Nos. A25A1664

IN THE COURT OF APPEALS
STATE OF GEORGIA

PHILADELPHIA INDEMNITY INSURANCE COMPANY,

Appellant,

v.

MARK EUBANKS et al.,

Appellees.

AMICI CURIAE BRIEF OF AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION AND COMPLEX INSURANCE CLAIMS LITIGATION ASSOCIATION IN SUPPORT OF APPELLANTS

On Appeal from the Superior Court of Floyd County, No. 19CV00237

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Georgia Court of Appeals Rule 26(d), counsel for amici curiae Complex Insurance Claims Litigation Association ("CICLA") and the American Property Casualty Insurance Association ("APCIA") states as follows:

This brief is filed on behalf of CICLA and APCIA as amici curiae and not on behalf of any individual member of either organization.

CICLA is not a publicly-owned corporation. Accordingly, it has not issued shares of stock, nor does it have any parent corporations.

APCIA is not a publicly-owned corporation. Accordingly, it has not issued shares of stock, nor does it have a parent corporation.

INTEREST OF AMICI CURIAE

The Complex Insurance Claims Litigation Association ("CICLA") and the American Property Casualty Insurance Association ("APCIA") (collectively, "Amici") are trade associations of property and casualty insurance companies. Amici's members issue insurance in Georgia and throughout the country. Through amicus curiae briefs, Amici seek to assist courts in understanding and resolving the core coverage issues of greatest importance to insurers today. Amici have participated in numerous insurance cases in state and federal appellate courts across the United States, including important cases before the United States Supreme Court[1] and the Georgia Supreme Court.[2]

Amici focus on just one of the key insurance coverage issues before the Court: Does an occurrence-based commercial general liability policy, which

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[1] In *Truck Insurance Exchange v. Kaiser Gypsum Co*., 602 U.S. 268 (2024), the United States Supreme Court quoted from and twice cited Amici's submission, recognizing the valuable perspective these amici provide in assisting courts.

[2] *Ga. Farm Bureau Mut. Ins. Co. v. Smith*, 784 S.E.2d 422 (Ga. 2016); *Piedmont Office Realty Trust Inc. v. XL Spec. Ins. Co.,* 771 S.E.2d 864 (Ga. 2015). *See also Aloha Petroleum, Ltd. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 557 P.3d 837 (Hawaii 2024); *CX Reinsurance Co. v. Johnson*, 282 A.3d 126 (Md. 2022) *Ken's Foods, Inc. v. Steadfast Ins. Co*., 199 N.E.3d 1286 (Mass. 2023); *Sherwin-Williams Co. v. Certain Underwriters at Lloyd's London*, No. 2023-0255, 2024 WL 5049193 (Ohio Dec. 10, 2024); *Fire-Dex, LLC v. Admiral Ins. Co*., No. 24-3781, 2025 WL 1554337 (6th Cir. June 2, 2025); *Chisholm's-Village Plaza LLC v. Cincinnati Ins. Co.,* Nos. 23-2133, 23-2134, 2025 WL 1178099 (10th Cir. Apr. 23, 2025).

provides coverage for "bodily injury" only if it occurs "during the policy period," respond to claims alleging emotional distress from past instances of sexual abuse? In other words, is a policy triggered years after the alleged abuse and bodily injury occurred – based solely on the claimant's ongoing emotional distress?

Under settled law in Georgia and across the country, the answer is no. Georgia, like the majority of states nationwide, holds that commercial general liability ("CGL") policies do not cover emotional injuries in the absence of physical harm.[3] For coverage to be triggered under an occurrence-based CGL policy, there must be bodily injury during the policy period. An insurer may also be required to pay for noneconomic emotional distress damages *resulting* from bodily injury, but only if the bodily injury occurred *during the policy period.* A policy issued years *after* the alleged bodily injury (here, the sexual abuse) occurred is not triggered solely based on alleged ongoing emotional distress.

