability Insurance - Perspective and Overview," 25 Fed'n Ins. Couns. Q. 217, 237 (Spring 1975).)

In other words, the severability of interests condition was created to avoid the problem of a policy exclusion barring coverage for "the insured" when there was more than one insured. It answered the question concerning *which* insured was "the insured" referred to in such an exclusion. It showed that the term "the insured" meant only the insured who was claiming coverage under the policy:

> "The intention of the underwriters has always been that where a policy would or might apply to several insureds, the unqualified term 'the insured,' as used in the exclusions and conditions of the policy, *meant only the person claiming coverage*. Thus, for example, the exclusion for injury to an employee of 'the insured' *deprives no one of coverage except with respect to his own employees*. A number of cases had arrived at a contrary result, so the 1955 provisions undertook

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majority of the reported decisions was to the contrary." (*Alaska Dept. of Trans. & Public Facilities, supra,* 797 P.2d at pp. 1205-1206 (Matthews, C.J., conc.))

> to spell out this underwriting intent by the use of the statement: 'The term 'the insured' is used severally and not collectively . . . .'"

(*Smith, supra*, 29 T. *Marshall L. Rev.* 97, 177-178 (Fall 2003) (emphasis added, citing Norman E. Risjord & June M. Austin, Standard Family Automobile Policy, 411 Ins. L. J. 199, 202 (April 1957) (hereafter "Risjord.") see also *Michael Carbone, Inc. v. Gen. Acc. Ins. Co.* (E.D.Pa. 1996) 937 F.Supp. 413, 419 (construing Pa. law); *Phoenix Ass. Co. v. Hartford Ins. Co.* (Colo. 1971) 488 P.2d 206, 207; see also 8 Couch on Ins. §115:22 [purpose of clause to prevent employee exclusion from being applied "where it does not belong"].)

2. The severability condition has no effect on unambiguous exclusions that preclude coverage for the intentional act of "an insured" or "any insured."

Plaintiff would use this severability condition to create two entirely separate insurance policies. Under plaintiff's theory, even though Safeco's exclusion says this insurance does not apply to "an act or omission of *an* insured," the severability provision rewrites the exclusion to instead read: this insurance does not apply to "an act or omission intended by *the* insured." Plaintiff claims that since Betty Schwartz is "*the* insured" who is *claiming coverage*, the exclusion does not apply because she did not commit an intentional act.

When there is more than one insured under a policy, the phrase "*the* insured" can raise questions concerning to whose intent it is referring. The severability clause answers the question: "*the* insured" refers only to the insured who is claiming coverage.

But in the broader Safeco exclusion, there is no question that requires an answer. Such an exclusion is not ambiguous because it says that if *any* insured has committed an intentional act, then no insured is

entitled to coverage. Analyzing coverage separately, from the perspective of the insured claiming coverage, **does not make the existence of the other insured, nor the intent of the other insured, *irrelevant.*** The severability condition does not require courts to ignore the fact that there *are* other insureds, that one of those other insureds acted intentionally, or to ignore plain exclusionary language that coverage is barred if "an" insured has committed an intentional act. Severability clauses do not shift the analysis from "an insured's," i.e., David's intent, to *Betty's* intent, or lack thereof. And even from *Betty's* "perspective" as the insured claiming coverage, there is still another insured, and he *still acted intentionally.* In short, the severability clause does not transform the exclusion's use of "*an* insured" to "*the* insured." As long as "an insured" committed an intentional act, coverage for all insureds is barred.

One court succinctly explained the critical distinction between "an" or "any" insured exclusions, on the one hand, and those referring only to "the insured," on the other. It concluded that the broader "an" or "any" insured exclusion is "not altered or otherwise limited" by as severability clause:

> "This is because the exclusion excepts losses 'arising out of the ownership, maintenance, use or entrustment to others of any . . . 'Auto' . . . owned or operated by or rented or loaned to *any* insured.' *Note the exact language.* The provision excludes losses caused by an automobile operated by '*any* insured;' the clause does *not* say '*the* insured.' *The distinction is paramount.* Had the automobile exclusion used the phrase 'the insured,' the separation of insureds clause would have altered the meaning of the exclusion . . . ."

(*Michael Carbone, Inc., supra*, 937 F.Supp. at p. 420, emphasis modified and added; see also *Phoenix Assurance, supra*, 488 P.2d at p. 207.) After an exhaustive search, *Michael Carbone* concluded that this

is the majority rule: the severability clause does not apply to an exclusion couched in terms of "an" or "any" insured.[10]

Other courts agree, because any other conclusion would contradict the plain meaning of the broader "an or any" insured exclusion. For example, the Texas Court of Appeal refused to apply the severability clause to an auto exclusion which barred coverage for autos owned, operated or rented by or loaned to "any insured." (*Bituminous Cas. Corp. v. Maxey* (Tex.App. 2003) 110 S.W.3d 203.) The court said:

> "To hold that the term 'any insured' in an exclusion clause means 'the insured making the claim' would collapse the distinction between the terms 'the insured' and 'any insured' in an insurance policy exclusion clause, making the distinction meaningless. It would also alter the plain language of the clause, frustrating the reasonable expectations of the parties when contracting for insurance. We should not adopt an unreasonable construction of an insurance contract." (*Id.* at p. 214.)

