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Supreme Court of South Carolina
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY,

Plaintiff,

vs.

ROSE WADFORD HUNTER, JANE DOE, by and through her mother and natural Guardian ad Litem, MARY ROE, and MARY ROE, individually,

Defendants.

Civil No.: 9:17-00384-DCN

ORDER

The following matter is before the court on plaintiff Allstate Vehicle and Property Insurance Company's ("Allstate") motion for summary judgment, ECF No. 34. For the reasons set forth below, the court refrains from deciding the motion for summary judgment at this juncture as the question of coverage rests on the resolution of a state law issue that has not yet been resolved in South Carolina courts. It instead certifies the following question to the South Carolina Supreme Court:

(1) In Manufacturers & Merchants Mut. Ins. Co. v. Harvey, 498 S.E.2d 222 (S.C. Ct. App. 1998) the South Carolina Court of Appeals held that in a coverage dispute involving sexual abuse negligence claims against a non-abusing third party constitute "occurrences" and are not barred by the intentional act exclusion in an insurance policy. How does this holding interact with the intentional or criminal act exclusion and joint obligations provision found in Allstate's insurance policy? Specifically, does Allstate's intentional or criminal act exclusion and the joint obligations provision operate to bar coverage for claims such as negligent supervision and breach of fiduciary duty levied against the non-abusing third party that is the other "named insured" in a policy?

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I. BACKGROUND

This is an insurance coverage case. It arises out of the alleged sexual assault of minor Jane Doe ("Doe") by Joseph Stephen Hunter ("Joseph Hunter"), the husband of Rose Wadford Hunter ("Rose Hunter"). According to the complaint, Rose and Joseph Hunter were Doe's neighbors in Bluffton, South Carolina when the abuse and harassment occurred. Joseph Hunter began to sexually assault Doe in 2006, when Doe was seven years old. He continued to do so until 2015, when Doe was 16 years old. During this period, Joseph Hunter exposed himself to Doe, forced Doe to masturbate Joseph Hunter, and made Doe perform and receive oral sex. Joseph Hunter videotaped and photographed Doe performing these sex acts. On January 5, 2016 Joseph Hunter was arrested on charges of first and third degree child molestation. The complaint alleges that Rose Hunter was aware of her husband's sexual proclivities concerning young girls yet continued to encourage interactions between Doe and Joseph Hunter including sleepovers. The complaint further alleges that after Joseph Hunter's arrest, Rose Hunter posted comments on the social networking site Facebook "disparaging, denigrating, and defaming" Doe's mother Mary Roe ("Roe") as a "sorry mother." This type of behavior was, the complaint alleges, part of a pattern of behavior that Rose Hunter engaged in to discredit victims of Joseph Hunter's abuse.

Doe, through Roe, brought suit against Rose Hunter in state court entitled Jane Doe, by and through her mother and natural Guardian Ad litem, Mary Roe, and Mary Roe, individually, C.A. No. 2016-CP-07-1541 ("the underlying suit"). Doe alleges that as the result of Joseph Hunter's actions—and Rose Hunter's inactions in the face of the abuse—Doe has received substantial medical, therapeutic, and counseling expenses. Doe

suffers from, and likely will continue to suffer from, psychological distress including depression and post-traumatic stress disorder. Doe levies causes of action for negligence/gross negligence/recklessness, defamation, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty.

Allstate issued a homeowner's policy, Policy No. 990100794 ("the Policy"), to the Hunters, with an effective date of June 16, 2015. The relevant provisions of the Policy are the family liability protection and guest medical protection provisions. The family liability protection provides:

> Losses we cover under Coverage X:
>
> Subject to the terms, conditions and limitations of this policy, we will pay damages which an insured person becomes legally obligated to pay because of bodily injury or property damages arising from an occurrence to which this policy applies, and is covered by this part of the policy.

The Policy defines an "insured person" as "you and, if a resident of your household: a) any relative; and b) any dependent person in your care," and further defines "you" and "your" as "the person listed under Named Insured(s) on the Policy Declarations as the insured and that person's resident spouse." The Policy goes on to define an "occurrence" to mean "an accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in bodily injury or property damage." And finally, "bodily injury" is defined as "physical harm to the body, including sickness or disease . . . ." The Policy also includes a number of exclusions from coverage. Most saliently, it includes an intentional acts exclusion:

> Losses we do not cover under Coverage X:
>
> We do not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, any insured person. This exclusion applies even if:

> a) Such insured person lacks the mental capacity to govern his or her conduct;
> b) Such bodily injury or property damage is of a different kind or degree than intended or reasonably expected; or
> c) Such bodily injury or property damage is sustained by a different person than intended or reasonably expected.