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[3] *E.g., O'Dell v. St. Paul Fire & Marine Ins. Co*., 223 Ga. App. 578, 579, 478 S.E.2d 418, 420 (1996); *Presidential Hotel v. Canal Ins. Co*., 188 Ga. App. 609, 611,373 S.E.2d 671, 673 (1988). In *Trinity Universal Ins. Co. v. Cowan ,* 945 S.W. 819, 823 (Tex. 1997), the Texas Supreme Court followed the approach of the "substantial majority" of courts, stating: "'bodily injury' ... does not include purely emotional injuries ... and unambiguously requires an injury to the physical structure of the human body. Our decision comports with the commonly understood meaning of 'bodily,' which implies a physical, and not purely mental, emotional, or spiritual harm." *Id*. at 82 n.2 (and cases cited therein). *See also Nat'l Cas. Co. v. Great Southwest Fire Ins. Co*., 833 P.2d 741, 746 (Col. 1992) (en banc) (expressly following the majority rule that "bodily injury" under a CGL policy "covers physical injury and does not include claims for purely nonphysical or emotional harm.").

Enforcing an insurance contract's limitation of coverage to a discrete and finite policy period is critical to the insurance bargain. Sound underwriting depends on predictability, so that insurers can rationally analyze the financial risks they undertake. These policies cover liability only when bodily injury occurs during the policy period. To impose coverage based solely on ongoing emotional distress resulting from bodily injury that took place in an earlier policy period would eviscerate the temporal foundation of occurrence-based policies.

Nonetheless, the trial court held that a claimant's emotional distress alone triggered coverage under occurrence-based CGL policies issued long after the alleged abuse occurred. If permitted to stand, such a rule would violate well-established principles of contract interpretation, public policy, and common sense. It would shift the risk of losses priced and paid for under policies issued when the abuse occurred to policies issued years later, during which no sexual abuse took place. Failing to enforce the policies' fundamental temporal requirement -- bodily injury during the policy period -- and thus expanding these general liability policies to cover claims when no physical injury occurred in the policy term, would significantly impact not just the parties to this case, but also the insurance system as a whole.

The Court's resolution of this issue will affect Amici's members, their policyholders, and the commercial liability insurance marketplace in Georgia. For

these reasons, Amici urge the Court to reverse the ruling below. Damages that flow from earlier bodily injury, including non-economic emotional distress damages, do not independently trigger coverage under an occurrence-based CGL policy. It is only when bodily injury occurs during the policy period that the policy is triggered and coverage may exist.

STATEMENT OF FACTS

Amici adopt the relevant portions of the Statement of Issues, Statement of the Case, and Statement of Facts set forth in the Opening Briefs of the Philadelphia Indemnity Insurance Company ("PIIC") and Zurich American Insurance Company ("Zurich"). Highlighted here are the key facts relevant to the trigger of coverage issue addressed. PIIC Op. Br. at 4-12, 24-27; Zurich Op. Br. at 4-13.

The underlying complaints allege that multiple instances of sexual abuse occurred at The Darlington School, a boarding school in Rome, Georgia, in the 1970s and 1980s. V14-3345-46; V17-718; V9-1389-1403. The abuse was allegedly perpetrated by a former school employee. *Id*.

In this appeal, The Darlington School seeks coverage from insurers that issued policies from 1975 and later, including Zurich, which provided CGL coverage from 1996 to 2010 (V9-1481-1486), and PIIC,[4] which provided CGL

[4] PIIC also provided claims-made and builders-risk coverage, not relevant to the requirement that "bodily injury" occur "during the policy period."

coverage from 2010 to 2021 (*see* V10-2686-5114). The policies' insuring agreements provide coverage only for "bodily injury" that occurs "during the policy period," stating:

> This insurance applies to 'bodily injury'… only if…(2) The 'bodily injury' … occurs during the policy period.

(V15-177, 229, 276, 457; V10-2772).

