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STATE OF MINNESOTA **DISTRICT COURT**
COUNTY OF WADENA **SEVENTH JUDICIAL DISTRICT**

North Star Mutual,
Plaintiff,
vs.

Court File No. 80-CV-19-1044

Christopher Erickson, Lacy Erickson, Trent Walter, and Samantha Walter.
Defendants.

SUMMARY JUDGMENT ORDER

The above-entitled matter came remotely before the Honorable Doug Clark on September 24, 2021, at the Courthouse in the City of Wadena, County of Wadena, State of Minnesota, for a hearing on competing motions for summary judgment. North Star Mutual, Plaintiff herein, was present remotely and through its attorney, Paul Storm. Christopher Erickson and Lacy Erickson, Ericksons herein, were present remotely and appeared through their attorney, Jennifer Crancer. Trent Walter and Samantha Walter, Walters herein, were present and appeared through their attorney, Jay Pederson.

At the hearing, the Court granted Defendants Ericksons and Walter leave to submit supplemental briefing on any out-of-state caselaw on the issue of the application of inferred intent to minors. Such supplemental briefing from Defendants was due on or before October 8, 2021. Plaintiff was given until October 15, 2021, to file any responsive briefing.

Based on the foregoing and having duly considered the memoranda, the documents, other evidence and proceedings herein, together with the applicable law, the Court now makes the following:

FINDINGS OF FACT

Parties

1. Laicy Erickson and Christopher Erickson (collectively "Ericksons") are two individuals, married and residing at all times material hereto at their home located at 11916 County Road 9 in Wadena County, Minnesota. Ericksons have two children. Their second youngest son, C.E., born resides with Ericksons and is a minor.[1]

1 No party provided an actual or approximate date of birth for C.E., other than asserting that C.E. was between 6 and 7 years old when any of the alleged contact with R.W. took place.

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2. Laicy Erickson was a family care provider licensed by the State of Minnesota and ran a daycare out of her home located at the Ericksons' Property from 1997 to 2017. Laicy Erickson was the primary caregiver at her daycare. At no time material hereto was Christopher Erickson involved with the running of the daycare or its day-to-day affairs.
3. Defendants Trent Walter and Defendant Samantha Walter (collectively "Walters") have three children, including a twin son, J.W., and daughter, R.W., who were born in October of 2010, and a second daughter, A.W., born in August of 2016.
4. J.W. and R.W. attended Laicy Erickson's daycare from approximately October or November 2011 through approximately July 2016.

Underlying Litigation

5. On October 9, 2019, Trent Walter and Samantha Walter, individually and as the parents of R.W. filed a Complaint against Laicy Erickson and Christopher Erickson. The complaint brought claims of physical assault, sexual assault, battery, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation, negligence, vicarious liability, negligent supervision of a minor, failure to report sexual abuse, giving false or misleading information to authorities, and invasion of privacy.
6. Most of the claims concern interactions between R.W. and a child of Laicy Erickson and Christopher Erickson, C.E. The Complaint alleged that R.W. attended daycare run by Laicy Erickson from December of 2015 through July 19, 2016. Present at this daycare was the Erickson's son, C.E.
7. The Complaint alleged that, at the daycare, C.E. pinned R.W. down and was "wrestling her" and refused to get off when asked. It also claimed that C.E. was "dry humping" R.W. while C.E., R.W., and J.W. were all playing together in C.E.'s room. The Complaint alleged that these actions were reported to Samantha Walter by their child J.W. in December 2015.
8. The Complaint also alleged that C.E. told R.W. to take her clothes off and get naked so that he could spray her with a hose while C.E. and R.W. were in daycare at the Ericksons' Property. The Complaint stated that these actions occurred on July 13, 2016, but provide no further specification or indication as to when or how these events occurred.
9. The Complaint alleged that C.E. told R.W. that he loved her and wanted to marry her, that C.E. told R.W. and he wanted kiss her, that he asked her to take off all her clothes so that they could

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touch "privates", and that C.E. purportedly was "rubbing/touching R.W.'s vagina."

10. The Complaint alleged that there was an incident in which C.E. tried to put his penis in R.W.'s mouth.

Current Litigation

11. On November 20, 2019, Northstar Mutual filed a Summons and Complaint, naming Ericksons and Walters, seeking a declaration that Northstar Mutual had no obligation to defend, indemnify, or otherwise provide coverage under its insurance policy with Ericksons related to the underlying litigation.
12. On November 22, 2019, Walters filed an Answer, denying every averment in the Complaint.
13. On December 5, 2019, the Ericksons filed an Answer, denying in part the averments in the Complaint.
14. On May 28, 2021, Ericksons filed a motion for summary judgment, seeking a declaration that North Star Mutual had a duty to defend them in a personal injury action, *Trent Walter and Samantha Walter vs. Laicy Erickson and Christopher Erickson*, court file no. 80-CV-19-927. This motion was accompanied by a memorandum of law and an affidavit with six attachments.
15. On June 1, 2021, Plaintiff filed a motion for summary judgment. This motion was accompanied by a memorandum of law and an affidavit with eleven attachments.
16. On June 1, 2021, Walters filed a motion for summary judgment. This motion was accompanied by a memorandum of law and an affidavit with five attachments.
17. On June 14, 2021, Walters filed a memorandum of law in opposition to Plaintiff's motion for summary judgment.
18. On June 14, 2021, Plaintiff filed memoranda of law in opposition to both Walters and Ericksons motion for summary judgment.
19. On June 14, 2021, Ericksons filed a memorandum of law in opposition to Plaintiff's motion for summary judgment. This was accompanied by an affidavit with a single attachment.
20. On June 21, 2021, Ericksons filed a reply memorandum in support of their motion for summary judgment.
21. On June 21, 2021, Plaintiff filed a reply memorandum in support of their motion for summary judgment.
22. On June 21, 2021, Walters filed a reply memorandum in support of their motion for summary

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judgment.

23. On June 24, 2021, Plaintiffs filed an amended motion for summary judgment.
24. On June 29, 2021, Walters filed an amended motion for summary judgment.
25. On July 7, 2021, Ericksons filed an amended notice of hearing.
26. A motion hearing was held on September 24, 2021. At the hearing, the Court requested additional submissions from the parties on any out-of-state case law governing the application of inferred intent to minors.
27. On October 7, 2021, the Court received additional briefing from Walters.
28. On October 8, 2021, the Court received additional briefing from Ericksons.
29. On October 14, 2021, the Court received additional briefing from Plaintiff.
30. The Court took the matter under advisement on October 15, 2021.