Allstate is currently defending Rose Hunter in the underlying action, subject to a reservation of rights.

On February 8, 2017 Allstate filed this suit, asking the court to declare that Allstate is not required to provide coverage for any of Doe's injuries. Specifically, Allstate contends that the Policy does not provide coverage because: (1) allegations of sexual abuse do not constitute an "occurrence" as defined under the Policy; (2) all or some of the allegations of the sexual abuse did not happen during the policy period; and (3) the allegations of sexual abuse in the underlying action arise from the intentional and criminal acts of Joseph Hunter, placing the acts within the Policy's intentional acts exclusion.

Allstate filed a motion for summary judgment on March 12, 2018. ECF No. 34. Plaintiffs[1] filed a response on March 26, 2018. ECF No. 36. Allstate filed a reply on April 9, 2018. ECF No. 41. The court held a hearing on May 15, 2018. The motion has been fully briefed and is ripe for the court's review.

[1] The court refers to "plaintiffs" to refer collectively to Rose Hunter, Jane Doe, and Mary Roe. While these parties are obviously adversarial in the underlying suit, Allstate refers to all of these parties as "plaintiffs," so for ease of reference the court adopts this lexicon.

II. STANDARD

Having chosen to certify a question to the South Carolina Supreme Court before deciding upon the motion for summary judgment, the court lays out the standard for certification. South Carolina Appellate Court Rule 244 provides that the South Carolina Supreme Court

> in its discretion may answer questions of law certified to it by any federal court of the United States . . . when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the case then pending in the certifying court when it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

SCACR 244(a). The certification order must set forth: (1) "the questions of law to be answered"; (2) "all findings of fact relevant to the questions certified"; and (3) "a statement showing fully the nature of the controversy in which the questions arose." SCACR 244(b).

III. DISCUSSION

This summary judgment motion is a complex one, and the facts are unfortunate. But as explained below, the court refrains from ruling on the summary judgment motion and instead certifies the question of whether the joint obligations provision in the policy bars coverage for the negligent supervision claims levied against Rose Hunter, the a non-abusing third party.[2]

[2] Plaintiffs filed a 46-page response. At no point does the docket reflect that plaintiffs filed a motion for leave to file excess pages. The court refuses Allstate's invitation to strike the excess pages, but it does reiterate the importance of following Local Rule 7.05(B), which states that "[u]nless an exception is granted by the court, no memorandum shall exceed: (1) Thirty-five double-spaced pages in the case of an initial brief of any party . . . ." see also W. Shakespeare, Hamlet, Act 2, scene ii ("[B]revity is the soul of wit.").

A. Joint Obligations Provision

The Policy includes a "joint obligations" provision, which states:

> The policy imposes joint obligations on the Named Insured(s) listed on the Policy Declarations and on that person's resident spouse. These persons are defined as you or your. This means that the responsibilities, acts and omissions of a person defined as you or your will be binding upon any other person defined as you or your.
>
> This policy imposes joint obligations on persons defined as an insured person. This means that the responsibilities, acts and failures to act of a person defined as an insured person will be binding upon another person defined as an insured person.

It is undisputed that both Joseph Hunter and Rose Hunter are considered "named insureds" under the Policy. Allstate argues that this joint obligations provision operates such that the Policy imposes joint obligations on all insureds, and where coverage for damages as the result of the intentional and/or criminal acts of one insured is excluded, coverage is excluded for all insureds. ECF No. 41 at 6. Plaintiffs counter that a "reasonable and plausible interpretation of this 'joint obligations' clause" is that the clause refers to the obligations to pay premiums to "take certain actions before and after the loss." ECF No. 36 at 37.

The court agrees with Allstate that the language of the joint obligations provision is unambiguous. The Policy is clear that Rose Hunter, who is a named insured under the Policy, is bound by the "acts and omissions" of her husband Joseph Hunter, another named insured under the Policy. To find otherwise would be to torture the language of the Policy. While it does not appear that South Carolina state courts have interpreted an insurance policy containing a joint obligations provision, Allstate Indem. Co. v. Tilmon, 2014 WL 1154666 (D.S.C. Mar. 21, 2014) is instructive. In Tilmon, the court interpreted an identical joint obligation clause and held that the language "renders the criminal acts

exclusion applicable to claims for negligence against other insureds." Id. at *7. The joint obligations provision in the policy in Tilmon stated that "[t] he terms of this policy impose joint obligations on the persons defined as an insured person . . . [and][t]his means that the responsibilities, acts and failures to act of a person defined as an insured person will be binding upon another person defined as an insured person." Id. The court adopts the reasoning in Tilmon to find that the joint obligations provision is valid and applies the claims for negligence against all named insureds.