The Zurich policies define "bodily injury" as: "bodily injury, sickness or disease sustained by a person" and make clear this includes "mental anguish, mental injury, shock, fright or death resulting from the 'bodily injury.'" (V15-432, 164, 237, 290; V10-2772). In the PIIC policies, "bodily injury" means: "bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these." [V10-2811.][5]

PIIC and Zurich moved for summary judgment on the grounds (among others) that their policies were not triggered because no "bodily injury" "occurred during the policy period." Despite no allegation of abuse after 1994, the trial court denied their motions, finding coverage under the 1996 to 2010 Zurich policies and the 2010-2021 PIIC policies. V3-34. The trial court appears to have concluded that ongoing emotional distress alone was sufficient to trigger coverage, and that the

[5] The temporal boundaries of coverage likewise apply to the excess policies issued by Continental Casualty Company (*see* Op. Br. of Cont. Cas. Co. at 31-33) and by North River Insurance Company from 2006 to 2010, which follow form to the Zurich policies (*see* Op. Br. of North River Ins. Co. at 29).

claimants suffered emotional distress during all policy periods. *Id*. at V13, V19. The court also stated that a letter the Darlington School sent to former and current students and families in May 2017 "further triggered the damages, pain and suffering." *Id*. at V19, V21.

SUMMARY OF ARGUMENT

The requirement that "bodily injury" must take place "during the policy period" is a fundamental feature of an occurrence-based CGL policy. To be recoverable, emotional distress suffered by the underlying claimant must result from "bodily injury" – *i.e.,* physical harm – and those emotional distress damages are only potentially covered under the CGL policies that were in effect when the alleged acts of sexual abuse occurred. Reading policies as being triggered based on emotional distress that happened years after the alleged abuse occurred ignores the fundamental terms of occurrence-based CGL policies.

Under the CGL policies, bodily injury must occur during the policy period for any resulting loss to be covered. Failing to enforce that temporal limitation in the insurance policies would alter the scope of their coverage and make rational underwriting virtually impossible.

ARGUMENT

I. THE INSURERS' DUTIES TO DEFEND AND INDEMNIFY ARE SUBJECT TO THE POLICIES' "DURING THE POLICY PERIOD" LIMITATION.

In Georgia, insurance is a matter of contract and the ordinary rules of contract construction apply. *Boardman Petroleum, Inc. v. Federated Mut. Ins. Co.*, 269 Ga. 326, 328, 498 S.E.2d 492, 494 (1998); *SawHorse, Inc. v. Southern Guar. Ins. Co. of Georgia*, 269 Ga. App. 493, 604 S.E.2d 541 (2004). While ambiguities are construed against the drafter, the court must look to the contract alone to ascertain the parties' intent where the terms are clear and unambiguous. *Boardman Petroleum*, 269 Ga. at 328-29, 498 S.E.2d at 494. The contract is to be considered as a whole and each provision is to be given effect and interpreted so as to harmonize with the others. *Id*. *See also Fidelity Nat. Title Ins. Co. of New York v. OHIC Ins. Co*., 275 Ga. App. 55, 57, 619 S.E.2d 704, 706 (2005). And, where possible, insurance contracts are to be read in accordance with the reasonable expectations of the insured. *Id*.

Under the plain language of the policies at issue, coverage applies to claims alleging "bodily injury" only if it occurs "during the policy period." Under policy terms affording coverage for losses *during the policy period*, insurers assume risks only for defined periods of time. The plain language of the Zurich and PIIC insurance contracts—the language for which the parties bargained and on which

they relied—explicitly provides coverage for a discrete and finite period. A reasonable insured understands that CGL policies contain this fundamental temporal limitation and would not expect an insurer issuing a policy today to pay damages for the consequences of bodily injury that occurred long ago.[6]

The policy duration is an essential contract term. It sets the parameters of the insurer-accepted risks. An insurer that has issued a policy and charged a premium based on a finite policy period can be held responsible only for injury that takes place during that policy period. *See, e.g.*, *Soc'y of the Roman Catholic Church of the Diocese of Lafayette & Lake Charles, Inc. v. Interstate Fire & Cas. Co.*, 26 F.3d 1359, 1366 (5th Cir. 1994) ("The insurance policies all excluded bodily injury occurring outside of the policy period."); *see generally* George J. Couch, 9 *Couch on Insurance* 2d § 39:203, at 647 (1985).

