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Northern District of Illinois Holds Liability for Child Pornography Not Covered By Homeowners Policy

BY:

The Northern District of Illinois held earlier this week that disgraced former Illinois state representative Keith Farnahan's homeowner's insurer is not required to cover Farnahan's civil liability for child pornography. The court reasoned that the injury suffered by the claimants was not caused by an "occurrence" and that a penal law exclusion also applied to preclude coverage.

Farnahan served in the Illinois House of Representatives from 2009 until 2014. On December 5, 2014, Farnahan pled guilty to violating certain criminal child pornography statutes and admitted to possessing images and videos of child pornography. Two of the children depicted in Farnahan's collection subsequently filed a civil suit against Farnahan alleging invasion of privacy. Farnahan tendered the suit to his homeowner's insurer, Citizens Insurance Company of Illinois ("Citizens"), who disclaimed. Farnahan died in prison in June 2017, and a \$2 million civil judgment was entered against his estate later that year. The claimants then filed suit against Citizens in the Northern District of Illinois to recover the judgment.

Citizens moved to dismiss the claimants' action, and the court granted the motion. In relevant part, the Citizens' policy insuring agreement covered "personal injury" only if caused by an "occurrence," or accident. While it was undisputed that the claimants suffered "personal injury," the Court held that the "personal injury" was not caused by an "occurrence" because Farnahan admitted in his criminal case that he "intentionally intruded upon the solitude and seclusion" of the plaintiffs and the injuries therefore were not accidental.

Additionally, the policy excluded injury "caused by a violation of a penal law or ordinance committed by a violation of a penal law or ordinance committed by or with the knowledge or consent of an 'insured.'" The court held that the exclusion unambiguously applied because the claimants' injuries were caused by a violation of criminal child pornography statutes.

A copy of the court's opinion can be found at *"Erin" and "Jane Doe" as next friend for Minor "Fiona," v. Citizens Insurance Company of Illinois*, 2019 WL 2346980 (N.D. Ill. June 4, 2019).