Plaintiffs discuss at length the doctrine of reasonable expectations, and argue that this doctrine should be applied to the joint obligation provision. Under the doctrine of reasonable expectations, "[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations." Bell v. Progressive Direct Ins. Co., 757 S.E.2d 399, 405 (S.C. 2014) (citing Robert E. Keeton, Insurance Law Rights at Variance with Policy Provisions: Part One, 83 Harv. L.Rev. 961, 967 (1970)). But in Bell, the Supreme Court of South Carolina clearly held that the doctrine does not apply where the policy "unambiguously" denies coverage under its plain terms. Id. A review of the joint obligations provision in the policy at hand demonstrates that the policy unambiguously denies coverage to one named insured where the other named insured has been barred from coverage. Because the language of the Policy is clear and unambiguous, the court holds that the joint obligations provision operates to bar coverage—where the actions of one insured person excludes him from coverage, those acts are binding upon the other insured parties and preclude coverage for any claims against the other insured as well.

B. Coverage for Sexual Abuse as "Occurrence" under Policy

The court now turns to the substantive questions of coverage under the Policy. Allstate first argues that it is entitled to summary judgment because Joseph Hunter's sexual abuse of Doe was not an "occurrence" triggering coverage under the Policy because it was not an accident. And even if the sexual abuse is considered an "occurrence," Allstate contends, coverage would be unavailable because the Policy expressly excludes coverage for bodily injury resulting from intentional and criminal acts. For both arguments, the governing case is Mfrs. & Merchs. Mut. Ins. Co. v. Harvey, 498 S.E.2d 222 (S.C. Ct. App. 1998).

Plaintiffs first contend that there is a genuine issue of material fact whether the Hunters' acts are deemed an "occurrence" and that because the policies fail to define the term "accident" the court should look to other common understandings of the term. In Harvey, 498 S.E.2d at 224–26, the court considered whether a homeowner's insurance policy provided coverage against claims that the named insureds, a grandmother and grandfather, sexually abused their grandchildren. The policies in Harvey defined a covered "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions which results, during the policy period, in: (a) bodily injury; or (b) property damage." There too, the policies did not define the term "accident." The Harvey court concluded that there was no coverage because "an intended injury cannot be accidental." Harvey, 498 S.E.2d at 226. Indeed, in Harvey the court concluded that because "the sexual abuse of a child is so inherently injurious . . . [the] intent to harm the child will be inferred as a matter of law." Id. In addition, the court held, "the effect of sexual abuse is so integral to the act that the intent to do the act

is interchangeable with the intent to cause the resulting injury." Id. at 227. In short, under South Carolina law "an intended injury cannot be accidental." Id. at 225. It is the "intent to act, coupled with the intent to produce the consequences" that determines whether an accident has caused the resulting injury. Id. at 227.

> At the least, therefore, an insured's act is not an accidental contributing cause of injury when the insured actually intended to cause the injury that results. "[A]n accident is never present when a deliberate act is performed unless some additional unexpected, independent and unforeseen [circumstance exists or] happening occurs which produces or brings about the result of the injury or death."

Id. The Harvey court held that the sexual abuse of a child cannot be an accident when the intent to harm is inferred as a matter of law. This operates to bar all coverage for Joseph Hunter as his sexual abuse of Doe was not an "occurrence" under the Policy.[3]

The more complicated question is whether Harvey also bars coverage for claims levied against Rose Hunter for negligent supervision of Doe that facilitated Joseph Hunter's sexual abuse. The underlying suit alleges that Rose Hunter was a non-abusing insured person who was negligent, as she "knew or should have known" that Joseph Hunter was engaging in inappropriate intimate sexual contact with underage girls, and had done so prior to the abuse that he perpetrated on Doe. Despite Rose Hunter being on notice of this particular predilection, the complaint alleges that Rose Hunter continued to allow Joseph Hunter to spend time with Doe alone and unsupervised in the Hunters'

[3] As the rule of inferred intent to injure invoked in Harvey is directly applicable here, there is no need to wait to see whether the trial court recognizes a valid cause of action for negligence in the underlying suit. Cf. State Farm Fire & Cas. Co. v. Blanton, 2015 WL 9239788, at *11 (D.S.C. Dec. 17, 2015) ("[T]he state court judge in the underlying tort case found sufficient evidence to charge the jury on negligence as well as self defense. Therefore, this court does not find that the acts by Blanton were intentional acts cloaked in negligence terms.").

home and failed to warn Roe or Doe of Joseph Hunter's "deviant sexual proclivities." Plaintiffs cite to Harvey for the proposition that such a negligence claim against a non-abusing third person is an "occurrence" in the context of a sexual abuse coverage case. This is a question that has not yet been addressed by the South Carolina courts.