Insurance Policy Language - Definitions

31. As with many insurance policies, the policy at hand provides numerous definitions.
32. "'Insured' means 'you' and residents of 'your' household who are:
    a. 'you';
    b. 'your' relatives, if residents of 'your' household;
    c. Persons under the age of 21 residing in 'your' household and in 'your' care or in the care of 'your' resident relatives…"
33. "Bodily injury" is defined as "bodily harm to a person and includes sickness, disease, or death. This also includes required care and loss of services." This definition of "bodily injury" does not include "bodily harm, sickness, disease, or death that arises out of:
    a. communicable disease;
    b. Any actual, alleged or threatened sexual misconduct. Sexual misconduct includes, but is not limited to, sexual molestation, sexual touching, sexual harassment, assault of a sexual nature, unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or any act, conduct or communication which is of a sexual or seductive nature;
    c. Mental or emotional injury, suffering, or distress that does not result from physical injury;
    d. Physical abuse…"
34. "Occurrence" is defined as "an accident, including repeated exposures to similar conditions that results in 'bodily injury' or 'property damage' during the policy period."

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Insurance Policy Language – Liability Coverage and Exclusions

35. With respect to personal liability coverage, the policy states that Northstar Mutual would "pay, up to 'our' 'Limit', all sums for which an 'insured' is liable by law because of 'bodily injury' or 'property damage' caused by an 'occurrence' to which this coverage applies. 'We' will defend a suit seeking damages if the suit resulted from 'bodily injury' or 'property damage' not excluded under this coverage. 'We' may make investigations and settle claims or suits that 'we' decide are appropriate. 'We' are not required to provide a defense after 'we' have paid an amount equal to 'our' 'limit.'"
36. The insurance policy excludes from personal liability coverage:
    a. "'bodily injury' or 'property damage' which is expected or intended from the standpoint of an 'insured'.
    b. 'bodily injury' or 'property damage' that is the result of criminal activities of an 'insured'.
    c. 'bodily injury' arising out of any:
        i. refusal to employ;
        ii. termination of employment;
        iii. coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, sexual misconduct; or other employment-related practices, policies, acts or omissions; or
        iv. consequential "bodily injury" as a result of […] above."
37. The policy states that this exclusion applies "whether the 'insured' may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury."

CONCLUSIONS OF LAW

Summary Judgment Standard

1. "The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. Rule 56.01.
2. On a motion for summary judgment, courts view the evidence in the light most favorable to the non-moving party. *State by Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 571 (Minn. 1994).

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3. Further, "summary judgment is appropriate when a party 'fails to make a showing sufficient to establish the existence of an element essential to that party's case." *Iacona v. Schrupp*, 521 N.W.2d 70, 72 (Minn. App. 1994) (*quoting Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).
4. "A genuine issue of material fact may not be established by unverified and conclusory allegations or metaphysical doubt about the facts." *McBee v. Team Industries, Inc.*, 925 N.W.2d 222, 230 (Minn. 2019).
5. No genuine issue as to any material fact exists under Minnesota law "when the non-moving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).
6. A party cannot rely on speculation or general assertions to create a genuine fact issue. *Nicollet Restoration, Inc. v. City of Saint Paul*, 533 N.W.2d 845, 848 (Minn. 1995).
7. The issue presented by a declaratory judgment action is a pure legal question under Minnesota law. *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888, 894 (Minn. 2006).
8. Being a pure legal question, there are no fact issues that alter the required analysis of determining insurance coverage; fact questions only affect whether claims pled in underlying litigation have merit. *Agricultural Ins. Co. v. Focus Homes, Inc*., 212 F.3d 407, 410 (8th Cir. 2000).

Insurance Policy Interpretation

9. The interpretation of an insurance contract is a legal determination under Minnesota law. *Jenoff v. N.H. Ins. Co.*, 558 N.W.2d 260, 262 (Minn. 1997).
10. "General principles of contract interpretation apply to insurance policies." *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W.2d 246, 249 (Minn. 1998).
11. "[An insurance] policy must be read as a whole, and unambiguous language must be accorded its plain and ordinary meaning." *SCSC Corp. v. Allied Mut. Ins. Co.*, 536 N.W.2d 305, 311 (Minn. 1995), *overruled on other grounds by Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910 (Minn. 2009).
12. Exclusions in an insurance policy are as much a part of the contract as other parts thereof and

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must be given the same consideration in determining what is the coverage. *Bobich v. Oja*, 258 Minn. 287, 295, 104 N.W.2d 19, 24-25 (1960).

13. An insurance contract is ambiguous when, after reading the entire document, its language can be "reasonably subject to more than one interpretation." *Mitsch v. American Nat. Prop. & Cas. Co.*, 736 N.W.2d 355, 358 (Minn. Ct. App. 2007).
14. Where unequal bargaining power exists between parties so that one party controls all terms and offers contract on a take-it-or-leave-it basis, contract will be strictly construed against drafting party. *Atwater Creamery Co. v. W. Nat. Mut. Ins. Co.*, 366 N.W.2d 271 (Minn. 1985).
15. In interpreting a policy exclusion, any ambiguity in the language of the policy must be construed in favor of the insured. *Henning Nelson Const. Co. v. Fireman's Fund Am. Life Ins. Co.*, 383 N.W.2d 645, 652 (Minn. 1986).
16. An insurer has the burden of proving that a policy exclusion applies. *Caledonia Community Hosp. v. St. Paul Fire & Marine Ins. Co.*, 307 Minn. 352, 354, 239 N.W.2d 768, 770 (1976).
17. Courts construe a contract as a whole and attempt to harmonize all clauses of the contract. *Telex Corp. v. Data Prods. Corp.*, 271 Minn. 288, 293, 135 N.W.2d 681, 685 (1965).
18. "Because of the presumption that the parties intended the language used to have effect, [courts] will attempt to avoid an interpretation of the contract that would render a provision meaningless." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 526 (Minn. 1990).

