

Best's Insurance Law Podcast

What New York Child Victims Act Means for Insurers - Episode #160

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John Czuba: Welcome to "Best's Insurance Law Podcast," the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Insurance Professional Resources*.

We're pleased to have with us today attorney Florina Altshiler from the [Russo & Toner](#) law firm with offices in New York, New Jersey, Pennsylvania and Connecticut.

Florina is the managing attorney for the firm's Buffalo, NY office. She is a litigation attorney specializing in labor law and premise liability matters. Her practice also includes medical malpractice and general negligence law. Florina also has significant experience in the areas of complex medical practice, premises liability and construction accident litigation. And Florina, we're very pleased to have you with us today.

Florina Altshiler: Thank you. I'm happy to be joining you.

John: Thank you, Florina.

Today's discussion is on the Child Victim Act in New York and what it means for insurers. Florina, for our first question today, can you explain for us the Child Victim Act?

Florina: The Child Victim Act effectively does two things. One is it extends the time to bring felony criminal charges by five years. Victims can now be as old as age 28.

More importantly, from an insurance perspective, what it does is it effectively extends and also temporarily removes the statute of limitations for civil cases. What it does, in terms of the civil statute, is it has opened, starting in August 2019, a one year, one time window for victims to seek compensation regardless of the abuse date.

It could have happened back in the 1980s, 1950s. It does not matter. The date of the incident is completely irrelevant. That one time, one-year window will close in August 2020. It is currently open and any claims can be brought that occurred from any time, so long as they're brought during this look-back period.

The other thing that it does, from a civil perspective, is it expands the statute of limitations once the look back window closes. After August 2020, any victim under the age of 55 can sue, no matter how long ago the abuse had happened.

This will allow for civil relief against abusers, enabling institutions, and any employers that potentially employed these abusers so long as the victim is under the age of 55, which significantly expands the earlier five-year statute of limitations.

John: Florina, how has this change impacted civil claims in New York State?

Florina: Since the statute took effect on August 14, 2019 hundreds of claims have been filed, most of them filed right when this look-back period opened on August 14, 2019.

John: What should insurance carriers be aware of?

Florina: There are big questions raised in terms of both when the abuse occurred and what insurance policy would be effective. If someone is alleging that a claim stems from an allegation in 1977, it's going to be difficult to find which policy was in effect and in place back in 1977.

The other question is, does the defendant have a claims-made policy now in 2019 or 2020? Does it implicate that policy, as well as an occurrence-based policy from 1977? Both policies may be implicated. The insurer may not be able to locate the older policy.

The other question is how many occurrences are there? Oftentimes with child abuse and molestation cases, the molestation occurs over a period of time in different locations. The question is, do you have one occurrence or multiple occurrences?

If you have multiple occurrences, that would implicate multiple policies and potentially multiple payouts from each of those policy's carriers for each of those occurrences. You can have a claim where there's, maybe, let's say 20 incidents. Now you have, potentially, 20 different payouts.

Insurance companies will want to definitely keep an eye out for that and limit it to one occurrence and one payout if the policy even applies for the period as alleged.

John: Florina, are there other states with Child Victim Acts?

Florina: There are. California, Delaware, Minnesota, Hawaii are examples. Many of those have Child Victim Acts with that look back window that recently closed.

John: Have other states have look back windows that now closed? What happened since the windows closed?

Florina: Since the look back windows have closed, there have been significant settlement payouts. California, for example, suspended their statute of limitations in 2003. They had a look back window of one year, which allowed childhood sexual abuse lawsuits to be filed back in 2003, regardless of when the incidents allegedly occurred.

There were about 850 Catholic clergy abuse victims and 150 others who sued churches, the Boy Scouts, and other institutions for employing what they termed to be known molesters.

The courts had then struck down the criminal prosecution look back window in California, but the civil lawsuit look back window was deemed to be constitutional. Those suits all moved forward.

By the end of the year, when the window had closed, the Archdiocese of Los Angeles had over 500 lawsuits they settled, a total of 570 claims of abuse against 221 priests, and teachers, and church employees spanning a period of 70 years.