Courts around the country recognize that, when a policy provides coverage for injury that occurs during the policy period, the parties did not intend to saddle the insurer with coverage for injury occurring outside of its policy period. *E.g., Radiator Specialty Co. v. Arrowood Indem. Co*., 383 N.C. 387, 414, 881 S.E.2d 597, 615 (2022) ("during the policy period" limitation on coverage "makes clear

[6] The reasonableness of that interpretation is reflected in the fact that The Darlington School initially tendered the underlying claims only to Commercial Union Insurance Company, whose policies were in effect during the periods of abuse. The subsequent tender to carriers whose policies were issued after the abuse occurred was made only after Commercial Union became insolvent.

that the insurer's obligation is not without limits"); *Keyspan Gas E. Corp. v. Munich Reins. Am., Inc.*, 31 N.Y.3d 51, 60 (2018) ("the imposition of liability on an insurer for damages resulting from occurrences outside the policy period would contravene the very premise underlying pro rata allocation"); *Wrecking Corp. of Am., Va., Inc. v. Ins. Co. of N. Am.*, 574 A.2d 1348, 1351 (D.C. 1990) (coverage under a policy is "limited to damage occurring while the policy is in effect").[7]

Georgia law accords with this fundamental principle. *See Owners Ins. Co. v. James*, 295 F. Supp. 2d 1354, 1362 (N.D. Ga. 2003) (no coverage where alleged

[7] Courts nationwide have held that an insurer's coverage obligations are limited by the "during the policy period" limitation. *See Liberty Mut. Ins. Co. v. Wheelwright Trucking Co.*, 851 So. 2d 466 (Ala. 2002); *Cont'l Ins. Co. v. U.S. Fid. & Guar. Co.*, 528 P.2d 430 (Alaska 1974); *Hoang v. Assurance Co. of Am.*, 149 P.3d 798 (Colo. 2007) (en banc); *Sec. Ins. Co. of Hartford v. Lumbermens Mut. Cas. Co.*, 264 Conn. 688, 826 A.2d 107 (2003); *Sentinel Ins. Co. v. First Ins. Co. of Haw., Ltd.*, 76 Haw. 277, 875 P.2d 894 (1994); *Thomson Inc. v. Ins. Co. of N. Am.*, 33 N.E.3d 1039 (Ind. 2015); *Atchison, Topeka & Santa Fe Ry. Co. v. Stonewall Ins. Co.*, 275 Kan. 698, 71 P.3d 1097 (2003); *Aetna Cas. & Sur. Co. v. Commw.*, 179 S.W.3d 830 (Ky. 2005), *as modified reh'g; S. Silica of La., Inc. v. La. Ins. Guar. Ass'n*, 979 So. 2d 460 (La. 2008); *Rossello v. Zurich Am. Ins. Co.*, 468 Md. 92, 122, 226 A.3d 444, 462 (2020); *Bos. Gas Co. v. Century Indem. Co.*, 454 Mass. 337, 910 N.E.2d 290 (2009); *Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724 (Minn. 1997); *Dutton-Lainson Co. v. Cont'l Ins. Co.*, 279 Neb. 365, 778 N.W.2d 433 (2010); *EnergyNorth Nat. Gas, Inc. v. Certain Underwriters at Lloyd's*, 156 N.H. 333, 934 A.2d 517 (2007); *Benjamin Moore & Co. v. Aetna Cas. & Sur. Co.*, 179 N.J. 87, 843 A.2d 1094 (2004); *Keyspan Gas* Corp., 31 N.Y.3d at 61; *Radiator Specialty Co.*, 383 N.C. at 414, 881 S.E.2d at 615; *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.,* 395 S.C. 40, 717 S.E.2d 589 (2011); *Ohio Cas. Ins. Co. v. Unigard Ins. Co.*, 268 P.3d 180 (Utah 2012); *Sharon Steel Corp. v. Aetna Cas. & Sur. Co.,* 931 P.2d 127 (Utah 1997); *Towns v. N. Sec. Ins. Co.*, 184 Vt. 322, 964 A.2d 1150 (2008).

property damage did not occur "during the policy period"); *Capitol Specialty Ins. Corp. v. PTAV, Inc*., 331 F. Supp. 3d 1329, 1333 (N.D. Ga. 2018) (under Georgia law, an insurer need not indemnify an insured for a liability the insured incurs outside the terms of the insurance contract).

II. DAMAGES, INCLUDING NON-ECONOMIC EMOTIONAL DISTRESS DAMAGES, DO NOT SEPARATELY TRIGGER COVERAGE UNDER POLICIES ISSUED AFTER THE ALLEGED ACTS OF ABUSE OCCURRED.

The trial court conflated the bodily injury coverage trigger in these policies with the consequential harm that flows from that bodily injury – in this case, non-economic damages in the form of emotional distress. The trial court stated that The Darlington School's publication of a 2017 letter to former students and their families disclosing the allegations of inappropriate conduct by former teachers "aggravated" the "bodily injury," and triggered the PIIC policies issued between 2017 and 2021,[8] apparently concluding that emotional distress provides an independent basis to trigger coverage. This contradicts the unambiguous policy terms and Georgia law.

[8] The trial court stated: "The Umbrella and Excess Coverage provide for payment of the 'ultimate net loss' that the Darlington school becomes liable to pay for 'bodily injury.' This bodily injury occurs or is committed during the policy period. Does this include the May 2017 damage and continuing damage? Again, this must be construed against the Insurer and thus there is coverage under the excess and Umbrella policies." V24.

The keystone of the "bodily injury" requirement is that there must be physical harm "during the policy period" to trigger coverage. *O'Dell v. St. Paul Fire & Marine Ins. Co*., 223 Ga. App. 578, 579, 478 S.E.2d 418, 420 (1996) ("In Georgia, "used in an insurance policy, the term 'bodily injury' means just that – 'bodily injury.' It pertains to physical injury to the body. It does not include non-physical, emotional or mental harm."); *Auto-Owners Ins. Co. v. Robinson*, No. 3:05-CV-109(CDL), 2006 WL 2583356, at *2 (M.D. Ga. Sept. 6, 2006) (where policy defined "bodily injury" as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at one time[,]" the court held that "bodily injury" requires "physical injury to the body."); *Presidential Hotel v. Canal Ins. Co*., 188 Ga. App. 609, 611, 373 S.E.2d 671, 672 (1988) ("Used in an insurance policy, the term "bodily injury" means just that—"bodily injury." It pertains to physical injury to the body. It does not include non-physical, emotional or mental harm).

The policies clearly cover consequential harm and damages resulting from that bodily injury – for instance, the policies expressly provide coverage for "death" or "mental anguish" resulting from "bodily injury, sickness or disease." The policy covering the consequential harm and damages, however, is the policy in effect when the alleged sexual abuse occurred. Resulting damages, including non-

economic emotional distress damages, do not separately trigger coverage under policies issued after the alleged acts of abuse occurred.

As Georgia courts have repeatedly recognized, contract terms must be read in context to give effect to all parts of the contract. The policies require that bodily injury occur during the policy period. As a result, the consequential harm and damages that flow from that bodily injury do not independently trigger coverage under later policies where no alleged abuse happened; covered damages are paid under the policy in effect when the bodily injury happened. Thus, for example, the Zurich policies require that "mental anguish, mental injury … or death" result from "bodily injury," which must occur *during the policy period*. Likewise under the PIIC policies, mental anguish alone does not trigger coverage irrespective of when bodily injury occurred. Mental anguish is covered under the policy only if it results from *bodily injury during the policy period*.