Reasonable Expectations Doctrine

19. Minnesota observes a general prohibition on "redraft[ing] insurance policies to provide coverage 'where the plain language of the policy indicates that no coverage exists.'" *Lott v. State Farm Fire & Cas. Co.*, 541 N.W.2d 304, 307 (Minn. 1995).
20. "The reasonable-expectations doctrine gives the court a standard by which to construe insurance contracts without having to rely on arbitrary rules which do not reflect real-life situations and without having to bend and stretch those rules to do justice in individual cases." *Atwater*, 366 N.W.2d at 2781985).
21. The doctrine of reasonable expectations places the burden on the insurer to communicate coverage and exclusions of policies accurately and clearly, while requiring the expectations of coverage by the insured to be reasonable under the circumstances. *Kabanuk Diversified Investments, Inc. v. Credit Gen. Ins. Co.*, 553 N.W.2d 65, 72 (Minn. Ct. App. 1996).

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22. Ambiguity is not required for application of the reasonable expectations doctrine; instead it is a factor to be considered in assessing the applicability of the doctrine. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 48 (Minn. 2008).
23. The Minnesota Supreme Court has recognized that the reasonable expectation doctrine is not broadly applicable. *Id*.
24. "The reasonable expectations doctrine has a very narrow application." *Midwest Family Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 639 (Minn. 2013).
25. "[I]n the absence of an ambiguity, a hidden major exclusion, or other special circumstances, the doctrine of reasonable expectations is inapplicable." *Frey v. United Services Auto. Ass'n*, 743 N.W.2d 337, 343 (Minn. Ct. App. 2008).
26. The reasonable expectations doctrine applies only on the few "egregious" occasions when an exclusion is disguised in a policy's definitions section. *Allstate Ins. Co. v. Steele*, 74 F.3d 878, 881 (8th Cir. 1996).
27. "In applying reasonable-expectations doctrine to insurance contract provisions, factors include ambiguity in language of contract, whether insured was told of important, but obscure, conditions or exclusions, and whether particular provision in contract at issue is item known by public generally." *Atwater*, 366 N.W.2d at 278 (Minn. 1985).
28. In no case since *Atwater* has the Minnesota Supreme Court used the reasonable expectations doctrine to provide coverage in contravention of unambiguous policy terms. *Carlson*, 749 N.W.2d at 49.
29. The Court finds that the reasonable expectation doctrine does not apply in this case. The Court finds that the intentional acts exclusion and the definition of bodily harm which excludes harm arising out of sexual misconduct to be unambiguous. The Court finds that the definition of bodily harm did not hide the limitation of injuries arising from sexual misconduct. First, the Court notes that the definition was in a font-type similar to other provisions in the policy. Second, the definitions were located near the beginning of the liability section of the policy. Finally, the entire definitions section is only two pages. In addition, in indicating that bodily harm did not include sexual misconduct the policy provided an illustrative list of acts that constituted sexual misconduct. As a result, this Court finds that no reasonable person, reading this section of the insurance policy, would have believed that the policy covered injuries arising from sexual

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misconduct. The Court does not find any other special circumstances that would justify application of the reasonable expectation doctrine to these insurance policies.

30. The Court finds this outcome is consistent with case law. First, in *Carlson v. Allstate Ins. Co.* the Minnesota Supreme Court held that the reasonable expectation doctrine did not apply to provide coverage in an insurance policy excluding medical expenses due to injury incurred during employment for wages or profit. 749 N.W.2d at 48. The insurance policy unambiguously restricted uninsured motorist coverage to named insureds as opposed to drivers or policy holders. As a result, even though a listed driver was injured as a pedestrian by an uninsured motorist, the policy did not provide uninsured motorist benefits. *Id*.
31. Second, in *Ross v. City of Minneapolis* the Minnesota Supreme Court stated that the reasonable expectations doctrine did not apply to liability policy held by wrestling match sponsor. 408 N.W.2d 910, 914 (Minn. Ct. App. 1987). The Supreme Court noted that the policy's assault and battery exclusion from liability was unambiguous, was not hidden, was clearly marked, and appeared under a clear capitalized heading on an otherwise blank page. *Id*.
32. Third, in *Bob Useldinger & Sons, Inc. v. Hangsleben*, the Minnesota Supreme Court declined to apply the reasonable expectations doctrine despite claims that a party had asked for and been assured coverage. 505 N.W.2d 323, 327 (Minn.1993). The Court found that, because the purchasers of the insurance were experienced businesspeople, there was nothing in the language of the policies that would raise a reasonable expectation of coverage. *Id*.
33. Fourth, in *Austin P. Keller Constr. Co. v. Commercial Union Ins. Co.* the Minnesota Supreme Court found that the doctrine of reasonable expectations did not apply to a comprehensive general liability insurance that had a joint venture exclusion. 379 N.W.2d 533, 536 (Minn.1986). The Court stated that that the parties were "aware of the difference in the scope of coverages afforded to it as an individual contractor as distinguished from a member of a joint venture." *Id.* at. n. 3.
34. Finally, in *Metro. Prop. & Cas. Ins. Co. & Affiliates v. Miller*, the Minnesota Supreme Court was confronted with a similar issue, a sexual molestation limitation included in the definition of bodily injury. 589 N.W.2d 297 (Minn. 1999). That definition of bodily injury stated that it did not include "coverage for "actual, alleged or threatened sexual molestation of a person." *Id*. at 299. The Supreme Court was upheld this limitation and found that coverage did not extend to the

sexual molestation of an 11-year-old visitor. *Id.* at 299-300. The Court noted that "The plain language of the policies provides no coverage for injury in the form of sexual molestation regardless of whether the injury was caused by an insured or the injury could have been prevented by an insured." *Id.* at 300.

Duty to Defend

35. The duty to defend is broader in scope than the duty to indemnify. *Brown v. State Auto. & Cas. Underwriters*, 293 N.W.2d 822, 825 (Minn. 1980).
36. "Whether the insurer owes a duty to defend is determined by comparing the plain language of the insurance policy to the allegations in the complaint and any extrinsic facts that could bring those allegations within the scope of coverage." *Farm Bureau Mut. Ins. Co. v. Earthsoils, Inc.*, 812 N.W.2d 873, 875 (Minn. Ct. App. 2012).
37. In determining the existence of a duty to defend, a court will compare the allegations in the complaint in the underlying action with the relevant language in the insurance policy. *Meadowbrook, Inc. v. Tower Ins. Co., Inc.*, 559 N.W.2d 411, 415 (Minn. 1997).
38. "The insurer's duty to defend is not invoked solely by the nature of the complaint. *Lanoue v. Fireman's Fund Am. Ins. Companies*, 278 N.W.2d 49, 52 (Minn. 1979), *overruled on other grounds by Am. Standard Ins. Co. v. Le*, 551 N.W.2d 923 (Minn. 1996).
39. "The determination of whether a duty to defend exists is not defined solely by the way in which the claim is characterized in the underlying lawsuit." *Rulli v. State Farm Fire & Cas. Co.*, 479 N.W.2d 87, 89 (Minn. Ct. App. 1992).
40. Where the pleadings do not raise a claim arguably within the scope of coverage, the insurer has no duty to defend or investigate further to determine whether there are other facts present which trigger such a duty. *Republic Vanguard Ins. Co. v. Buehl*, 295 Minn. 327, 332–33, 204 N.W.2d 426, 429 (1973).
41. If the insurer is aware of facts indicating that there may be a claim, either from what is said directly or inferentially in the complaint, or if the insured tells the insurer of such facts, or if the insurer has some independent knowledge of such facts, then the insurer must either accept tender of the defense or further investigate the potential claim. *Johnson v. Aid Ins. Co. of Des Moines, Iowa*, 287 N.W.2d 663, 665 (Minn.1980).
42. "An insurer's obligation to defend its named insured does not depend on the merits of the claim