They had very large payouts to settle those abuse litigation claims. San Diego's diocese had filed for bankruptcy protection. About 10 bishops and archbishops resigned over the alleged involvement in sexual abuse and cover up allegations. Parishes were terminated. In California, the Catholic schools had closed. They ended their ministerial program.

Delaware had a Child Victim Act, as well. They, a much smaller state with a much smaller population...They had 1,175 civil claims. They settled the claims cumulatively for \$77 million against the Wilmington Diocese, which had filed for bankruptcy protection. This is in 2009.

They had significant layoffs, property sales, liquidation of funds. Parishes there in Delaware did not close.

If we look at Minnesota, they had more than 850 child abuse claims, including about 500 against the Minnesota Catholic clergy. There, they had a three year window, which closed in 2016.

Dioceses across Minnesota had declared bankruptcy, five of the six Catholic dioceses in Minnesota, which were home to about 1.2 million Catholics had to turn to Chapter 11 federal bankruptcy protection to settle hundreds of claims of sexual abuse. They filed for Chapter 11, reorganized, and then reemerged as leaner operations.

Hawaii also had look back windows. Their window was actually extended three different times. They had significant claims which also paid out in the millions. New York's window is now open. The claims are coming in and the settlements are going to eventually start.

John: How do you expect the Child Victim Act to impact the settlements and payouts throughout New York State?

Florina: My prediction is that if we compare New York State to other states and what the payouts have been in other states; for example, New York's population is three and a half times larger than that of Minnesota. If Minnesota had about 1,000 claims that settled, if we multiply that by population sizes, by three and a half, one could expect about 3,500 claims to be made during this one year look back window.

If there's 3,500 claims that are filed and if they're settled at an average of even \$250,000, we're looking at a total of over \$437 million in Medicare liens alone, and approximately \$875 million in settlement payouts.

The way I come up with about \$250,000 on average is if we look at the fiscal impact of the New York Child Victims Act, what we could do is we could look at how approximately one third of child sex abuse victims, based on statistics, develop PTSD. There's a correlation between trauma and substance abuse. It's particularly strong for adolescents with PTSD.

One in three New Yorker's currently receive Medicaid. Medicaid liens, of course, are placed on settlement funds for the coverage directed to the problems arising from sex abuse. It's widely agreed that 20 to 25 percent of children are sexually abused by the age of 18.

The enactment of the window portion of this act is going to lead to reimbursement of New York's Medicaid. For at least \$250,000 Medicaid liens are paid out of the settlement.

This is a conservative figure. It's assuming that approximately 2,000 victims would take advantage of the window and that, on average, they'll receive \$250,000 in settlement, which is well below the national average of approximately \$350,000 per victim.

Medicaid often accounts for roughly 50 percent of the settlement. At 2,000 claims times \$250,000, times half, you have \$250 million going to Medicaid. The number of cases that have been filed pursuant to the windows have ranged from, of course, as little as 2 to 1,175.

Comparing it to Minnesota's window, adjusting by population size and multiplying by the number of claims, New York State may potentially have \$875 million in settlement payoffs.

John: Florina, what type of litigation do you anticipate?

Florina: Before the claims even make it to litigation in terms of whether or not there was abuse and the damages there, there's going to be a lot of litigation to determine whether or not the policies that are implicated apply, whether or not the coverage is available for the defendant that's alleged.

If the policy does apply, the number of occurrences that are alleged versus the number of occurrences that are covered, which would affect the payout amount, obviously, if there's more than one occurrence. If that's deemed, under New York law, to be recoverable, then you have multiple policy payouts.

If the policy limit is \$1 million but you have 20 separate occurrences, now you have a \$20 million payout for that one lawsuit. The question of how many occurrences are there is a big question to be answered, assuming that the policy itself even applies.

John: Florina, thank you very much for joining us today.

Florina: Thank you.

John: You've just listened Florina Altshiler from [Russo & Toner, LLP](#), and special thanks to today's producer, Frank Vowinkle.



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I'm John Czuba, and now this message.

Transcription by CastingWords

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