In Harvey, the mother of the abused child levied claims against the alleged perpetrators of abuse that they negligently injured the minor children by "allowing the plaintiff's minor children to be in the company of a person or persons that each Defendant knew or should have known posed a severe danger to the Plaintiff's minor children," and "in failing to prevent physical, sexual, or emotional abuse which each defendant knew or should have known was likely to occur to the plaintiff's minor children." Harvey, 498 S.E.2d at 228. The Harvey court found that these allegations alleged negligent or reckless conduct, and that the conduct described alleged actions which constituted an "occurrence" under the Harveys' policy. Id. The Harvey court further held that the negligence claims were not excluded by the intentional acts exclusion in the Harveys' homeowner's insurance policies, as the underlying complaint did not allege that the perpetrators of the abuse intended the harm to the minor children through their negligent supervision. Id. This claim of negligence against a non-abusing third person was, according to the Harvey court, separate and distinct from the acts of molestation by the abuser himself. The Harvey court takes care to note that such a negligence claim was both a covered "occurrence" and not barred by the intentional acts exclusion.

However, the policy in Harvey did not have a joint obligations provision. As discussed above, the language of the joint obligations provision in the Policy is

unambiguous. It is clear that Harvey held that acts of molestation by the abuser himself do not constitute an "occurrence" in an insurance policy and so coverage is barred. Read in conjunction with the joint obligation provision in the policy at hand, it is unclear whether coverage is also barred for Rose Hunter as a named insured.

The court acknowledges that the Tillmon court confronted a similar set of facts concerning the interplay between Harvey and the joint obligations provision in a policy and arrived at a different conclusion. Specifically, in Tillmon the plaintiffs in the underlying suit brought claims for negligent supervision and breach of fiduciary duty against non-abusing third parties for failing to protect a minor from sexual abuse. Tillmon, 2014 WL 1154666, at *7. In Tillmon, the non-abusing third parties were covered under the same insurance policy as the abuser, and the court found that the Policy contained a valid joint obligations provision. The Tillmon court held that the allegations against the non-abusing third parties were for negligent conduct and therefore were "occurrences" and not barred by the intentional acts exclusion in the policy. Id. But ultimately, the Tillmon court found that the joint obligations provision of the Policy attributed the sexual abuse perpetrated on the minor by the abuser to the non-abusing third parties. Id. at *8. As a result, the insurer did not have a duty to defend those third parties. Tillmon is, admittedly, a case from within this district. But as a district court case, it is not binding upon this court. Furthermore, questions of insurance coverage are a state law issue, and no South Carolina court has yet specified the precise boundaries of Harvey's holding as it applies to a policy that contains a joint obligations provision. The court is hesitant to make an Erie guess on how the South Carolina Supreme Court would resolve the issue under the specific circumstances presented. This is an important issue

that is determinative of how this case should be disposed. Allstate maintains that the intentional acts exclusion and the definition of an "occurrence" under the Policy operate to bar coverage for Rose Hunter entirely, and contends that even though plaintiffs are levying claims of negligence against Rose Hunter, plaintiffs are seeking to "recover the same damages arising out of [Joseph] Hunter's sexual molestation of Doe." ECF No. 41 at 4.

