

Best ways to work with appointed counsel: what happens next...

OSBA CAPITAL CONFERENCE
OCSBA School Law Workshop
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Why is this topic important to you? **Select Case Summaries from 2002-2012**

- A southwest Ohio school district's staff racial balancing policy violated the Equal Protection Clause, and the court awarded \$49,119 in fees and costs as a result. A teacher was not awarded damages, because despite his claim that he was "surplussed" based on his race, the jury found the employer would have made the same decision regardless.

Why is this topic important to you? **Select Case Summaries from 2002-2012**

- An Ohio teacher alleged his termination for using inappropriate physical force with a student was racially motivated and retaliatory. The teacher, who was white, claimed he was discouraged from enrolling his adopted children, who were black, and complained that his children were treated differently. The parties settled the case for \$900,000.

Cases from 2002 to 2012 (cont.)

- An elementary student fell to the ground after climbing to the top of a 25-foot rope during his physical education class, resulting in compression back fractures. An Ohio jury awarded the student \$35,000 after finding the district was negligent for including this activity in its curriculum.

Cases from 2002 to 2012 (cont.)

- A school bus driver complained that an Ohio school district failed to take adequate measures in response to her complaints of sexual harassment by a coworker. A federal jury awarded \$50,000 to the bus driver, plus \$100,000 in attorneys' fees.

Cases from 2002 to 2012 (cont.)

- A fifth grade student who volunteered as a crossing guard at an Ohio elementary school nearly amputated her finger when a car became entangled in the chain as the student was lowering it. A jury awarded \$167,434 (\$60,276 as to school, remainder as to defendant teacher).

Cases from 2002 to 2012 (cont.)

- An Ohio science teacher was accused of burning an image of a cross on a student's arm. School board reached \$121,000 settlement with the family. Lawsuit filed against the teacher resulted in a \$450,000 settlement agreement (to be paid by district's liability insurance carrier).

Cases from 2002 to 2012 (cont.)

- A jury awarded \$238,000 to an assistant principal in an age discrimination lawsuit filed against a northern Ohio school district. The assistant claimed a younger, less experienced candidate was awarded a principal position.

Cases from 2002 to 2012 (cont.)

- An Ohio school district agreed to pay \$90,000 to settle a sex discrimination lawsuit against the district and a male employee. A female employee alleged she was denied a head coaching position even though she was qualified, and that the school district had never hired a qualified female for a coaching position when a qualified male also applied.

Cases from 2002 to 2012 (cont.)

- The U.S. 6th Circuit Court of Appeals upheld a \$200,000 jury verdict against a school district in a student-on-student sexual harassment lawsuit. The court found the district acted with deliberate indifference in responding to the incidents and failed to provide a safe environment for the students.

Cases from 2002 to 2012 (cont.)

- In a Pennsylvania case, a school district's insurance carrier agreed to cover \$1.2 million in fees and costs to settle a lawsuit filed on behalf of several students after it was discovered that school district officials had remotely accessed webcams on laptops the district provided to the students.

Cases from 2002 to 2012 (cont.)

- A New Jersey school district and its insurance carriers agreed to a \$4.2 million settlement to resolve a lawsuit filed by a student who was paralyzed from the waist down after being punched by a bully.

Cases from 2002 to 2012 (cont.)

- An Illinois school district reached a \$12 million settlement with a student who was paralyzed after striking a metal pole during football practice.

History of liability insurance coverage for school districts

- I. Why is liability insurance needed?

- II. History of liability insurance providers.

History of liability insurance coverage for school districts

A variety of insurers are in the Ohio school market, including:

- Avizent
- Chartis (member company of AIG)
- Hylant Group
- Indiana Insurance / Ohio Casualty / Liberty Mutual
- Ohio School Plan – created in response to Nationwide leaving the market.
- SORSA (Schools of Ohio Risk Sharing Authority)
- Trident

A few examples of the types of claims your policy may cover

- Employment claims
- Injuries
- Employees' trips
- Hazing or other injuries
- Special education litigation
- Property and equipment
- Employee dishonesty
- Terrorism/school violence
- Physical assault
- Sexual misconduct
- Bomb threats
- Child abduction
- Guns in schools/armed school staff
- Mandamus actions / injunctive or other non-monetary relief

Glexco Insurance



"I think you misunderstood. The million dollar umbrella policy only covers you for claims involving an umbrella."

