

GBW | OUR METHOD FOR SUCCESS

HOW DID YOU
WIN THAT CASE?

\$1.75 MILLION SETTLEMENT
SCHOOL SEX ABUSE

T.H. minor and guardian ad lietem, N.H.
vs. Torrance Unified School District

Holding Schools and Public Entities Accountable
for Sexual Abuse and Molestation



PRESENTERS



Scott H. Carr

is a partner at Greene Broillet & Wheeler, LLP and one of the state's premier trial lawyers in business litigation, legal malpractice, personal injury, product liability, and employment law. Scott is a past President of the Association of Business Trial Lawyers (ABTL) in Los Angeles. As a result of his trial skills, Scott was named Consumer Attorney of the Year by the Consumer Attorneys of California (CAOC) in 2016.



Taylor Rayfield

is a partner at Greene Broillet & Wheeler, LLP and a trial lawyer who has helped obtain many verdicts and settlements for cases involving sex abuse, products liability, catastrophic personal injury, wrongful death, business torts, and legal malpractice. Taylor received the 2018 Street Fighter of the Year Award from the Consumer Attorneys of California (CAOC).



Holly N. Boyer

is a certified appellate specialist and a partner at Esner, Chang & Boyer. In addition to handling all aspects of appellate litigation, she also assists trial lawyers with dispositive and post-judgment motions. Holly received the Ian Herzog Appellate Lawyer of The Year Award in 2019 from Consumer Attorneys Association of Los Angeles (CAALA).

VETTING THE CASE

- Statute of Limitations
- Government Claim
- Viable Defendant
- Your Client

STATUTE OF LIMITATIONS

Statute of Limitations-if under 18

- CCP 340.1
- 40 years old
- 5 year discovers or reasonably should discover
 - (non perp)-entity knew or had reason to know, or was otherwise on notice, of any misconduct that creates a risk of childhood sexual assault by an employee, volunteer, representative, or agent, or the person or entity failed to take reasonable steps or to implement reasonable safeguards to avoid acts of childhood sexual assault.
- 3 year Revival Window
 - Special filing rules

Statute of Limitations-Adult

- CCP 340.16
 - 10 years from date of last act, attempted act, or assault with intent to commit
 - 3 years from discovery or reasonably should discover
 - Not retroactive
 - No revival-except USC
- If don't fall under CCP 340.16-only 2 years

GOVERNMENT CLAIM?

WHO'S THE DEFENDANT?

Government Entity

- Tort liability for Government entity based upon statute

Government Code:

- 820(a) a public employee is liable for injury caused by his act or omission to the same extent as a private person and
- 815.2(a) public entity vicariously liable for torts of an employee occurring within the scope of his or her employment.

Seminal Case for School Liability

C.A. v. William S. Hart Union High Sch. Dist. (2012) 53 Cal.4th 869

- a school district and its employees have a *special relationship* with the district's pupils, a relationship arising from the mandatory character of school attendance and the comprehensive control over students exercised by school personnel, analogous in many ways to the relationship between parents and their children.
- a school district and its employees have an "affirmative duty" ***to take all reasonable steps to protect its students.***
- A duty to supervise at all times the conduct of children on the school grounds
- Either a total lack of supervision or ineffective supervision may constitute a lack of ordinary care

Special Relationship?

- A special relationship exists when “the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control over the plaintiff’s welfare. [citation]” *Doe v. United States Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1129.
- “[A] typical setting for the recognition of a special relationship is where ‘**the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control over the plaintiff’s welfare.**’” [Citations.]” (*Regents of Univ. of California*, 4 Cal.5th at p. 621.)

Special Relationship-College

- “[a] duty to control, warn, or protect may be based on the defendant’s relationship with ‘*either* the person whose conduct needs to be controlled *or [with] ... the foreseeable victim of that conduct.*’” (*Regents of Univ. of Calif., supra*, 4 Cal.5th at p. 619-620 (emphasis added).)
- Noting that although the college students were not minors, but that they were vulnerable, this Court concluded: “Considering the unique features of the collegiate environment, we hold that universities have *a special relationship with their students and a duty to protect them from foreseeable violence* during curricular activities.” (*Id.* at p. 613.)