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asserted but on whether the allegations of the complaint against the insured state a cause of action within the coverage afforded by the policy." *Meadowbrook*, 559 N.W.2d at 419.

43. An insurer's obligation to defend does not depend upon the merits of the claim asserted against its insured. *Truchinski v. Cashman*, 257 N.W.2d 286, 287 (Minn. 1977).

44. "If any part of the claim is arguably within the scope of coverage afforded by the policy, the insurer should defend and reserve its right to contest coverage based on facts developed at trial." *Brown*, 293 N.W.2d at 825-26.

45. An insurer seeking to avoid its duty to defend an insured bears a heavy burden. *In re Liquidation of Excalibur Ins. Co.*, 519 N.W.2d 494, 497 (Minn. Ct. App. 1994).

46. An insurer seeking to escape its duty to defend has the burden of establishing that all parts of the cause of action fall clearly outside the scope of coverage. *Jostens, Inc. v. Mission Ins. Co.*, 387 N.W.2d 161, 165–66 (Minn. 1986).

Duty to Indemnify

47. An insurer also has a duty to indemnify its insured by paying a covered claim under the insurance policy. *Brooks Realty, Inc. v. Aetna Ins. Co.*, 276 Minn. 245, 252–54, 149 N.W.2d 494, 499–500 (1967). The holder of a liability insurance policy has a contractual right to payment, and an insurer the corresponding duty to indemnify the insured, when it is established that the insured's liability to a third party is within the scope of the insurance policy. *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co.*, 819 N.W.2d 602, 616 (Minn. 2012).

48. Ericksons claim that ruling on the issue of indemnity is premature, in the absence of a finding of liability. The Court disagrees. Since the duty to defend an insured is broader than the duty to indemnify, if there is no duty to defend, then there can be no duty to indemnify. As a result, and unless a genuine dispute of material fact prevents resolution, the Court will determine that there is no duty for Plaintiff to indemnify Ericksons related to claims for which there is no duty to defend.

Intentional Tort Claims

49. The insurance policy excludes from personal liability coverage "'bodily injury' or 'property damage' which is expected or intended from the standpoint of an 'insured.'" This type of exclusion is known as an intentional acts exclusion.

50. In the underlying complaint, Counts I-assault, II-sexual assault, III-battery, V-intentional

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infliction of emotional distress, and VI-defamation, are all explicitly and exclusively pled as intentional tort.

51. In Count I, Walters allege that the "assaults described herein were ***deliberate*** and ***intentional*** and committed with malice, reckless disregard for the rights of Plaintiff's minor, R.W." (emphasis added).
52. In Count II, Walters allege that the "sexual assaults described herein were ***deliberate*** and ***intentional*** and committed with malice, reckless disregard for the rights of Plaintiff's minor, R.W." (emphasis added).
53. In Count III, Walters allege that the "battery described herein were ***deliberate*** and ***intentional*** and committed with malice, reckless disregard for the rights of Plaintiff's minor, R.W." (emphasis added).
54. In Count V, Walters allege that the "conduct of Defendants described herein was ***deliberate*** and ***intentional***, and committed with malice, reckless disregard for the rights of Plaintiff's minor, R.W." (emphasis added).
55. In Count VI, Walters allege that the "defamation described herein were ***deliberate*** and ***intentional*** and committed with malice, reckless disregard for the rights of Plaintiff's minor, R.W." (emphasis added).
56. In Count XII, Walters allege that Ericksons' actions "constitute invasion of Plaintiffs' and Plaintiffs' minor, R.W.'s privacy." The complaint does not expressly state the intent required for this claim.
57. Plaintiff argues that this Court's review of the insurance policy's coverage to the underlying litigation is limited by the Walters' characterization of these acts as intentional.
58. Ericksons argue that this Court should consider the "extrinsic" facts of the child's age and find that the child was unable to act intentionally. However, if this Court were to accept this as a fact and find that C.E. lacked the intent to commit these acts, this Court is unable to see how Walters could possibly prevail on these claims. Intent is an element of each claim and required to be proven in order to find liability. The Court finds that it would be irrational and nonsensical to determine as a matter of law that C.E. lacked intent to commit the intentional tort claims, and yet still find that the claims were viable. As a result, this Court declines to consider these additional facts when determining whether the intentional acts exclusion precludes coverage.

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59. Ericksons note that in order to hold parents liable for the intentional torts committed by their children, there must be some negligence on the part of the parents. *Buehl*, 295 Minn. at 330, 204 N.W.2d at 428. The Court agrees. However, that additional negligence does not dispense with the requirement for an underlying intentional tort.
60. Given the manner in which Counts I, II, III, V, and VI were pled, the Court finds the intentional acts exclusion applies and precludes coverage. As a result, Plaintiff has no independent duty to defend against these five claims.
61. Even if the underlying complaint did not contain allegations of intent, this would not alter the outcome with respect to Counts I, II, III, and V. All standard jury instructions for assault, battery, and intentional infliction of emotional distress include elements of intent. CIVJIG 60.20 Civil Assault—Definition, 4A Minn. Prac., Jury Instr. Guides--Civil CIVJIG 60.20 (6th ed.) ("intent to cause apprehension or fear"); CIVJIG 60.25 Civil Battery—Definition, 4A Minn. Prac., Jury Instr. Guides--Civil CIVJIG 60.25 (6th ed.) ("intentionally caused harmful or offensive contact"); CIVJIG 60.75 Intentional Infliction of Emotional Distress, 4A Minn. Prac., Jury Instr. Guides--Civil CIVJIG 60.75 (6th ed.) ("the conduct was intentional or reckless"). Sexual assault is derivative of common law assault.
62. However, if allegations of intent were not included in Count VI, the defamation claim, it is less clear to the Court that such a claim would be barred under the intentional acts exclusion. Common law defamation claims only require: (1) that a statement was false; (2) that it was communicated to someone besides the plaintiff; and (3) that it tended to harm the plaintiff's reputation and lower him in the estimation of the community. This defamation does not expressly mention of intent. This does not affect the Court's determination in this matter, as the defamation claim was pled as intentional.
63. Count XII is Walters' complaint, invasion of privacy, is silent on the issue of intent. In recognizing the tort of invasion of privacy, which includes torts of intrusion upon seclusion, appropriation, and publication of private facts, the Minnesota Supreme Court in *Lake v. Wal-Mart Stores, Inc.*, adopted the invasion of privacy claims as stated in Restatement (Second) of Torts. 582 N.W.2d 231, 235 (Minn. 1998). The Restatement (Second) of Torts § 652B defines intrusion upon seclusion as "[o]ne who ***intentionally*** intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the