From a public policy perspective, if such a joint obligations provision—which is increasingly commonplace in liability policies—operates to bar even negligent supervision claims against non-abusing third-party insureds, this will effectively preclude victims of sexual abuse from recovering money damages against those non-abusers complicit in perpetrating abuse upon them. The court need only to glance at the headlines to assess the prevalence of non-abusing third parties tasked with protecting the abused who instead cover up the acts of abusers. See, e.g., Martha Karolyi was told of allegations that Larry Nassar molested Team USA gymnasts in June 2015, San Jose Mercury News (May 3, 2018), https://www.mercurynews.com/2018/05/03/martha-karolyi-was-told-of-allegations-that-larry-nassar-molested-team-usa-gymnasts-in-june-2015/; Joe Paterno may have known of earlier Jerry Sandusky abuse claim, police report reveals, CNN (September 11, 2017), https://www.cnn.com/2017/09/09/us/penn-state-paterno-sandusky-police-report/index.html; Weinstein Scandal Triggers Questions of Corporate Liability and Even Complicity, Variety (October 25, 2017), http://variety.com/2017/biz/news/harvey-weinstein-sexual-harassment-corporate-liability-21st-century-fox-1202598683/; Marci A. Hamilton, The Waterloo for the So-Called Church Autonomy Theory: Widespread Clergy Abuse and Institutional Cover-Up,

29 Cardozo L. Rev. 225 (2007). Allowing victims of abuse to proceed on civil damages claims against such third-parties will mean little if insurance companies do not provide coverage for the damages awards against those third parties. The court is, however, also cognizant of South Carolina's formalistic interpretation of insurance contracts. Bell, 757 S.E.2d at 406 ("South Carolina courts have a long history of formalistic interpretation with respect to all contracts" and that courts 'should not torture the meaning of policy language in order to extend or defeat coverage that was never intended by the parties.'"). Ultimately, South Carolina courts have not interpreted an insurance policy containing a joint obligations provision in the context of a negligence claim levied against a non-abusing third party named insured. Instead of using this motion for summary judgment to decide such a novel issue of state law, the court certifies the following question to the South Carolina Supreme Court:

(1) In Manufacturers & Merchants Mut. Ins. Co. v. Harvey, 498 S.E.2d 222 (S.C. Ct. App. 1998) the South Carolina Court of Appeals held that in a coverage dispute involving sexual abuse, negligence claims against a non-abusing third party constitute "occurrences" and are not barred by the intentional act exclusion in an insurance policy. How does this holding interact with the intentional or criminal act exclusion and joint obligations provision found in Allstate's insurance policy? Specifically, does Allstate's intentional or criminal act exclusion and the joint obligations provision operate to bar coverage for claims such as negligent supervision and breach of fiduciary duty levied against the non-abusing third party that is the other "named insured" in a policy?

C. Coverage for Defamation under the "intentional acts" exclusion of the Policy

The complaint alleges that Rose Hunter made statements that "imputed unchastity on Plaintiff Doe," and published "natural or alleged defects of the Plaintiffs which there exposed both [Doe] and [Roe] to public hatred, contempt, ridicule." Am. Compl. ¶¶ 86–92. The complaint goes on to say that the statements "were made with knowledge they

were false or with careless, negligent, or reckless disregard to whether it was false or not." Am. Compl. ¶ 89. The parties spend considerable briefing discussing whether the defamation claims against Rose Hunter is barred from coverage under the "intentional acts" exclusion of the Policy.

Defamation is an archetypal intentional tort. Plaintiffs urge the court to recognize two distinct causes of action, intentional defamation and negligent defamation. In support, plaintiffs point to New York Times Co. v. Sullivan, 376 U.S. 254 (1964). That case, however, did not recognize separate intentional defamation and negligent defamation causes of action. It instead held that the Constitution "prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." Id. at 279–80. Indeed, New York Times simply requires a certain level of culpability by the tortfeasor before a public official can recover damages for defamation when his or her official conduct is the subject of the defamation. It does not create separate causes of action based upon the mental state of the defendant.

The Supreme Court of New Hampshire confronted a similar arguments—albeit in the context of an immunity defense as opposed to a coverage dispute—in McCarthy v. Manchester Police Dep't, 124 A.3d 686, 692 (N.H. 2015). In McCarthy, the court reasoned that "in the case of some other torts, the law recognizes separate causes of action for intentional conduct, on the one hand, and negligent conduct, on the other." Id. In support, the McCarthy cited to the separate torts of negligent infliction of emotional distress and intentional infliction of emotional distress, as well as the separate standards

for intentional misrepresentation and negligent misrepresentation. Id. However, there is no such distinction between "intentional defamation" and "negligent defamation."

