Washington Cases To Watch In 2023

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Summary

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Body

The University of Washington is testing whether a narrow pathway exists for insurance claims over COVID-19-related losses to succeed, despite court rulings across the country that have mostly sided with insurers.

Also before the courts in Washington this year is a case weighing if a Christian college breached its fiduciary duty with anti-LGBTQ hiring practices. And the state Supreme Court will address an unsettled question about a Washington university's duty to protect students in a lawsuit filed by a student raped by another student that could have implications beyond higher ed.

Here, Law360 highlights the top cases in Washington state to watch this year.

COVID-19 Coverage Suit Tests Legal Opening

The University of Washington is accusing its insurance company of wrongly refusing to provide coverage for pandemic losses, arguing that the presence of the coronavirus caused direct physical damage to university hospitals and Husky Stadium, resulting in hundreds of millions of dollars of losses and expenses.

Court rulings across the country have mostly sided with insurers in similar cases. But the university's breach of contract suit was filed a little more than a month after the Washington Supreme Court signaled that there might be a path for plaintiffs to win some virus coverage cases.

The university alleges that the Employers Insurance Company of Wausau has refused to provide coverage under five "all risk" policies, even though COVID-19 caused direct physical damage by physically altering and impairing UW properties. The university also said that the presence of COVID-19 was a physical condition that rendered its properties unfit for their intended purposes.

In its ruling in Hill and Stout PLLC v. Mutual of Enumclaw Insurance Co., the state high court found that COVID-related government shutdown orders didn't amount to a direct physical loss that would qualify Hill and Stout, a dental practice, for coverage.

But attorneys for policyholders have told Law360 that they nevertheless see a possible road map for arguing that the presence of COVID-19 itself could trigger coverage for physical loss.

In a footnote in the Hill and Stout opinion, the justices acknowledged that there was much discussion in the amicus briefs on whether the presence of COVID-19 on its own can trigger that kind of loss. But because the dental group's policy had virus exclusions, it did not make those arguments, and the justices did not rule directly on them.

"This is exactly the type of situation that the Washington Supreme Court recently confirmed qualifies as 'direct physical loss of or damage to property,'" the UW complaint said, citing two recent state high court decisions, including Hill and Stout.

Scott Greenspan of Pillsbury Winthrop Shaw Pittman LLP told Law360 that the UW case is important because it asserts that viruses on the premises caused physical loss or damage to covered property. That's opposed to the government-orders-only cases that were rejected in Hill and Stout, said Greenspan who represents policyholders in other COVID-19 coverage suits,

"The claim that the presence of coronavirus causes physical loss or damage has ever-growing support in appellate courts around the country, including those in California, Vermont and Louisiana," Greenspan said. "And the Washington Supreme Court's decision in Hill and Stout included language supportive of that claim."

The case is The Board of Regents of the University of Washington v. Employers Insurance Company of Wausau, a Liberty Mutual Co., case number 2:22-cv-01538, in the U.S. District Court for the Western District of Washington.

LGBTQ Discrimination and Fiduciary Duty

A group of students, staff and faculty at a Christian university in Seattle have sued members of the school's board of trustees, accusing them of implementing anti-LGBTQ hiring practices that have thrown the school into financial turmoil.

Seattle Pacific University graduate student Chloe Guillot and others sued in state court, accusing university trustees of breaching their fiduciary duty, negligent misrepresentation and fraud, among other claims.

The university has said the First Amendment protects its hiring decisions based on religious doctrine, regardless of whether the employee is a minister, because the sexual conduct policies apply to all employees.

A hearing on the trustees' motion to dismiss the case is scheduled for Feb. 17.

Under the hiring policy, the university won't employ people who are married to or dating someone of the same sex, according to the suit, which argues that the university's primary function is education, despite being a faith-based institution.

The lawsuit also cites Woods v. Seattle's Union Gospel Mission, a case in which the Washington Supreme Court ruled that the religious exemption to the state's anti-discrimination law does not shield nonprofit religious organizations' hiring practices from liability unless the employees are ministers.

J. Denise Diskin, executive director of the QLaw Foundation of Washington, said the potential liability for the school stemming from the Woods decision is no different from that of a business that neglects to update its payroll program to accurately pay its employees.

"You're creating a liability for that business," said Diskin, who was co-council for the plaintiff in the Woods case. "SPU certainly has that problem. That's the breach of fiduciary duty. It's not holding to its duties to maintain the institution's alignment with the law."

Both the Woods and the Guillot cases address the necessary boundaries between compliance with the law and religious expression, Diskin said.

The Woods case focused on the responsibilities that nonprofit religious institutions have to their employees, and it clarified when and how institutions with discriminatory policies violate Washington law and the civil rights of their employees, Diskin said.

Guillot addresses the responsibilities SPU has to its "community of investors," the students, faculty, donors and others who support the institution, Diskin said.

Diskin said a fiduciary duty case such as this also gets to the core question of how leadership guides an institution so that it can be valuable to its graduates, who might be asking, "Am I hirable with an SPU degree?"

Sara Amies of Seattle Employment Law Partners PLLC told Law360 that the SPU case is important to watch because it could help clarify whether organizations like Seattle Pacific University should be exempt from civil rights laws that protect other employees.

Amies, who represents workers, said the overarching legal question is whether the institution's mission is to serve the community or to serve the institution's religious needs.

"The breach of fiduciary duty question asks who benefits from university operations," Amies said. "Is it the Free Methodist Church or is it the students and community of Seattle Pacific University?"

Amies said it was interesting to her that the complaint focuses on how divisive the issue has been for the SPU community and argues that faculty, staff and students have left the school.

The case is Guillot et al. v. Whitehead et al., case number 22-2-14642-7 SEA, in King County Superior Court.

Does a University Have a Special Duty to Protect Students?

The Ninth Circuit has asked the Washington Supreme Court to settle the question of whether a university has a special duty to protect students from harm in a case involving Washington State University.

Madeleine Barlow was a freshman at the school when she was raped by a fellow student at an off-campus party in 2017. The attacker, who was expelled and ultimately convicted of second-degree rape, had a prior record of sexual misconduct.

Barlow brought claims of Title IX discrimination claim and negligence against the university in federal court in Washington. The Ninth Circuit upheld a trial court's ruling tossing the Title IX claim but asked the Washington Supreme Court to weigh in on whether a university owes a duty of care to its students to protect them from foreseeable harm by other students.

The Washington Court of Appeals held in the 1995 case Johnson v. State of Washington that there is no special relationship that would trigger such a duty in a university setting because college attendance is not mandatory.

The Ninth Circuit said the Washington Supreme Court has not addressed the question and that in the nearly 30 years since Johnson was decided, the law on special relationships has shifted. The Ninth Circuit said courts in other states have determined that college students are not fully independent, noting that students' desire to be independent and exercise their right to privacy may come in conflict with their immaturity and need to be protected.

Barlow argues the university had a duty to protect her and that the harm was foreseeable because the school's code of conduct forbids sexual assault. The university counters it has no duty to protect adult university students from fellow students off campus at a private event, where the university has no control over the attacker or the victim.

Seattle University School of Law professor Deirdre Bowen, who signed an amicus brief in support of Barlow, said the idea that a university has an extra duty of care would have "massive implications" in terms of the costs of monitoring and investigating student behaviors and actions, both on campus and off.

"But if there is a duty and the duty is articulated and it is ultimately determined that the university violated its obligation, that could have broader implications to similarly situated institutions with similar special relationships," said Bowen, director of the law school's Family Law Center.

A ruling for Barlow could eventually be applied to employers who hire summer interns, Bowen said, and also could have a spillover effect on cruise ship workers.

But any generalized application outside a university setting would have to be decided by future litigation, Bowen said.

Jeffrey J. Nolan of Holland & Knight LLP told Law360 that whatever the decision in the Barlow case, he does not expect it will usher in a "complete sea change" in the relationship between universities and their students.

Nolan, who represents colleges and universities, said students often demand a lot of autonomy until something bad happens. And courts that have recognized a special relationship tend to make narrowly tailored rulings on specific circumstances.

"I definitely keep a watch on this type of case because every time a state court recognizes a duty or declines to recognize a duty in a certain factual context that just further informs the broader risk-management steps that need to be taken," Nolan said.

Nolan said Barlow is also important because state courts look to each other to see where the law could be going.

The Washington Supreme Court will take up the issue at a Feb. 23 hearing.

The case is Madeleine Barlow v. State of Washington, d/b/a Washington State University, case number 21-35397, in the U.S. Court of Appeals for the Ninth Circuit. The case number is 101045-1 in the Washington Supreme Court.

--Editing by Jill Coffey and Jay Jackson Jr.