The requirement of bodily injury during the policy period is the touchstone for coverage under these CGL policies. So, with respect to the May 2017 letter, if reading the letter fueled emotional distress because of pre-policy sexual abuse, this emotional distress may be consequential harm from the bodily injuries in the 1970s and 1980s. It would not be covered under the policies post-dating the abuse because the bodily injury did not occur in those policy periods.

This is fully consistent with the general rule: there must be physical harm during the policy period to trigger bodily injury coverage. When acts of sexual abuse take place during a policy period and trigger coverage, the policy generally covers the damages that flow from that bodily injury.

Courts across the country have held that a CGL policy may cover bodily injury only when sexual abuse takes place during the policy period. A claimant's subsequent emotional distress may be covered damages under the policy in effect at the time of abuse but an emotional distress claim alone does not independently trigger later policy years. *Catholic Bishop of N. Alaska v. Continental Ins. Co.*, No. 4:08-CV-0038-RRB, 2010 WL 10095655 at *2-3 (D. Alaska July 30, 2010), is squarely on point. There, the court, applying Alaska law, considered "whether post-abuse injuries, such as depression, shock or emotional distress, experienced by the abuse victims are covered" under policies issued after the abuse occurred. The policies provided coverage for "personal injuries" caused by an occurrence and defined "personal injuries" to include "bodily injury, mental injury, mental anguish[.]" The court held that post-abuse injuries are covered only under the policy when the bodily injury occurred. It found that an objectively reasonable insured would expect the policy in effect at the time of the abuse to cover "any subsequently resulting personal injuries arising from the same occurrence." *Id*. at *13. It further found that an "objectively reasonable insured would not expect [the

policies] to cover only a portion of the loss, such as the post-abuse impacts, where the initial injury occurred before the inception of the policy period. *Id*.

In *Bishop of Charleston v. Century Indemnity Co*., 225 F. Supp.3d 554 (D.S.C. 2016), the court, applying South Carolina law, held that a policyholder cannot access coverage for periods beginning after the last act of abuse "even though sexual abuse undoubtedly causes lifelong harm." *Id*. at 566. The court explained:

> The Diocese's position, apparently, is that any policy purchased at any time after an act of sexual abuse provides full coverage for the life of the victim. Were that the law, insurers would need to charge premiums for each period sufficient to cover decades of potential liability.

Id. at 566 (noting that the policyholder cited no authority for the proposition that insurance policies covering the period 1965 to 1979 cover a claim of sexual abuse occurring in the 1940s).

In *Servants of Paraclete, Inc. v. Great American Insurance Co*., 857 F. Supp. 822, 854 (D.N.M. 1994), applying New Mexico law, the court recognized that "the effects of childhood sexual abuse, both initial and long-term, are varied and severe." *Id*. at 834. But that terrible truth does not create coverage under an insurance contract. The court reasoned:

> Taking a step back from the individual words and examining the policy as a "complete and harmonious instrument designed to accomplish a reasonable end," [citations omitted], an insured cannot reasonably expect a policy to cover injury originating years before the

> policy's inception. Insurance premiums undoubtedly do not reflect such risks and the Court can only speculate as to the enormous increase in premiums were such pre-policy injury causing events to be covered.
>
> In conclusion, since the underlying complaints do not allege "bodily injury" occurred during the period of coverage, Catholic Mutual had no duty to indemnify under the policy.

Id. at 834. This Court should likewise enforce the temporal limitations of the policies and reverse the trial court's ruling below with respect to policies issued after the dates of sexual abuse.

III. SOUND PUBLIC POLICY SUPPORTS ENFORCING THE TEMPORAL LIMIT OF THE POLICY PERIOD.

Imposing coverage under policies issued years after the alleged abuse and bodily injury occurred would require this Court to ignore, rather than give effect to, the plain language of these policies. Ignoring the contracts' policy period limitations would undermine the certainty and predictability necessary to the proper functioning of insurance. Insurers could not perform their vital risk-spreading function if courts failed to enforce the terms of insurance contracts according to their plain language.

