

## Court of Appeals finds no coverage for volunteer's alleged sexual assault of minor



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In the recent *Doe v. Foley* decision, the Wisconsin Court of Appeals held that a volunteer was not covered under the Big Brothers and Big Sisters of Metropolitan Milwaukee's (BBBS') primary or umbrella liability policies for his alleged sexual assault of a minor.

The complaint alleged that a Big Brother with BBBS used his position to regularly sexually assault the plaintiff, a Little Brother, over the course of two years. Courts have previously held that sexual assault is not an accident and, therefore, not an occurrence for purposes of liability coverage. The Court did not reach that issue, to the extent it was raised. It determined instead that the defendant Big Brother was not an insured in the first instance.

Like many standard form policies, the BBBS policies defined insured to include "[y]our volunteers but only while acting at your direction and within the scope of their duties." The Court acknowledged that the duties of Big Brothers include spending one-on-one time with their Little Brothers. Any alleged sexual misconduct, however, is "so extraordinary and too disconnected from the type of service ordinarily contemplated" that it could not be said the volunteer was acting within the scope of his duties.

The Court's decision has broader implications. Liability policies typically include an organization's executive officers, directors, members, trustees, partners and employees as insureds, but, like with volunteers, only when those individuals are acting within the scope of their duties. Where sexual assault is found to fall outside the scope of employment, insurers have another arrow in their quiver when denying coverage for such claims.

More critically, the Court's decision is consistent with the general intent behind liability policies' extension of coverage to a named insured's volunteers, or its executives and employees. That is, where the named insured faces a risk of vicarious liability, coverage typically extends to the individual volunteer whose conduct is at issue to the same extent as the named insured. Because that risk is not present when an individual has stepped aside from her duties to procure a personal benefit, the named insured's liability policy generally does not provide a defense or indemnity for any subsequent claims.

*The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice and does not create an attorney-client relationship. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.*