Bituminous warned that "construing the term 'any [insured]' the same as the word 'the [insured]' in an exclusion clause when an insurance policy contains a separation of insureds or severability of interests clause would require a tortured reading of the terms of the policy." "The unambiguous term 'any insured'" should not be "misshaped through an overreading of the separation of insureds clause." (*Ibid.* citation omitted, quotation marks modified). That would "expand liability beyond that bargained for by a reasonable person who followed the

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[10] *Carbone's* exhaustive research revealed that "the vast majority of jurisdictions which have addressed the issue . . . hold that the severability doctrine or a separation of insureds clause modifies the meaning of an exclusion phrased in terms of '*the* insured.'" (*Michael Carbone, Inc., supra,* 937 F.Supp. at p. 418 (emphasis added); and see authorities collected.) "These cases hold that the exclusion will only be effective if it applies with respect to the specific insured seeking coverage." (*Ibid.*) See also authorities cited *post,* at pp. 41-42, n. 16.)

plain language of the policy and would invite collusion among insureds . . . . We should not give the terms of a contract such an expansive reading without a definite expression of the parties' intent that we do so." (*Ibid.*; see also *Altieri, supra*, 235 Cal.App.3d at p. 1361, discussing *Spezialetti v. Pacific Employers Ins. Co.* (3d Cir. 1985) 759 F.2d 1139, 1141-1142 (emphasis added) ["using the term 'the' insured creates uncertainty in circumstances where the various persons covered by the policy may have adverse or joint interests. [*Spezialetti*] determined that *the uncertainty does not exist*, however, when the policy exclusion refers to '*any* insured'"].)

The only California decision to discuss the severability condition concurs with this analysis. (*California Cas. Co. v. Northland Ins. Co.* (1996) 48 Cal.App.4th 1682 *("Northland".)* The policy there excluded coverage for injuries "arising out of the ownership, maintenance or use of an inboard watercraft 'owned by any insured.'" The court first concluded "the exclusion's unambiguous intent is to exclude coverage for *any* insured, even if liability of that insured does not arise from his or her personal ownership or use of the watercraft." (*Id.* at p. 1696 (emphasis added.) *Northland* said the existence of a severability clause does it nullify the exclusion: "a clause excluding liability for specific conduct should prevail over a more general severability provision." The purpose of severability clauses is to afford each insured a full measure of coverage up to the policy limits, *not to negate bargained-for and plainly worded exclusions.* (*Id.* at p. 1697, citation omitted.) "It is inconceivable that parties to a policy would include clauses specifically excluding coverage for claims based on certain types of conduct, but intend those exclusions to have no effect in any case involving claims against coinsured spouses." (*Id.* at p. 1697-1698.)

Plaintiff places great reliance on Justice Baxter's concurring and dissenting opinion in *Safeco Ins. Co. of America v. Robert S.* (2001) 26 Cal.4th 758, 771 and 778, which said that by virtue of the severability provision, "exclusionary clauses apply separately to each insured. . ., and "exclusions from coverage are personal and may not be imputed from one insured to another . . . ." But with no disrespect intended, this did not consider the history and intent of the severability clause, important factors in interpreting the provision's meaning. (See *MacKinnon v. Truck Ins. Exch.* (2003) 31 Cal.4th 635, 643-645; *E.M.M.I, Inc. v. Zurich American Ins. Co.* (2004) 32 Cal.4th 465, 486-487 (Chin, J., dissenting).) The severability condition was designed to resolve the ambiguity created by an exclusion barring coverage for "the insured." It was not intended to override exclusions that are not ambiguous with respect to which insured the policy is referring.

Moreover, this severability clause does not create entirely separate contracts of insurance. It simply says "[t]his insurance *applies* separately to each insured." (2 ER 78, ¶2] (emphasis added).) In other words, coverage is analyzed separately, from Betty's *perspective* as the one claiming coverage. Separate analysis does not require tunnel vision. A separate analysis does not suggest that courts now evaluate Betty's intent (or lack thereof), or that David's intent suddenly becomes irrelevant.

And even if the severability condition reflects that exclusions are personal to the insured claiming coverage, the exclusion itself makes "imputation" of intent permissible. Betty has been sued for a parasitic tort. Applying the severability condition here, to "sever" one policy into two would require separating the inseparable. David's liability is a precondition to Betty's. Absent David's excluded act of molestation, Betty could not possibly be liable. Her liability, if any, *necessarily*

arises out of his excluded intentional acts. (See discussion *ante* at pp. 13-16; and see, e.g., *Folsom Investments v. Amer. Motorists Ins. Co.* (Tex.App. 2000) 26 S.W.3d 556, 561 [severability clause does not cover negligent hiring/supervision for sexually harassing employee since employer's liability is related to and interdependent upon employee's tortious conduct].)

Applying the severability condition in this context would create an absurd result, one that contradicts rather than serves the parties' conceded intent. Yet courts should strive to reconcile policy provisions so that each has effect and meaning. (*Bank of Stockton v. Diamond Walnut Growers, Inc.* (1988) 199 Cal.App.3d 144, 158.) A construction that would render one provision meaningless or inoperative is not reasonable and will not render ambiguous an alternative interpretation that gives effect to each provision. (*Ibid.*) The severability condition exists to resolve ambiguity. It is not a trump card designed to nullify exclusions; it was created to clarify, not distort, the parties' actual intent. (See *Smith*, *supra*, at p. 178, citing *Risjord, supra*, at p. 237 [severability clauses "are still only explanations of what the coverage has always been"].) Plaintiff's proposed misuse of the severability condition would, in practical effect, *always* nullify this exclusion, and, indeed, all others like it that unambiguously refer to "an" or "any" insured[11].