In State Farm Fire & Cas. Co. v. Weaver, 585 F. Supp. 2d 722, 733 (D.S.C. 2008), on reconsideration in part, 2008 WL 11349874 (D.S.C. Mar. 20, 2008), the insurer argued that there was no coverage under a homeowner's policy for defamation because coverage was barred by the policy's "intentional acts" exclusion. The court found that based on the allegations in the complaint and the state jury's finding of liability on defamation in the underlying suit, the insured intended the results of his actions and so coverage for the defamation cause of action was barred under the "intentional acts" exclusion. Id. at 734. Of course, here there does not appear to be a finding of liability on the defamation cause of action yet. While this alone does not prevent Allstate from depending on Weaver, it certainly distinguishes it. Plaintiff contends that Weaver is inapplicable because the finding that coverage was barred was predicated on a finding of liability in the underlying suit. While the Weaver court certainly considered that there was a finding of liability on the defamation count in the underlying suit, it was not determinative on the coverage issue—the court also looked at the allegations of the underlying complaint to determine if, accepted as true, they fell within the policy's definition of an "occurrence."

Ultimately, the "intentional acts" exclusion precludes coverage for damages arising out of the defamation claim that Roe levies against Rose Hunter. The Policy does not include a specific provision for "personal injury" coverage that arises from defamation, distinguishing many of the cases that plaintiffs cite. And South Carolina recognizes no tort for "negligent defamation" between two private parties. Cf. Hearst

Corp. v. Hughes, 466 A.2d 486 (Md. Ct. of App. 1983) (discussing whether actual impairment of reputation was required to recover damages in a negligent defamation action). Therefore, the court finds that there is no coverage for defamation under the Policy.

D. Coverage for Breach of Fiduciary Duty as an "occurrence" under the Policy

Finally, plaintiffs claim that the breach of fiduciary duty is an "occurrence" such that coverage is warranted.[4] The operative complaint alleges that Rose Hunter "had a special relationship" with Doe and Roe, and owed a fiduciary duty of care, loyalty and good faith. Am. Compl. ¶¶ 95–97. The underlying complaint alleges that Rose Hunter breached this duty in allowing Joseph Hunter to be alone with Doe despite his previous history sexually abusing other minor and failing to warn Roe and Doe of Joseph Hunter's past sexual proclivities, which are substantially similar allegations to the negligence claim against Rose Hunter. In their briefing, plaintiffs subsume the breach of fiduciary duty claim into the negligence claim. ECF No. 36 at 8 ("The negligence claim and breach of fiduciary [duty] claim are combined for the purposes of this memorandum and all references to the negligence claim apply equally to the claim for breach of fiduciary duty against defendant Rose."). Accordingly, the court treats the two claims as one as well. Just like the negligence claim levied against Rose Hunter, the question of whether the breach of fiduciary duty claim is barred by the joint obligations provision of the Policy is a question that the court certifies to the South Carolina Supreme Court.

[4] Plaintiffs concede that the remaining claim of aiding and abetting fiduciary duty is an intentional tort that is not covered by the Policy.

Certainly, "where both covered and excluded acts are alleged, the duty to defend attaches." Fuisz v. Selective Ins. Co. of Am., 61 F.3d 238, 245 (4th Cir. 1995). But of the claims that Doe levies against the Hunters—intentional infliction of emotional distress against Joseph Hunter, negligence against Rose Hunter, false imprisonment against Joseph Hunter, defamation against both Rose and Joseph Hunter, and breach of fiduciary duty against both Rose and Joseph Hunter—only the negligence claim and breach of fiduciary duty claims against Rose Hunter could possibly be covered under the Policy. And, as described in section III.C, the court certifies the question of whether the joint obligations provision in a policy operates to bar coverage for negligence claims against non-abusing third parties. Therefore, the court refrains from deciding this motion for summary judgment until that issue has been decided by the South Carolina Supreme Court.

IV. CONCLUSION

For the foregoing reasons, it is hereby ordered that the following question be **CERTIFIED** to the South Carolina Supreme Court:

(1) In Manufacturers & Merchants Mut. Ins. Co. v. Harvey, 498 S.E.2d 222 (S.C. Ct. App. 1998) the South Carolina Court of Appeals held that in a coverage dispute involving sexual abuse, negligence claims against a non-abusing third party constitute "occurrences" and are not barred by the intentional act exclusion in an insurance policy. How does this holding interact with the intentional or criminal act exclusion and joint obligations provision found in Allstate's insurance policy? Specifically, does Allstate's intentional or criminal act exclusion and the joint obligations provision operate to bar coverage for claims such as negligent supervision and breach of fiduciary duty levied against the non-abusing third party that is the other "named insured" in a policy?

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

June 7, 2018
Charleston, South Carolina

UNITED STATES DISTRICT COURT
District of South Carolina
Clerk's Office
CHARLESTON, SOUTH CAROLINA 29402
Official Business

TO: