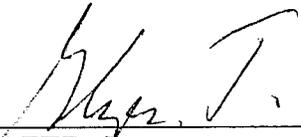


the Opinion issued simultaneously, it is **ORDERED** that said Motion is **DENIED**.

BY THE COURT:



GLAZER, J.

When a court or other government unit, in making an interlocutory order in a matter in which its final order would be within the jurisdiction of an appellate court, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order.¹

This court does not believe that there is substantial ground for difference of opinion with respect to the court's interpretation and application of the AME. As noted by PMA in its Response to PSU's Motion, the cases cited by PSU to support its argument that there is a difference of opinion do not speak to the coverage issues before this court:

In its motion, PSU focuses on case law holding that sexual abuse of minors is not generally within the scope of an individual's employment duties. Accordingly, employers are not vicariously liable for acts of sexual abuse committed by their employees. *See R.A. ex rel. NA. v. First Church of Christ*, 748 A.2d 692, 699-700 (Pa. S. per. 2000). However, just because acts of sexual abuse are not deemed to be within the scope of employment duties for the purpose of holding the perpetrator's employer vicariously liable, [that] does not resolve the question raised [here]. A perpetrator who commits the abuse while at the same time serving the interests of his employer (as [this] Court found) and cloaked with responsibilities and titles that permit him to access children may still be an "insured" for the purposes of an exclusion plainly intended to eliminate the insurer's liability with respect to such acts. The case law cited by PSU simply is inapposite under the present circumstances, where PSU's alleged vicarious liability is not at issue.²

This is an insurance coverage case and only an insurance coverage case. The legal issues raised in this case, as opposed to those raised in the underlying matters, are far less than meet the eye. This court was not asked to, and did not, decide whether PSU should be held tortiously liable for Sandusky's crimes or not. Instead, this court had to make its coverage decision in the liability vacuum created by PSU's settlement with Sandusky's victims.³

¹ 42 Pa. S. C. §702(b). *See also* Pa. R. App. P. 1311(b).

² PMA's Response to Motion to Certify, p. 10.

³ While the court applauds all such settlements, they do make coverage determinations more difficult to explicate.

If, instead of settling, PSU had been found liable at trial for all of Sandusky's abusive acts based on PSU's negligent employment, supervision, or retention of him, then under the court's ruling, the AME would bar coverage for any damages paid by PSU on such claims. If PSU was found not liable with respect to some of those claims, such as the ones that occurred off-campus, yet it paid money to the victims with respect to those claims, then such gratuitous payments would not have to be reimbursed by PMA because PMA agreed in the policies to pay only "all sums which [PSU] shall become legally obligated to pay as damages." Either way, PSU is not entitled to reimbursement from PMA. The same is true where, as here, PSU opted to settle the claims rather than try them. The court does not see how there could be substantially different opinions regarding what is, candidly, a fairly pedestrian coverage decision.

Nor will the delay occasioned by an appellate court's immediate consideration of the AME issue materially advance the ultimate termination of this matter. In this case, the parties have raised numerous issues regarding the interpretation of a wide range of policy terms and exclusions in multiple policies, and they have asked this court to apply those policy terms and exclusions to many different factual scenarios over a 40 year period. In deciding the parties' Motions for Partial Summary Judgment, the court ruled on several of the issues raised, but by no means all of them. By the time this court has resolved all of the issues at trial or otherwise, both parties may feel that they have grounds for appealing this court's decisions. It would be far more efficient for the appellate court to hear all such appeals together as one, rather than piecemeal as PSU has requested.

PSU claims that if the appellate court "reverse[s] this court's ruling, [PSU] will be positioned for a complete recovery of its claims under the Exclusion Policies . . ." ⁴ The fact that one

⁴ PSU's Motion to Certify, p. 9.

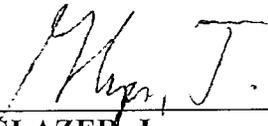
side may ultimately obtain more money if an appeal is allowed, and the trial court's decision is reversed, is not a reasonable basis for the extraordinary remedy of certifying an order for interlocutory appeal. The same argument can be made about almost every ruling at every stage in every case. This court will not impose upon the appellate court at this juncture by certifying the AME issues for immediate interlocutory appeal.

CONCLUSION

For all the foregoing reasons, PSU's Motion to Certify the court's May 4th Order for interlocutory appeal is denied.

Dated: June 30, 2016

BY THE COURT:



GLAZER, J.