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[11] For example, several exclusions in the Safeco policy refer to "an" insured. (See, e.g., 2 ER 76, ¶1.b ["arising out of business pursuits of *an* insured"]; 2 ER 76, ¶1.d ["arising out of any premises owned or rented to *an* insured which is not an Insured location"]; 2 ER 76, ¶1.e(1)(b) ["entrustment by *an* insured of an aircraft"]; 2 ER 76, ¶1.e(3)(b) ["entrustment of a watercraft by *an* insured"]; 2 ER 77, ¶1.h ["transmission of a communicable disease by *an* insured"]; 2 ER 77, ¶2.a(3) ["for punitive damages awarded against *an* insured"]; 2 ER 77, ¶2.b ["property damage to property owned by *an* insured"]; 2 ER 77,

C. Plaintiff's Severability Argument Contradicts the Parties' Undisputed Intent That There Is No Coverage If Any Insured Acted Intentionally.

Plaintiff admits that if there were no severability of interests condition, there could be no coverage for Betty Schwartz. His sole argument is that the severability condition and the intentional acts exclusion together create an ambiguity – which respect to *which* insured's intent the exclusion is referring – and this "ambiguity" should be resolved in his favor. Plaintiff's argument suffers from several fatal flaws.

First, by conceding he has "no quarrel" with the many cases holding that an "an or any" exclusion bars coverage for all insureds, plaintiff has also conceded that the meaning of this exclusion is plain and unambiguous. Therefore, analyzing coverage according to the parties' reasonable expectation is not only inappropriate, it is unnecessary. When the meaning of a policy term is unambiguous, this Court does not inquire into reasonable expectations of coverage. The plain language of the policy controls. Reasonable expectations – the second step of policy interpretation rules – applies only if the policy language is not plain. (See, e.g., *Rosen, supra*, 30 Cal.4th at p. 1074, citation omitted ["If possible, we infer this intent solely from the written provisions of the insurance policy. If the policy language 'is clear and explicit, it governs'"]; *Waller, supra*, 11 Cal.4th at p. 18, ["The rules

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¶2.e ["bodily injury or property damage for which *an* insured under this policy is also insured under a nuclear energy liability policy"]; 2 ER 77, ¶3.a [bodily injury to residence employee if injury does not arise out of "residence employee's employment by *an* insured"].) (All emphases added.) Can the severability of interests condition trump all of these provisions? To do so would virtually rewrite the entire liability coverage section from scratch.

governing policy interpretation require us to look first to the language of the contract in order to ascertain its plain meaning or the meaning a layperson would ordinarily attach to it"]; *Foster-Gardner, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.* (1998) 18 Cal.4th 857, 888 [courts will not rewrite plain policy language].) The contract's plain language itself establishes what is, and what is *not*, a reasonable expectation. Plaintiff has conceded the exclusion is plain.

Second, even absent plaintiff's concession, this intentional acts exclusion is not ambiguous. The exclusion broadly bars coverage when "an" insured commits an intentional act. The severability provision applies to exclusions whose use of the term "*the* insured's" intentional act creates confusion about which insured's act will bar coverage. But under Safeco's exclusion, it does not matter which insured committed the intentional act, so long as one did. Plaintiff is straining to force an ambiguity where there is none. (*Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d 800, 807 ["Courts will not adopt a strained or absurd interpretation in order to create an ambiguity where none exists"].)

And even under the reasonable expectations test, there is no coverage or possible coverage here. No objectively reasonable insured would expect the *severability* condition to cover them for another insured's intentional act. He or she would naturally look to the intentional acts exclusion. (See, e.g., *Northland, supra*, 48 Cal.App.4th at p. 1697 [severability clauses not designed or intended to negate bargained-for and plainly worded exclusions]; *Bituminous, supra* 110 S.W.3d at p. 214 [using the severability provision to rewrite an "an insured" or "any insured" exclusion would "alter the plain language of the [exclusion], frustrating" the parties' "reasonable expectations"]; *Argent v. Brady* (N.J.Super. 2006) 901 A.2d 419, 427 [unreasonable for

insured to conclude severability clause operated as a coverage grant because it is located in the policy's conditions].)

The exclusion is specifically-tailored to the intentional acts of an insured, i.e., to the nature of the acts excluded, and to foreseeability of harm from intentional acts. Any reasonable person would agree that David Schwartz committed an intentional act, and plaintiff concedes that based on the language of this exclusion, no *other* insured would expect coverage for a claim of negligently supervising an intentional actor. By contrast, the severability of interests condition is broad and general. It nowhere – either expressly or by implication – refers to intentional conduct, or, for that matter, to any exclusion. As a matter of common sense, reasonable insureds would conclude that the specific, plain language of the intentional acts exclusion controls; they would not even entertain the possibility that the far more general language of the severability condition trumps the exclusion's concededly plain meaning. (See, e.g., *Jane D. v. Ordinary Mutual* (1995) 32 Cal.App.4th 643, 651 [specific policy language controls over general]; *Northland, supra*, 48 Cal.App.4th at p. 1697 ["a clause excluding liability for specific conduct should prevail over a more general severability provision;" the purpose of severability clauses is to afford each insured a full measure of coverage up to the policy limits, not to negate bargained-for and plainly worded exclusions]; *Northwest G.F. Mutual Insurance Co. v. Norgard* (N.D. 1994) 518 N.W.2d 179 [the specific exclusion prevails over more general severability clause; severability clause not intended to negate plainly worded exclusions].) No insured who read this intentional acts exclusion could possibly have been misled into believing that Safeco covered negligent supervisors of intentional actors such as child molesters.

Thus, the severability clause does not create a reasonable expectation that there would be coverage for non-perpetrator insureds. The nature and kind of risk covered by the policy governs and limits what are the parties' reasonable expectations of coverage. (See, e.g., *La Jolla Beach & Tennis Club, Inc., supra*, 9 Cal.4th at p. 39; *Fred Stephenson v. Argonaut Ins. Co.* (2004) 125 Cal.App.4th 962, 969.)

In *MacKinnon*, this Court applied the reasonable expectations test to find coverage. (*MacKinnon v. Truck Ins. Exch.* 31 Cal.4th at p. 635.) There, the insured, a landlord, sprayed its apartment building for an infestation of insects. A tenant died as a result. When the tenant's parents sued the landlord, it tendered the defense to its liability insurer. Denying coverage, the insurer relied on the pollution exclusion, which defined the word "pollutants," used in the exclusion, as: "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste materials." (*Id.* at p. 639.) Though technically, the term "pollutants," as thus *defined*, could theoretically include insecticides, this Court concluded such a reading would violate the parties' reasonable expectation:

> "The application of iodine onto a cut through an eyedropper may be literally characterized as a discharge or release of an irritant. Truck Insurance's interpretation would therefore bar coverage for injury caused by the misapplication of iodine, or its application on someone who was hypersensitive or has an allergic reaction. A child's accidental ingestion of a pesticide or other toxic substance negligently left in an empty soft drink bottle would be barred. *Yet few if any would think of these injuries as arising from 'pollution' in any recognizable sense of that term.*"

(*Id.* at p. 650 (emphasis added.)

MacKinnon employed a common sense reading of policy terms. It prohibited a literal result, under the technical language of the policy, that did not comport with the parties' *reasonable* expectations. Plaintiff

has admitted that the plain meaning of the intentional acts exclusion precludes coverage for all insureds if any acted intentionally. Yet he invokes the severability of interests condition in the same manner as Truck when it relied on the technical definition of "pollutants" - to create an absurd result, contrary to common sense and plain meaning. (See *St. Paul Fire & Marine Ins. Co. v. American Dynasty Surplus Lines Ins. Co.* (2002) 101 Cal.App.4th 1038, 1058 [courts must "apply a little common sense to determine which of the two reasonable interpretations ... meets the objectively reasonable expectations of ... the party claiming coverage"].)

In determining "objectively reasonable expectations," the disputed policy language must be examined with regard to its intended function in the policy, "in the context of that instrument as a whole, and in the circumstances of that case, and cannot be found to be ambiguous in the abstract." (*Bank of the West, supra*, 2 Cal.4th at p. 1265; *Jordan v. Allstate Ins. Co.* (2004) 116 Cal.App.4th 1206, 1213–1214.) As shown above, the severability condition avoids the unintended consequence of precluding coverage for "omnibus" insureds, when such a result is contrary to the parties' intent. (See discussion *ante* at pp. 18-20.) Here, however, plaintiff would use the severability clause to *contradict* what he concedes is the parties' actual intent.

Based on common sense and the exclusion's plain language, the reasonable expectation here is that there is no coverage for any insured when one has acted intentionally. Reasonable expectations may defeat as well as afford coverage. (See, e.g., Croskey, Heeseman, Popik & Imre, *supra*, Cal. Practice Guide: Ins. Litigation, ¶ 4:318 ["An insured's reasonable expectations may restrict rather than expand coverage. The insured cannot claim coverage where a reasonable person would not

expect it"].)[12] Even under a reasonable expectation analysis, there is no coverage or potential coverage for Betty Schwartz here. The insured's interpretation of the severability clause would effectively nullify the exclusion which plaintiff concedes is plain.

D. Practical Ramifications Of Imposing A Duty To Defend Here.

1. Plaintiff's rule would encourage negligent supervisors to turn a blind eye to known child molestation.

Plaintiff argues it is only fair that victims of child abuse be compensated. Though no one would quarrel with that proposition, plaintiff ignores the countervailing public policy considerations that militate against a finding of coverage or potential coverage here. The statutory willful acts exclusion, Insurance Code section 533, exists to discourage the commission of willful torts. It reflects a fundamental public policy of denying coverage for such wrongs. (*J.C. Penney, supra*, 52 Cal.3d at pp. 1020–1021, n. 8; *Tomerlin v. Canadian Indem. Co.* (1964) 61 Cal.2d 638, 648)

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[12] See, e.g., *Farmers Ins. Exch. v. Knopp* (1996) 50 Cal.App.4th 1415, 1423 [reasonable person purchasing personal auto liability policy would not expect coverage for driving passengers for hire in taxicab or limousine]; *La Jolla Beach & Tennis Club, Inc., supra,* 9 Cal.4th at p. 43 [reasonable person would not expect workers' compensation policy to cover employee's civil lawsuit for damages against insured employer]; *Bank of the West, supra,* 2 Cal.4th at pp. 1265–1266 [reasonable person would not expect a policy covering claims for "damages" caused by "unfair competition" to cover violations of a statute prohibiting "unfair competition" that did not allow damages as a remedy]; *Bay Cities Paving & Grading, Inc. v. Lawyers' Mut. Ins. Co.* (1993) 5 Cal.4th 854, 868–869, 873 [a single policy limit of coverage available because no insured could reasonably expect separate policy limits for related acts of malpractice].)

For that reason, the insured/molester who has acted intentionally cannot shift his/her rightful tort obligation to the insurer. As noted, child sexual molestation is always intentional, and it is "always harmful" because it is "inherently harmful." (*J.C. Penney, supra*, 52 Cal.3d at p. 1025 ["always harmful"]; *Horace Mann, supra*, 4 Cal.4th at p. 1082 ["inherently harmful"].) Those who sexually abuse children have imputed knowledge that their acts always harm the child. That is every bit as true for supervisors of abusers who are actually, subjectively *certain* that child abuse is occurring, or who actually know enough to foresee abuse. In other words, if supervisors of child molesters know that abuse is occurring or probable, then, as a matter of law, they must have foreseen the resulting harm.

Betty could never be liable to plaintiff for negligent supervision based on what she "should have" but did not know about David's acts or propensities. Liability for negligently supervising a molester is possible only if the supervisor had actual knowledge of abuse, or actually knew of facts that would lead a reasonable person to conclude the perpetrator must be abusing a child. (See, e.g., *Chaney, supra*, 39 Cal.App.4th at pp. 157-158.) An inference of actual knowledge is permissible when the circumstances show that the supervisor defendant must have known. (*Id.* at p. 157; see also *Romero v. Superior Court*, (2001) 89 Cal.App.4th 1068, 1082 [applying *Chaney's* "must have known" standard]; *Margaret W., supra*, 139 Cal.App.4th at p. 156 [foreseeability measured by what defendant actually knew]; *J.L. v. Children's Institute, Inc., supra,* 177 Cal.App.4th at p. 398 [supervising adult must have "had prior actual knowledge, and thus must have known, of the offender's assaultive propensities"].) Actual or imputed actual knowledge is what makes the abuser's conduct foreseeable, and foreseeability is an essential element of the tort of negligent supervision.

(*Chaney, supra*, 39 Cal.App.4th at pp. 157-158.) Thus, to be liable on a negligent supervision theory, non-perpetrators such as Betty must have known enough facts about the fact or likelihood of abuse to make abuse of plaintiff at least foreseeable.

Plaintiff's rule would allow those supervisor insureds, who actually knew of abuse or a foreseeable danger of child molestation, to ignore it yet still be entitled to a defense when the child sues them on a parasitic liability theory. The public policy of California is to promptly detect and discourage child abuse. The State encourages, and in many circumstances requires, child abuse to be reported. (See, e.g., Pen Code, §11164 et seq. [mandating and encouraging reporting for "known" or "suspected" abuse, imposing confidentiality on reporter's identity]; see also Pen. Code §11172(a) [creating immunity absent reckless disregard for truth].) Because the negligent supervisor, to be liable in tort, must have actually known of the serious, foreseeable danger of abuse, finding potential coverage would permit, even encourage, negligent supervisors to turn a blind eye to abuse they know is being committed.

The pernicious results of plaintiff's "blind eye" rule are graphically illustrated here. Betty was not merely charged with 'notice' of the classic signs and symptoms of child abuse, such as giving alcohol and pornography to minors. Plaintiff alleges that Betty had actual knowledge of David's molestation because she "walked in on" them *in flagrante delicto.* (2 ER 52,¶ 12; 2 ER 55, ¶33.) Yet plaintiff would have this Court elevate the general, inapplicable severability clause above the public policy of detecting and preventing child sexual abuse. He would ignore the intentional acts exclusion here, permitting her a defense, and perhaps even indemnity, despite having ignored her actual, subjective, undeniable awareness of David's wrongful and "inherently," "always harmful" conduct.

2. Plaintiff's rule would create serious conflicts, uncertainty over coverage, and settlement/indemnity duties never contemplated by the contracting parties.

And there are many other problematic ramifications of plaintiff's proposed rule. The Court should consider the practical consequences of requiring a defense in the circumstances presented here.

First, the intentional acts exclusion is the "paradigm" example of a conflict of interest that can create the right to independent *Cumis* counsel. (Croskey, Heeseman, Popik & Imre, *supra*, ¶7:775; see also *San Diego Navy Fed. Credit Union v. Cumis Ins. Society, Inc.* (1984) 162 Cal.App.3d 358, 364; Civ. Code, §2860(b).) The attorney defending the non-perpetrator is faced with many difficult decisions, such as whether to seek or oppose special verdicts regarding the essential elements of the negligent supervision claim, such as actual, intentional abuse and foreseeability by the negligent supervisor.[13] (See *San Diego Navy Fed. Credit Union, supra*, 162 Cal.App.3d at p. 365.) Thus, imposing a defense obligation often would require independent counsel, conceivably two sets of defense lawyers, for a risk the insurer did not insure at all.

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[13] Typically, the defense of a negligent supervisor will take one of two forms. Here, for example, that: (1) David did not abuse plaintiff; or (2) he did commit abuse, but Betty lacked sufficient knowledge to know or foresee he was doing so. In the first scenario, the interests of Betty and her insurer are not adverse; a defense verdict for Betty would mean the insurer owes no indemnity. But if her insurer defends Betty on the second basis, there may well be a conflict: a judicial determination in the underlying action that Betty *knew or foresaw* David's abuse and harm would not only render her liable for the tort of negligent supervision, it *would also prove the exclusion applies*, because there is no coverage when the non-perpetrator insured foresaw the intentional act and harm.

Second, finding a duty to defend imposes considerable pressure on carriers to settle even claims the insurer made clear it had no intention of covering in any fashion, and for which it collected no premium. The existence of a duty to defend leads, inexorably, down the road to settlement. Two justices of this Court warned of that practical reality in *Horace Mann, supra*, 4 Cal.4th at p. 1076. Justice Arabian recognized that, once found, the duty to defend becomes, in *effect*, the duty to settle:

> "It is beyond serious dispute that once the duty to defend attaches, the insurer often finds it necessary to fund all or part of a settlement regardless of its underlying duty to indemnify, because the costs of defense may far exceed the settlement offer. The duty to defend becomes, in effect, the duty to indemnify. Because almost every complaint based on child molestation can truthfully allege pre- or postmolestation acts designed to facilitate or cover up the sexual misconduct [citation], the net effect of the majority opinion is to nullify our holding in *J. C. Penney*, *supra*, [citation], that the insurer owes no duty to pay for damages resulting from child molestation."

(*Horace Mann Ins. Co., supra*, 4 Cal.4th at p. 1094, (Arabian, J., dis.)) Justice Baxter "shared Justice Arabian's concern that the majority too easily dismiss the problem of artful pleading around *J. C. Penney.* [Citation]. . . . . *[I]t is well to remember that from the insurer's perspective, the duty to defend, with its attendant costs, imposes the pressure to settle."* (*Id.* at p. 1089 (Baxter, J., conc.)) Here too, imposing a duty to defend would create serious pressure on the insurer to settle a claim it had plainly excluded.

Third, this is not just a matter of whether Safeco owes a defense obligation. If the severability condition has the power to wipe out the intentional acts exclusion as to Betty, that *will* create a duty to

indemnify. The severability clause will have *eradicated* the exclusion for parasitic tort claims.

And what will happen when an insurer receives a demand to settle within policy limits? The climate of uncertainty created by the severability clause's potential power to trump the exclusion will mean insurers must either (1) accept the settlement demand though they unambiguously excluded the entire parasitic tort claim; or (2) turn down the demand, relying on the clear exclusion, and face the risk of an excess judgment should a court later decide the severability clause has nullified that exclusion. An insurer who, in reasonable reliance on an exclusion, declines an offer to settle within policy limits, faces exposure to a judgment in excess of policy limits because, however reasonable, if it is wrong, its belief that there is no coverage is not a defense. (*Johansen v. California State Auto. Ass'n Inter–Ins. Bureau* (1975) 15 Cal.3d 9, 16; *Rappaport-Scott v. Interinsurance Exch. of Auto. Club* (2007) 146 Cal.App.4th 831, 836.) An insurer whose policy plainly says it does not cover any insured, on any theory, when one has acted intentionally, will be faced with these everyday practical settlement dilemmas. If it believes, as here, that the severability clause does not trump an "an or any" insured exclusion, and is later proven wrong, it faces excess liability. Whether insurers succumb and settle for policy limits, or rely on their exclusions, either way, they will be paying indemnity dollars for risks they did not intend to cover at all. Using the severability condition as a 'trump card' to negate a plainly worded policy provision would create needless uncertainty for the contracting parties.

And if the severability clause can negate *this* intentional acts exclusion, why not *other* policy provisions? Many exclusions in Safeco's policy key coverage to the acts of an "*an* insured." (See

discussion *ante* at pp. 26-27, n. 11.) The power of the severability condition to eradicate plain policy language would not be confined to intentional acts; it could nullify virtually any policy provision that limits coverage. Parties would be compelled to resort to the courts for a judicial interpretation to resolve the condition's potential effect on the ultimate coverage question. Yet a goal of policy interpretation should be clarity, so the contracting parties promptly know, with some measure of certainty, and without the need for case-by-case judicial intervention, what is covered and what is not. (See, e.g., *Foster-Gardner, supra*, 18 Cal.4th at p. 881 ["to answer these questions, courts would have to rewrite unambiguous policy language on a case-by-case basis under the guise of interpretation"].)

Finally, such a rule would encourage even marginal negligent supervision lawsuits, because there is no coverage and no possible coverage for the abusers, who are often judgment proof. (See *Horace Mann, supra*, 4 Cal.4th at p. 1089 (Baxter, J. conc.).) Indeed, plaintiff's proposed rule – by creating coverage/potential coverage for the non-perpetrator insured - encourages the so-called 'set up' lawsuit.