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other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person." (emphasis added).

64. This intent requirement for invasion of privacy claims has been applied in subsequent Minnesota cases. *Swarthout v. Mut. Serv. Life Ins. Co.*, 632 N.W.2d 741, 744 (Minn. Ct. App. 2001); *Wittwer v. Enbridge, Inc.*, A06-1049, 2007 WL 152533, at *4 (Minn. Ct. App. Jan. 23, 2007).
65. Given that the definition of the tort, as stated in the Restatement (Second) of Torts and adopted by the Minnesota Supreme Court in in *Lake v. Wal-Mart Stores, Inc.* requires intentional action. As a result, the Court finds that Count XII is an intentional tort and that Plaintiff has no independent duty to defend Ericksons against this count.

Failure to Report Sexual Abuse

66. Plaintiff argues that there is no common-law duty to report sexual abuse. As a result, any liability for the failure to report sexual abuse is created by statute alone. Plaintiff argues that the Minnesota Child Abuse Reporting Act (CARA) does not create such a private cause of action.
67. Walters did not submit any argument on this issue.
68. Ericksons acknowledge that the Minnesota Supreme Court has determined that the CARA does not create a private cause of action. However, Ericksons, without any argument, continue to assert that Plaintiff has a duty to defend them against this claim.
69. Under Minn. Stat. § 626.556 subd. 3(a) (renumbered 2020) "[a] person who knows or has reason to believe a child is being neglected or physically or sexually abused […] or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, county sheriff, tribal social services agency, or tribal police department."
70. Under Minn. Stat. § 626.556 subd. 6(a) (renumbered 2020), "[a] person mandated by this section to report who knows or has reason to believe that a child is neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, and fails to report is guilty of a misdemeanor."
71. "Generally, a statute does not give rise to a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication." *Lickteig v. Kolar*, 782 N.W.2d 810, 814 (Minn. 2010).

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72. "Principles of judicial restraint preclude [courts] from creating a new statutory cause of action that does not exist at common law where the legislature has not either by the statute's express terms or by implication provided for civil tort liability." *Bruegger v. Faribault County Sheriff's Dep't*, 497 N.W.2d 260, 262 (Minn. 1993).
73. In *Becker v. Mayo Found.*, the Minnesota Supreme Court found that CARA does not create civil liability for failure to report suspected child abuse to authorities, as the plain language of the Act shows the legislature chose to impose criminal, but not civil, penalties on mandatory reporters. 737 N.W.2d 200, 209 (Minn. 2007).
74. Since CARA does not create civil liability for failure to report child abuse, the Court finds that there is no private cause of action for failure to report child abuse under Minnesota law.
75. Since the insurance policies at issue only provide coverage when an insured "is liable by law" there is no duty to defend against nonviable claims, unless viable claims remain in the lawsuit.
76. For these reasons, the Court determines that Plaintiff has no independent duty to defend or indemnity Ericksons against Walters' Failure to Report Sexual Abuse claim.

Giving False or Misleading Information to Authorities

77. Minn. Stat. § 609.507 criminalizes as a misdemeanor falsely reporting child abuse. However, similar to the Failure to Report Sexual Abuse claim, there is no common law cause of action for giving false or misleading information to authorities. In addition, Neither Walters nor Ericksons identify any statutory basis for civil liability.
78. Neither Walters nor Ericksons provided any significant briefing in response to Plaintiff's argument.
79. As a result, the Court finds that there is no civil liability from giving false or misleading information to authorities that would permit Waters to bring a claim against Erickson.
80. Consequently, the Court determines that Plaintiff has no independent duty to defend or indemnity Ericksons against Walters' Giving False or Misleading Information to Authority.

Inferred Intent to Injure

81. In determining whether an incident is an accident, and thus an occurrence within the liability coverage of a homeowners' insurance policy, there are two main ways that an insurer can establish intent to injure and lack of coverage:
    a. an insurer may offer proof of actual intent to injure; and

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b. an insurer may prove intent to injure by inferring intent as a matter of law.

RAM Mut. Ins. Co. v. Meyer, 768 N.W.2d 399, 403 (Minn. Ct. App. 2009).

82. Plaintiff has not presented any evidence of actual intent to injure and instead relies solely on inferred intent.

83. In *State Farm Fire & Cas. Co. v. Williams*, the Minnesota Supreme Court held that intent to cause bodily injury is inferred as a matter of law whenever an insured party sexually assaults another person. 355 N.W.2d 421, 424 (Minn.1984). Plaintiff argues that this presumption applies uniformly regardless of the age of the perpetrator.

84. In the context of sex assault, the Minnesota Supreme Court has frequently applied the doctrine of inferred intent to sexual assault committed by adults. *Fireman's Fund Ins. Co. v. Hill*, 314 N.W.2d 834, 835 (Minn. 1982) (foster children sexually assaulted by an adult); *Williams*, 355 N.W.2d at 425 (adult had nonconsensual sex with another adult).

85. The Court of Appeals extended this inferred intent to a minor in the case of *Illinois Farmers Ins. Co. v. Judith G.*, the Court Appeals. 379 N.W.2d 638 (Minn. Ct. App. 1986). The case involved a sexual assault committed by a 13–16-year-old perpetrator against 8–9-year-old victims. *Id.* at 639. In that decision, the Court of Appeals held that it did not matter whether the juvenile perpetrator lacked a subjective intent to injure.