Special Relationship-Youth Organization

- “Generally, a greater degree of care is owed to children because of their lack of capacity to appreciate risks and avoid danger.” “Based on the vulnerability of children and the insidious methods of sexual offenders, the court in *Juarez* held that there was a special relationship between the Scouts and the plaintiff.” (*Doe v. United States Youth Soccer* (2017) 8 Cal.App.5th 1118 at 1129)
- US Youth Soccer Association was in a special relationship with youth athletes such that they could have required local organizations to conduct criminal background checks of coaches and warned or educated players and parents of the risks of sexual abuse (*United States Youth Soccer*, 8 Cal.App.5th at p. 1129),

BROWN V. USA TAEKWONDO

What to Plead?

- All Forms of Negligence
 - Special duty
- Civil Code Sections
- Mandatory Reporting
- False Imprisonment
- Treble Damages

NEGLIGENT HIRING, SUPERVISION, RETENTION
VS.
NEGLIGENCE

Negligent Hiring, Supervision, Retention

- Person in a **SUPERVISORIAL POSITION** over actor had prior knowledge
- School district may be vicariously liable under Gov Code 815.2 for the negligence of **administrators or supervisors** in hiring, supervising, and retaining....
CA v. William Hart

Negligence

- Duty runs to the student
- Vicarious liability for any employee's negligence
 - First grade teacher sees third grade teacher take student into classroom and shut the door
 - Second grade teacher on yard duty knew there was an alcove that students hid in, and she was required to check it ever 15 minutes, and she didn't
 - Teacher failed to report suspected child abuse penal code 11166

Negligence As One COA

Indeed, “[i]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under *any possible theory.*” (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966.) Thus, so long as the negligence claim states a cause of action *under some theory of negligence*, the demurrer must be overruled. A demurrer *cannot* piecemeal dismiss certain aspects of a single cause of action. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167 [a general demurrer does not lie to only part of a cause of action; if there are sufficient allegations to entitle plaintiff to relief, other allegations cannot be challenged by general demurrer];

CIVIL CODE

UNRUH ACT-Civil Code 51

- All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in **all business establishments** of every kind whatsoever
- Include school districts - *Nicole M. v. Martinez Unified Sch. Dist.* (N.D. Cal. 1997) 964 F. Supp. 1369
- the term “business establishment” to be interpreted “in the broadest sense reasonably possible,” (*Isbister v. Boys’ Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, 79)

Civil Code Sections-51.9

- There is a business, service, or professional relationship between the plaintiff and defendant or the defendant holds himself or herself out as being able to help the plaintiff establish a business, service, or professional relationship with the defendant or a third party
 - Physician, attorney, landlord, teacher, elected official, director or producer, etc.
- The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.

Ratification/Aiding/Abetting

- *Civil Code* section 52 specifically states “whoever denies, aids or incites” is liable for violation of *Civil Code* section 51 – various damages
- continued misconduct by an employee, and the employer’s retention of that employee despite knowledge of the misconduct, supported a claim of ratification. *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 109
- Retention of an employee after knowledge of the employee’s conduct or an adequate opportunity to learn of the conduct supports a finding of ratification. (See *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1111-1112; *Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 852; *McChristian v. Popkin* (1946) 75 Cal.App.2d 249, 256; *Coats v. Construction & Gen. Laborers Local No. 185* (1971) 15 Cal.App.3d 908, 913.)

Mandatory Reporting

- Negligence Per Se
- Penal Code 11166

FALSE IMPRISONMENT

Treble Damages

- 340.1
- Result of a coverup
- Government Entity?

Evidence

- Policies and Procedures
- Investigation
- Employee's files
 - Many places keep them in various locations
 - Principal's office
 - District office
- Work with Police
- Investigator for other witnesses
- Paper Files vs. Computer Files
- CA Teacher's Association

TORRANCE HIGH SCHOOL

A California Distinguished School

DATE: October 6, 2004
TO: Mr. John O'Brien
FROM: Theresa Hollis
RE: Phone incident on Wednesday, 10/6/04

I received a phone call on Wednesday, October 06, 2004 at approximately 8:30 a.m. from a young male adult. He asked me if we had a teacher at the high school by the name of Mr. Snider. I said yes and would he like to have his voice mail. He became slightly agitated and said he definitely do not want to speak to him. He said I could record his call if I wanted. I told him I was confused and asked him what he wanted and what he wanted with Mr. Snider. He said he would be "filling charges" against Mr. Snider and he wanted the school to know what kind of person he was. I asked him if he had been a student here at Torrance. He said yes. I asked him what year he graduated. He wasn't sure if it was 1997 or 1998. I asked him how old he was. He said he was 25. I told him he probably graduated in 1997. He said he thought that was correct. He again stated he wanted the school to know what kind of person Mr. Snider was and he didn't want any other students to be hurt by him. He said Mr. Snider "touched him, do you know what I mean?" He stated he had gone on a camping trip with Mr. Snider when he was young, 6th grade (I believe he said 6th grade) when this occurred. I told him he should probably speak to the principal about this matter. I asked him for his name and phone number and he gave it to me. (I gave to Mrs. Daugherty, Assistant Principal). He stated he did not want another student to feel the way he was - no self-esteem or confidence and he can't do anything. I told him I would have someone call him back. He was nervous and upset during the course of the conversation.