Since this case is still in the pleadings stage, the record does not disclose the full story of what transpired in connection with the settlement of the underlying lawsuit. But even on this minimal record, there can be no question that this is a thinly-disguised collaboration between the underlying parties to manufacture a defense and coverage, i.e., to end-run the intentional acts exclusion. It was *actual abuser David*, acting as Betty's "attorney in fact," who assigned *her* contract and bad faith claims to Minkler, as well as his own. (See 1 ER 3:11-13; 2 ER 37, ¶ 33.) It was actual abuser *David* – barred as a matter of law from being defended or indemnified – who stipulated to a judgment

against *Betty* for $5 million.[14] The molester collaborated with the non-perpretator insured and his victim to effectively shift most if not all of his own uninsured liability onto the insurer of his co-insured.[15] California law prohibits insurers from having to defend or settle on behalf of child molesters. The law should not permit artfully and indirectly what cannot be accomplished directly. This settlement/assignment is an artifice designed to evade the public policy enshrined in Insurance Code section 533, and the language of the

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[14] Because of the procedural posture, there are still many unanswered questions about the terms an circumstances of the settlement agreement and the resulting default judgment. David and plaintiff filed the agreement "under seal" and therefore have never disclosed the settlement terms. That strongly suggests they have something they wish to conceal, and it is not the fact that plaintiff was molested, because neither his underlying complaint nor the instant action was filed "under seal." If and when the seal is lifted, this agreement may very well turn out to be a "patent sham collusively designed to create a judgment for which liability insurance coverage would then exist. (See, e.g., *Pruyn v. Agricultural Ins. Co.* (1995) 36 Cal.App.4th 500, 517, n. 16, citation omitted.)

[15] And Proposition 51 – which requires apportionment of fault for noneconomic damages among joint tortfeasors – is no real safeguard that the insurer will be responsible only for the negligent supervisor's *proportionate share* of liability. (See Civ. Code, § 1431.2.) The case law abounds with examples of negligent supervisors assessed the lion's share of the blame, far more than the egregious, *intentional* wrongdoer. For example, in *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 148, a child's grandmother scalded the child in a tub of boiling hot water, holding her there until her "flesh was burned to the bone." The jury assessed only 1% fault to the *grandmother,* but *75%* to the *County* who placed the child with the grandmother, and *24%* to a County employee who failed to make monthly visits. In a shooting case, another jury apportioned 75% of the liability to the premises owner, which negligently failed to provide adequate security measures, and only 25% to the actual shooter. (*Rosh v. Cave Imaging Systems, Inc.* (1994) 26 Cal.App.4th 1225, 1232.)

intentional acts exclusion, which plaintiff concedes is unambiguous in barring coverage for all insureds when one acts intentionally.

Justice Baxter's concurrence in *Horace Mann* criticized such efforts as improper:

> "[I]t may well behoove a molestation victim to find any threadbare means of pleading the molester's insurer into the suit. However groundless such pleading might ultimately prove, it can supply invaluable leverage toward a compromised recovery from the insurer's funds. If the molester is judgment-proof except for insurance, the victim has every reason to seek even a much-discounted settlement rather than litigate to a worthless judgment against the uncovered tortfeasor. When analyzing duty-to-defend issues, we should never lose sight of these practical realities."

(*Horace Mann Ins. Co., supra*, 4 Cal.4th at p. 1089 (Baxter, J. conc.)) Here, the "threadbare means" of pleading Betty's insurer into the suit provides the same "invaluable leverage towards a compromised recovery from the insurer's funds."

It was to avoid these problems and adverse ramifications that Safeco's policy took such pains to exclude every theory of liability a third-party plaintiff might raise against any insured in connection with the intentional act of one. Safeco made clear it did not cover anything related to intentional acts, irrespective of which insured committed them, nor foreseeable harm flowing from such an act. It excluded not only the intentional act itself but the *entire parasitic tort*. This concededly-plain exclusion must be implemented as the parties reasonably expected. The severability clause does not apply here, nor should it. To hold otherwise would nullify plain contract language and create an entirely ad hoc approach to coverage, thereby creating rampant uncertainty over what is covered and what is not. And that uncertainty would not be limited to the intentional acts exclusion. The severability

clause was never designed for such improper purposes. It is not a trump card capable of nullifying plain and unambiguous language.

E. The Clear Weight Of Out-Of-State Authority Supports Safeco's Interpretation Of The Severability Condition.

In the absence of California case law, this Court will look to authority from other jurisdictions to assist it in policy interpretation. (*Aydin Corp. v. First State Ins. Co.* (1998) 18 Cal.4th 1183, 1216.) Courts around the country agree with Safeco's interpretation of the severability clause by a margin of two-to-one.[16]