86. The Eighth Circuit Court of Appeals, applying Minnesota law in *Allstate Ins. Co. v. Steele*, predicted that Minnesota Courts would apply that inferred intent presumption even if the perpetrator was a minor. 74 F.3d at 880. The Court notes that decisions of the federal Courts of Appeal on issues of state law are not binding precedent but may have persuasive weight. *In re Estate of Eckley*, 780 N.W.2d 407, 411 (Minn. Ct. App. 2010).

87. However, since *Williams, Judith G., and Steele* were decided the Minnesota Supreme Court has crafted numerous exceptions to application of inferred intent. In many of these cases, the Supreme Court has declined to simply applied the doctrine of inferred intent, either finding an exception or stating that intent was a disputed question of fact unsuited for resolution at summary judgment.

88. In *B.M.B. v. State Farm Fire & Cas. Co.*, the Supreme Court carved out an exception when an insured who is mentally ill commits sexual assault. The Supreme Court states that where "the insured's actions are more in the nature of an instinctive reflex or a sudden impulsive defensive

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reaction to a provocative situation" intent is a question of fact, "because the circumstances suggest that the insured was not the master of his own will." 664 N.W.2d 817, 823 (Minn. 2003).

89. In *State Farm Fire & Cas. Co. v. Wicka*, the Minnesota Supreme Court created an express exception from the inferred intent doctrine when an insured, because of mental illness or defect, either does not know nature or wrongfulness of act, or is deprived of ability to control his conduct regardless of any understanding of nature of act or its wrongfulness. 474 N.W.2d 324, 329–30 (Minn. 1991). The Supreme Court in *Wicka* stated that inferred intent required that the insured understand the obvious nature of their respective actions and the foreseeability of harm flowing from those actions. *Id*.
90. In fact, rather than applying a monolithic presumption of inferred intent, Minnesota has instead stated that the determination of whether an intentional injury exclusion bars coverage is to be made in a case-by-case factual inquiry. *E.g. Am. Family Ins. Co. v. Walser*, 628 N.W.2d 605, 613 (Minn. 2001).
91. In *Walser*, the Minnesota Supreme Court declined to infer intent to a high school student, finding that intent could not be inferred when the student grabbed another student's ankles as that student hung from a basketball rim, causing that student to fall and be injured. *Id*. The Supreme Court stated that intent could not be inferred because the students were "goofing around" in a high school gym. *Id.*
92. Given that this case involved relatively novel issues of state law, the Court invited the parties to provide supplemental submissions on how other state jurisdictions handles the application of inferred intent to minors. The Court greatly appreciates the parties' additional work and skillful legal research.
93. From the result of this research, differing jurisdictions have generally fallen into three categories. Some states have applied the doctrine of inferred intent to many, if not all, minors. Some states have determined the doctrine of inferred intent is wholly inapplicable to minors. Finally, some states assess the intent of minors on a case-by-case basis.
94. States jurisdictions directly applying the doctrine of inferred intent to minors include: Alaska, *Allstate Ins. Co. v. Roelfs*, 698 F. Supp. 815, 816 (D. Alaska 1987); Florida, *Allstate Ins. Co. v. Bailey*, 723 F. Supp. 665, 668 (M.D. Fla. 1989); Missouri, *B.B. v. Continental Ins. Co.*, 8 F.3d 1288 (8th Cir. 1993); Ohio*, Cuervo v. Cincinnati Ins. Co.*, 76 Ohio St. 3d 41, 665 N.E.2d 1121

(1996), *holding modified by Doe v. Shaffer*, 90 Ohio St. 3d 388, 738 N.E.2d 1243 (2000); Texas, *J.T. v. D.B.*, 05-94-01158-CV, 1995 WL 221970, at *1 (Tex. App. Apr. 13, 1995), writ denied (Nov. 16, 1995); and West Virginia, *W. Virginia Fire & Cas. Co. v. Stanley*, 216 W. Va. 40, 50, 602 S.E.2d 483, 493 (2004).

95. Cases declining to apply the doctrine of inferred intent to minors include: Alabama, *State Farm Fire & Cas. Co. v. GHW*, 56 F. Supp. 3d 1210, 1217 (N.D. Ala. 2014) (14-year-old perpetrator); Colorado, *Horton v. Reave*s, 186 Colo. 149, 526 P.2d 304 (1974) (3- and 4-year-old perpetrators); and Nevada, *Allstate Ins. Co. v. Jack S*, 709 F. Supp. 963 (D. Nev. 1989) (14-year-old perpetrator.
96. Cases involving a case-by-case determination of whether a minor intentionally acted include: Arizona, *United Services Auto. Ass'n v. DeValencia*, 190 Ariz. 436, 949 P.2d 525 (Ct. App. 1997); Illinois, *Country Mut. Ins. Co. v. Hagan*, 298 Ill. App. 3d 495, 504, 698 N.E.2d 271, 277 (1998); Michigan, *Fire Ins. Exch. v. Diehl*, 450 Mich. 678, 687, 545 N.W.2d 602, 606 (1996), *overruled on other grounds by Wilkie v. Auto-Owners Ins. Co.*, 469 Mich. 41, 664 N.W.2d 776 (2003); Utah, *Allstate Ins. Co. v. Patterson*, 904 F. Supp. 1270 (D. Utah 1995); and Vermont, *N. Sec. Ins. Co. v. Perron*, 172 Vt. 204, 218, 777 A.2d 151, 161 (2001).
97. The Court finds that, to the extent that *Williams*, *Judith G.*, and *Steele* once stood for the proposition that intent is to be inferred in all cases of sexual assault, even sexual assault committed by minors, that proposition has been undermined by subsequent Minnesota Supreme Court decisions. In particular, this Court finds that, based on the rationale in *B.M.B.* and *Wicka*, the Minnesota Supreme Court has abandoned any automatic application of inferred intent when there is evidence that the insured lacked the capacity to intentionally act.
98. In particular, the Court finds the out-of-state case of *Fire Ins. Exch. v. Diehl* to be persuasive. In that case, the Michigan Supreme Court held that inferring as a matter of law the intent to injure where a child sexually assaults another individual was inappropriate, as children, as a group, do not have the capability to understand the consequences of their sexual acts. *Fire Ins. Exch. v. Diehl*, 450 Mich. 678, 690, 545 N.W.2d 602, 608 (1996), *overruled on other grounds by Wilkie v. Auto-Owners Ins. Co.*, 469 Mich. 41, 664 N.W.2d 776 (2003).
99. The Court notes that Minnesota has expressly recognized that children have less capacity to act. Minnesota law states that children younger than 14 are incapable of committing crime. Minn.