Notifying your insurer of a claim

- Your policy likely contains notice requirements
- Notify "as soon as practicable."
 1. Wrongful acts that may result in a claim
 2. Occurrence/event that may result in a claim
 3. Claims/written demands
 4. Suits/notice of charges

Notifying your insurer of a claim

- What should you include when giving your insurer notice of a claim?
 1. Description of the incident/occurrence or claim – how, when, where?
 2. If an injury or damage, nature and location of injury or damage
 3. Persons involved
 4. Witnesses
 5. If a claim or suit, record the specifics of the claim or suit and record the date received.

Notifying your insurer of a claim

- Other considerations for reporting a claim
 1. How is “claim” defined in your policy?
 2. When in doubt, ask.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
SANTA FE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CHARLES R. KOKESH

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Civil Case No.: 09-cv-1021

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Defendant Charles R. Kokesh ("Kokesh") alleges as follows:

Summary

1. From at least 1995 through July 2007, Kokesh systematically misappropriated approximately \$45 million from four Commission-registered business development companies ("BDCs")—Technology Funding Medical Partners I; Technology Funding Partners III, L.P.; Technology Funding Partners IV, L.P.; and Technology Funding Partners V, L.P. Kokesh controlled two now-defunct Commission-registered investment-adviser firms, Technology Funding Ltd. ("TFL") and Technology Funding, Inc. ("TFI") (collectively, the "Kokesh Advisers"), which, in turn, controlled and provided investment advice to the BDCs pursuant to advisory contracts. Acting by and through the Kokesh Advisers, Kokesh misappropriated the funds by causing the BDCs to pay illegal distributions, performance fees, and expense reimbursements to the Kokesh Advisers. To conceal the scheme, Kokesh caused the Kokesh

Appointed Counsel

- Why does the insurer appoint counsel?
- Who is the client when my insurer appoints counsel?
- Can your general counsel continue as counsel once a lawsuit is filed and your insurance company is involved?
- Who is my appointed counsel?
- May I play a role in selecting my appointed counsel?

Roles of Appointed Counsel and General Counsel

- There are many options
- Choosing the best option depends on a variety of issues
 - The type of case or claim involved
 - Whether the claim exceeds the available insurance coverage limits
 - Whether there are coverage questions
 - Whether you intend to assert a counterclaim

Working with your appointed counsel

Assist with the initial transfer and gathering of information and documents.

1. The “litigation hold”
 - Preserve records
 - Suspend normal retention practices
 - Identify individuals
 - Failure to comply
2. Share background information



Working with your appointed counsel

Plan for an initial meeting with the attorney as well as ongoing communication.

1. Written discovery, including interrogatories, requests for production of documents, requests for admission, etc.
2. Depositions and deposition preparation meetings
3. Settlement conferences or mediation
4. Trial

Working with your appointed counsel

- Share information you learn as the case continues.
- Assist in the discovery process
- Be available for court conferences as requested and at trial

Settlement

Do you have a say in whether a case is settled by your insurer?



Settlement

Confidentiality concerns, particularly where the opposing party is a minor

1. Confidentiality provisions may apply to you, too
2. A confidentiality clause does not alter duties under the public records laws.

Settlement

3. Settlements paid to a minor should be approved by probate court. Probate court documents referencing settlement amounts are public records.
4. Consider a non-disparagement clause.

Settlement

Board approval of settlements

Yes if:

- a. the Board is paying/contributing funds to the settlement;
- b. there is a settlement agreement and the Board is a party.

Settlement

Maybe not if:

- a. there is no settlement agreement but only a full release of claims by the claimant or plaintiff;
- b. the Board has no contribution toward the settlement;
- c. your legal counsel has reviewed the circumstances and agrees no board action is needed.



Questions & Answers