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[16] Courts following the majority rule: *Allstate Ins. Co. v. Kim* (D. Hawaii 2000) 121 F.Supp.2d 1301, 1308; *Michael Carbone, Inc., supra*, 937 F.Supp. at pp. 416-420; *Chacon v. American Family Mut. Ins. Co.*, (Colo. 1990) 788 P.2d 748, 752; *Johnson v. Allstate Ins. Co.* (Me. 1997) 687 A.2d 642, 644-645; *American Family Mut. Ins. v. Moore* (Mo.App. 1995) 912 S.W.2d 531, 533-534; *Sales v. State Farm Fire & Cas. Co.* (11th Cir. 1988) 849 F.2d 1383; *State Farm Fire & Cas. Co. v. Wolford* (1986) 498 N.Y.S.2d 631; *Gorzen v. Westfield Ins. Co.* (Mich.App. 1994) 526 N.W.2d 43; *American Family v. Copeland-Williams* (Mo.App. 1997) 941 S.W.2d 625, 627-629; *Great Central Ins. Co. v. Roemmich* (S.D. 1980) 291 N.W.2d 772, 774-775; *Mutual of Enumclaw Ins. Co. v. Cross* (Wash.App. 2000) 10 P.3d 440; *Taryn E.F., by Grunewald v. Joshua M.C.* (Wis.App. 1993) 505 N.W.2d 418; *Norgard, supra*, 518 N.W.2d at pp. 183-184; *National Ins. Underwriters v. Lexington Flying Club, Inc.* (K.Y.App. 1979) 603 S.W.2d 490, 492; *Argent, supra,* 901 A.2d at p. 427; *Villa v. Short* (N.J. 2008) 947 A.2d 1217; *Oaks v. Dupuy* (La.App. 1995) 653 So.2d 165; *Caroff v. Farmers Ins. Co. of Washington* (Wash.App. 1999) 989 P.2d 1233.

For cases with the contrary result, see *Illinois Union Ins. Co. v. Shefchuk* (6th Cir. 2004) 108 Fed.Appx. 294; *Premier Ins. Co. v. Adams* (Fla.App. 1994) 632 So.2d 1054, 1055; *American Nat. Fire Ins. Co. v. Fournelle Est.*, (Minn. 1991) 472 N.W.2d 292, 294; *State Farm Fire & Cas. Co. v. Hooks* (Ill.App. 2006) 853 N.E.2d 1; *Worchester Mut. Ins. Co. v. Marnell* (Mass. 1986) 496 N.E.2d 158; *Northwestern Nat. Ins. Co. v. Nemetz* (Wis.App. 1986) 400 N.W.2d 33; *State Farm Fire & Cas. Ins. Co. v. Keegan* (5th Cir. 2000) 209 F.3d 767, 768-769;

Plaintiff argues that the courts agreeing with Safeco should be ignored, claiming they do not employ the same rules of policy interpretation that apply in California. He says that "[f]ew, if any, of the cases that enforce collective exclusions in the face of a severability clause actually analyze the issue from the standpoint of a lay insured." (OBOM, p. 4.) Plaintiff is wrong, for two reasons at least.

First, his claim is factually incorrect. Several of the majority cases examined the policy from the standpoint of the insured. For example, the Wisconsin Supreme Court applied the reasonable expectation test in *Norgard, supra*, 518 N.W.2d at pp. 183-184, concluding a layperson would not interpret the severability clause as nullifying or rewriting the intentional acts exclusion. Similarly, *Chacon* employed the very analysis suggested by plaintiff, holding that the focus of policy interpretation "is an objective one, focusing on what a reasonable person would have understood the contract to mean." (*Chacon, supra*, 788 P.2d at p. 752.). And the New Jersey Supreme Court followed policy interpretation rules that are virtually identical to those employed in California. (*Villa, supra*, 195 N.J. at p. 23.)

Second, most of the majority cases interpreting the severability condition based their conclusion on the clear and unambiguous language, the plain meaning, of the policy language.[17] They did not resort to reasonable expectations because, since the exclusionary language was clear, there was no need to do so. Here again, their

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Brumley v. Lee (Kan. 1998) 965 P.2d 1224; *West American Ins. Co. v. AV&S* (10th Cir. 1998) 145 F.3d 1224, 1226.

[17] See, e.g., *Kim, supra,* 121 F.Supp.2d at p. 1309 [holding based on the "plain, ordinary meaning" of the Severability Clause and exclusion at issue]; *Michael Carbone, Inc., supra,* 937 F.Supp. at pp. 422-423 [the policy "unambiguously expresses a contractual intent to create joint obligations and preclude coverage for innocent co-insureds"].)

reasoning is consistent with the approach to policy interpretation employed in California. This Court *first* decides if the exclusionary provision is plain and clear. If it is, that ends the inquiry, because the plain meaning is itself sufficient to determine the parties' reasonable expectations.

CONCLUSION

The uniform rule in California is that the exclusion in issue here unambiguously bars coverage for all insureds when one acts intentionally. That exclusion prohibits coverage not only for intentional acts but foreseeable harms that flow from intentional acts. By definition, the tort of negligent supervision of a child molester requires, as an essential element, precisely that: foreseeability of abuser harm. This exclusion was designed to exclude coverage for all parasitic claims and theories that necessarily arise out of the excluded intentional act.

Even plaintiff concedes this exclusion is plain and clear. The severability condition was neither designed nor intended to nullify plain, unambiguous policy language. To apply it here would violate rather than serve the parties' reasonable expectations, and in the bargain create the dangerous potential for rewriting all manner of plain policy exclusions and limiting provisions. To do so would create many serious, adverse practical ramifications and unintended consequences. The exclusion should be enforced as the parties intended. The district court's ruling should be affirmed.

DATED: November 30, 2009 Respectfully submitted,

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CERTIFICATION OF WORD COUNT

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Minkler v. Safeco Insurance Company of America, etc., et al.
Supreme Court No. S174016
Ninth Circuit No. 07-56689

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Trish Stevens

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THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT, WESTERN DIVISION Edward R. Roybal Federal Building 255 E. Temple Street Los Angeles, CA 90012 Attn: Courtroom 780 Hon. Margaret M. Morrow, District Judge	