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Stat. 609.055 subd. 1 "Further, children under ten years of age cannot be adjudicated as a "delinquent child" under Juvenile Court Act. *Matter of Welfare of S.A.C.*, 529 N.W.2d 517 (Minn. Ct. App. 1995). Instead, for issues relating to the conduct of a child under the age of ten, those are only handled in a general child protection matter, focusing on the entire family.

100. In particular the Court finds the analysis in *Diehl* to echo the Minnesota Supreme Court in *B.M.B.* and *Wicka*. Similar to the mentally ill, Minnesota law protects and restricts the activities of minors. This Court finds that the number of restrictions and protections imposed on very-young children and the mentally ill to be similar. As a result, the rationale of *B.M.B.* and *Wicka* support finding that the Minnesota Supreme Court, if confronted with this issue, would decline to apply the doctrine of inferred intent reflexively to children.

101. For all of these reasons, this Court declines to apply the doctrine of inferred intent to a six-to-seven-year-old alleged perpetrator.

Intentional Acts Exclusion

102. The insurance policy excludes from coverage "'bodily injury' or 'property damage' which is expected or intended from the standpoint of an 'insured.'"

103. "The purpose of an 'intentional injury' exclusion […] is to prevent extending to the insured a license to commit wanton and malicious acts." *Woida v. N. Star Mut. Ins. Co.*, 306 N.W.2d 570, 573 (Minn. 1981).

104. Where a comprehensive general liability policy contains an intentional act exclusion, there is no coverage for injury where the insured acts with the specific intent to cause bodily injury. *B.M.B.*, 664 N.W.2d at 821.

105. Exclusionary clause for "bodily injury […] caused intentionally by or at the direction of the insured" does not relieve insurer of liability unless the insured has acted with intent to cause a bodily injury; when the act itself is intended but the resulting injury is not, the exclusion has no application. *Caspersen v. Webber*, 298 Minn. 93, 98, 213 N.W.2d 327, 330 (1973).

106. Other than the age of the alleged perpetrator, there is no information about C.E.'s capacity and ability to understand his actions. Given this lack of information, the Court finds that a genuine dispute of material fact precludes resolution of whether the inferred intent doctrine applies in this case.

107. As a result, the Court finds the Court cannot determine as a matter of law that any of the

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C.E.'s actions were intentional. From that it follows that the Court cannot determine whether any of C.E.'s actions meet the policy's definition of an "occurrence" that results in bodily injury that would be covered by the insurance policy. As a result, this Court finds that counts not excluded from coverage for other reasons are not excluded under the intentional acts exclusion as a matter of law.

Sexual Misconduct Limitation

108. In the insurance policy's definition of "bodily harm" the policy seeks to exclude "bodily harm, sickness, disease, or death that arises out of" […] "any actual, alleged, or threatened sexual misconduct."

109. Sexual misconduct is specifically defined as including "sexual molestation, sexual touching, sexual harassment, assault of a sexual nature, unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or any act, conduct, or communication which is of a sexual or seductive nature…."

110. The parties dispute the scope of this definition. Plaintiff argues that all of Walters' claims depend on the existence of sexual assault and thus do not constitute the bodily injuries required for coverage under the policy. Ericksons and Walters assert that C.E. could not have formed the intent to commit sexual misconduct and thus C.E.'s actions did not constitute sexual misconduct, regardless of how the claims were pled in Walters' complaint. Ericksons further argue some of the counts are directed primarily or solely at the actions of Laicy Erickson, who is not alleged to have committed any sexual misconduct. As a result, Ericksons assert that these claims did not arise out of sexual misconduct and are thus not excluded by the sexual misconduct limitation.

111. The phrase "arising out of" has been given a broad meaning. *Andrew L. Youngquist, Inc. v. Cincinnati Ins. Co.*, 625 N.W.2d 178, 183 (Minn. Ct. App. 2001)

112. "The words 'arising out of' mean causally connected with, not 'proximately caused by' use." *Faber v. Roelofs*, 311 Minn. 428, 436, 250 N.W.2d 817, 822 (1977). However, but for causation is sufficient to satisfy "arising out of" provision of insurance policy. *Id.* at 436–37, 250 N.W.2d at 822.

113. Dictionary definitions of "misconduct" do not universally require intentional action. For instance, Meriam-Webster's defines misconduct as "mismanagement, especially of governmental or military responsibilities, intentional wrongdoing, and improper behavior."

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Misconduct, Merriam-Webster.com Dictionary, *available at* https://www.merriam-webster.com/dictionary/misconduct. (accessed Dec. 30, 2021).

114. Black's Law Dictionary defines misconduct as "[a] dereliction of duty; unlawful, dishonest, or improper behavior, esp. by someone in a position of authority or trust." *Misconduct*, Black's Law Dictionary (11th ed. 2019). Black's Law Dictionary contains many different related definitions of misconduct, including willful misconduct, which is defined as "misconduct committed voluntarily and intentionally." *Willful Misconduct*, Black's Law Dictionary (11th ed. 2019). If misconduct was inherently intentional, there would be no need for additional definition of willful misconduct; such a definition would be. As a result, the Court finds that the plain an ordinary definition of misconduct encompasses both intentional and unintentional or accidental misconduct.

115. Both Ericksons and Walters cite *Metro. Prop. & Cas. Ins. Co. & Affiliates v. Miller*, claiming that the Supreme Court of Minnesota held an insurer's attempt to exclude sexual molestation from the definition of bodily injury was "nonsensical." 589 N.W.2d at 300. Ericksons and Walters misstate *Miller*. The Supreme Court's use of the word "nonsensical" referred only to the logic of treating the sexual molestation exclusion as an action, rather than a condition. *Id*. The *Miller* Court ultimately upheld a sexual molestation exclusion and found that coverage did not apply. *Id*. Unlike the policy at issue in *Miller*, the insurance policy at issue in this case defines "bodily injury", a condition, as a bodily harm, sickness, disease or death, and excludes specified conditions that were the result of certain specified actions. As a result, there is no nonsensical definition in this insurance policy and *Miller* supports finding the sexual misconduct limitation in the definition precludes coverage in this case.