Theresa Hollis
Torrance High School
Secretary - Curriculum Office

A0590.964
21756

SECTION I TO BE COMPLETED BY STAFF REPRESENTATIVE			
MEMBER'S NAME (LAST) SMIDER	(FIRST) TROMAS	(MIDDLE) J.	CIA NO. 0000810739
ADDRESS (STREET)		(CITY)	(ZIP)
SCHOOL DISTRICT EMPLOYER TORRANCE UNIFIED SCHOOL DISTRICT		NAME	SCHOOL (310) 462-4195
LAW FIRM LARRY TRYGSTAD	STAFF REPRESENTATIVE MARIO DI LEVA		
MEMBERSHIP VERIFICATION			
CATEGORY	MEMBER SINCE	VERIFIED BY	
PLEASE DESCRIBE THE LEGAL PROCEEDING OR ISSUE			
CLAIM BY FORMER MIDDLE SCHOOL STUDENT WHO IS NOW AN ADULT OF INAPPROPRIATE CONTACT MANY YEARS AGO.			
I request legal services for the member named in this application.			
DATE APRIL 20	YEAR 2007	X	SIGNATURE <i>[Signature]</i>
Appointed made at		DATE	with Richard J. Schwab
TIME	DATE	ATTORNEY'S NAME	
ADDRESS		90067	TELEPHONE
SECTION II TO BE COMPLETED BY MEMBER			
I am a current member of the California Teachers Association, I hereby apply for group legal services.			
I understand that I have the right to other counsel at my own expense.			
DATE 4/23/07	INITIALS JDDT	X	SIGNATURE OF MEMBER <i>[Signature]</i>

EXHIBIT
47
O'BRIEN
pgs 11-30-1
DEBORAH R. MEYERS, CSR



From the desk of
JOHN O'BRIEN
Principal
Torrance High School

3-1-10

TO: F. O. S. SMITH

CALL DET. WENNERA

PLEASE

FRANK RIVERA ?

JWB

QUESTIONS?

Notice

- School has a duty to protect a student from *foreseeable harm*. *Randi W. v. Muroc Joint Unified School Dist.* (1997) 14 Cal.4th 1066.
- “it is not necessary that the exact injuries which occurred have been foreseeable; it is enough that a reasonably prudent person would foresee that injuries of the same general type would be likely to occur in the absence of adequate safeguards” *Dailey v. Los Angeles Unified School Dist.* (1970) 2 Cal.3d 748.
- the issue of ‘foreseeability’ does not depend upon the foreseeability of a particular third party’s act, but instead focuses on whether the allegedly negligent conduct at issue created a foreseeable risk of a particular kind of harm.” *Wiener v. Southcoast Childcare Centers, Inc.* (2003) 107 Cal.App.4th 1429, 1436.

*M.W. v. Panama Buena Vista Union School
Dist. (2003) 110 Cal.App.4th 508*

The fact that a particular act of sodomy in a school bathroom may have been unforeseeable does not automatically exonerate the District from the consequences of allowing students, particularly special education students, unrestricted access to the campus prior to the start of school with wholly inadequate supervision. Such conduct created a foreseeable risk of a particular type of harm—an assault on a special education student. Not only was such an assault reasonably foreseeable, it was virtually inevitable under the circumstances present on this campus.

Jennifer C.

- Student assaulted by another student in an alcove on campus
- No prior incidents but campus aide told to regularly check during lunch
- Court of Appeal held that a maintenance of a hiding place where students could be assaulted “satisfies the foreseeability factor of the duty analysis even in the absence of prior similar occurrences.” “A court’s task ... is *not* to decide whether a particular plaintiff’s injury was reasonably foreseeable in light of a particular defendant’s conduct but rather to evaluate more generally **whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party**

CONCLUSION

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