The policies provide for the period of risks the insurer is willing to take on. Policyholders purchase insurance against bodily injury that might take place within, and only within, the policy period. They do so in exchange for a premium calculated based on the potential risks posed during that particular time. As the

policy terms make plain, the insurers in this appeal agreed to pay only for liability for bodily injury that took place during the policy period. Requiring these policies to pay damages for abuse that took place before they were issued would nullify the policy period limitation and make the insurer's estimation of exposure the onset of its relationship with its insured meaningless.

When insurers cannot rely on clear policy language to support rational limitations on the risks undertaken, the adverse consequences ultimately fall on the insurance-buying public. Exposure to damages under a policy issued years after abuse occurred could make it difficult or impossible to price coverage accurately, making future underwriting riskier and disrupting insurability. It would increase risk and uncertainty for insurers and complicate coverage options for policyholders.

As courts and commentators have recognized, requiring insurers to pay loss outside the policy and destroying the certainty necessary for insurers to price risk can affect the affordability and availability of insurance.[9] Under the approach

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[9] *See* Michael B. Rappaport, *The Ambiguity Rule and Insurance Law: Why Insurance Contracts Should Not Be Construed Against the Drafter*, 30 Ga. L. Rev. 171, 203 (1995) ("[u]ncertainty about how judges will interpret insurance contracts may significantly increase the costs of insurance"). As the California Supreme Court has observed, judicially created insurance coverage leaves "ordinary insureds to bear the expense of increased premiums necessitated by the erroneous expansion of their insurers' potential liabilities." *Garvey v. State Farm Fire & Cas. Co.*, 48 Cal. 3d 395, 408, 770 P.2d 704, 711 (1989) (citation omitted); *accord Am.*
(Continued...)

urged by Appellees, an insurer would have to assess the potential for unknown or underreported liabilities in determining whether to offer coverage, and institutions such as churches, schools, and youth organizations could be particularly scrutinized. Responsible Georgia businesses at risk for sexual abuse claims (such as nursing homes, daycare centers and schools) could face the prospect of insurance becoming unaffordable or unavailable because of the fear of untenable exposures to damages from past incidents.

Imposing on insurers liability they did not contractually assume could also affect the availability of funds to pay covered claims. Insurers base reserves – the funds set aside to pay future claims – on the exposures they accepted and actuarially predicted patterns of loss for those covered claims. If resources are diverted to pay uncovered amounts such as noneconomic emotional distress damages arising from bodily injury that took place decades before a policy was issued, then the funds set aside for genuinely covered losses may not be sufficient.

Instead, recognizing that emotional distress results from the bodily injury that caused it aligns with the policy language as well as the reasonable expectations of the insured and insurer. Any other approach would alter the fundamental terms

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Home Prods. Corp. v. Liberty Mut. Ins. Co., 565 F. Supp. 1485, 1511 (S.D.N.Y. 1983) (”[T]he person[] whom [insurers] now cover may well be grievously hurt in future years by the lower coverage that results, or by the bankruptcies caused by companies becoming self-insured in an effort to avoid the higher rates required to pay for broader theories of coverage.”).

of the insurance agreement, and the certainty that insurance policy terms will be enforced as written, ultimately to the detriment of insurers, policyholders and the public.

CONCLUSION

This Court should hold that a claimant's emotional distress damages do not separately trigger coverage under policies issued after the alleged acts of sexual abuse and bodily injury occurred.

Dated: June 16, 2025

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WORD COUNT CERTIFICATION

This Submission does not exceed the word count limit imposed by Rule 24.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a true and correct copy of this Amici Curiae Brief the Complex Insurance Claims Litigation Association and the American Property Casualty Insurance Association on all counsel of record by filing same with the Court's electronic case filing system and by email, pursuant to a prior agreement with the parties to allow documents in a PDF format sent via email to suffice for service, as follows:

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