116. The Court agrees with Ericksons that the sexual misconduct exclusion in the exclusion to liability coverage section of the policy only applies to sexual misconduct related to employment. This exclusion is placed in a list of circumstances only applicable to employment, including, refusal to employ, termination of employment, demotion, evaluation, reassignment, and other employment-related practices, policies, acts, or omissions. Given the placement of this exclusion, the Court finds a person could reasonably believe that the exclusion was limited to employment situations. Under the intrinsic canon of construction noscitur a sociis, the scope of the term "sexual misconduct" in the limitations section is given more precise content by the

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neighboring words with which it is associated. *County of Dakota v. Cameron*, 839 N.W.2d 700, 709 (Minn. 2013). This canon of construction has been used as an interpretive aid in ambiguous insurance contracts. *E.g. Bader v. New Amsterdam Cas. Co.*, 102 Minn. 186, 190, 112 N.W. 1065, 1066 (1907). However, sexual misconduct is not solely mentioned in this limitation section. It is mentioned earlier in the definitions section of the policy.

117. Given the broad scope that courts have applied to exclusions using "arising out of" language, the Court finds that Count IV-negligent infliction of emotional distress, Count VII-negligence, Count VIII-vicarious liability, and Count IX-negligent supervision of a minor all arise out of sexual misconduct. The negligent infliction of emotional distress claim references C.E.'s assault and battery of R.W. The Court finds that all of the assaults and batteries alleged in the underlying complaint are of a sexual nature, regardless of C.E.'s intent. The assaults and batteries allegedly included "dry humping," requests for R.W. to get naked, expressions of love, kissing, and touching of R.W.'s vagina. The negligence, vicarious liability, and negligent supervision of a minor claims similarly depend on C.E.'s contact with R.W. and only contact alleged of a sexual nature. As a result, the Court finds that the allegations do no constitute the "bodily injuries" required for coverage under these insurance policies. As a result, Plaintiff has no independent duty to defendant Ericksons against these claims.

118. The Court finds that this result is consistent with caselaw. The Minnesota Supreme Court in *Republic Vanguard Ins. Co. v. Buehl* held that an insurer was required to defend its insured from a parental negligence claim relating to a motorcycle accident. 295 Minn. at 328, 204 N.W.2d at 427. The Court found that coverage existed even though the policy precluded coverage for accidents from the use of automobiles. *Id.* The Court determined that the alleged parental negligence was distinct from the use of the motorcycle, which resulted in an accident. A similar case is presented in *Redeemer Covenant Church of Brooklyn Park v. Church Mut. Ins. Co.*, in which a pastor sexually abused minors at his church, and his church was sued for negligent supervision. 567 N.W.2d 71, 77 (Minn. Ct. App. 1997). The Court again made a distinction between the church's negligence and the pastor's sexual abuse. *Id.* Because the insured church did not commit sexual assault, the Court found that the exclusion for "[l]icentious, immoral or sexual behavior intended to lead to or culminating in any sexual act" did not exclude coverage. *Id.* A crucial distinction between these cases and the case at hand is that this insurance policy

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precludes coverage for bodily injuries "arising out of" sexual misconduct. This expands the scope of this limitation. As a result, *Buehl* and *Reedemer* are inapposite.

119. In *Fillmore v. Iowa Nat. Mut. Ins. Co.*, the Minnesota Court of Court Appeals held that "negligent entrustment and supervision are part of the tort of negligent use and operation of an automobile." 344 N.W.2d 875, 881 (Minn. Ct. App. 1984). The Court of Appeal determined that these claims were not independent non-vehicle-related acts. *Id.* As a result, injuries arising from negligent entrustment and supervision, arose out of the use of an automobile, and thus were precluded from coverage a motor vehicle exclusion. Critical to the Court of Appeals' decision was the inclusion of "arising out of" language in the exclusion. *Id*.

120. In *Allstate Ins. Co. v. Steele*, the Eighth Circuit Court of Appeals, applying Minnesota law, the Court was confronted with homeowners' insurance coverage for the rape of one child by the child's stepbrother. 74 F.3d at 881. The Court of Appeals found that even if the Court assumed that parents failed to supervise the children adequately, the children would not have been injured but for intentional misconduct. *Id*. As a result, the Court found that the harm "resulted from" an intentional act, and the parent of the injured child could not circumvent the policy's intentional conduct exclusion by suing the other parents for negligent supervision." *Id*.

121. Finally, in *Illinois Farmers Ins. Co. v. M.S.*, the District Court for the District of Minnesota analyzed Minnesota law dealing with intentional conduct exclusions in insurance policies. CIV. 04-3102RHKJSM, 2005 WL 741898, at *5 (D. Minn. Mar. 31, 2005). The Court found that the rule from Minnesota case law "is that when an insurance policy excludes coverage for an injury 'arising out of' or 'resulting from' certain specified conduct (i.e., using a car, intentional acts, assault, battery, or bodily injury), and such conduct occurs, coverage is also excluded for the insured's negligent supervision if the injury would not have occurred but for the specified conduct."

122. Since the Court finds that all of C.E.'s conduct arose out of sexual misconduct, Plaintiff has no independent duty to defend Ericksons against Count IV, Count VII, Count VIII, and Count IX.

ORDER

1. Plaintiff's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**.
2. Ericksons' motion for summary judgment is **DENIED**.

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3. Walters' motion for summary judgment is **DENIED**.
4. This Court declares that Plaintiff has no independent duty under the intentional acts exclusion to defend Ericksons against Counts I, II, III, V, VI, XII as those Counts were pled or constitute intentional torts.
5. This Court declares that Plaintiff has no independent duty under the definition of bodily injury, which excludes injury arising from sexual misconduct to defendant Ericksons against Counts IV, VII, VIII, and IX.
6. This Court declares that Plaintiff has no independent duty to defend Ericksons against Count X, as there is no cognizable cause of action for failure to report sexual abuse under Minnesota law.
7. This Court declares that Plaintiff has no independent duty to defend Ericksons against Count XI, as there is no cognizable cause of action for giving false or misleading information to authorities.
8. As Plaintiff has no duty to defend against any individual claim in the underlying litigation, the Court declares that Plaintiff has no duty to defend Ericksons against Walters' litigation.
9. Since there is no duty to defend, the Court declares that Plaintiff has no duty to indemnify Ericksons for any resulting liability from Walters' litigation.
10. The Court does not reach any of the parties' additional and alternative arguments.

Dated this 8th day of January, 2021.

BY THE COURT:

Doug Clark

DOUG CLARK
Judge of District Court