



ROBINS  KAPLAN^{LLP}

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IN CHILD SEX ABUSE
CASES AGAINST THE
JEHOVAH'S WITNESSES**

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ESTABLISHING DUTY IN CHILD SEX ABUSE CASES AGAINST THE JEHOVAH'S WITNESSES

BY IAN S. MILLICAN



IAN S. MILLICAN

In 2019, 13 states and the District of Columbia amended civil statutes to enlarge statutes of limitations for child sex abuse claims.¹ Eight of these jurisdictions enacted revival statutes allowing previously time-barred child sex abuse claims to proceed: New York, the District of Columbia, Montana, New

Jersey, Arizona, Vermont, Rhode Island, and North Carolina.²

Since implementation of these statutes, survivors of child sex abuse have filed complaints against many different institutions—not just against individual perpetrators of abuse—including, the Roman Catholic Church, various independent schools, the Boy Scouts of America, and the Jehovah's Witnesses parent-organization, Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"). Institutions may be directly liable for sex abuse committed by their agents through negligence-based claims, such as, negligent supervision, hiring/retention, and failure to warn.

In Jehovah's Witnesses cases, perpetrators of sex abuse commonly hold the position of church "elder" or "ministerial servant." In those cases, attorneys for the Jehovah's Witnesses typically argue that elders and ministerial servants are unpaid volunteers, not employees or agents of the Jehovah's Witnesses, and, thus, the organization has no duty to protect one congregant from abuse by another congregant, especially if the abuse occurred off congregation premises.³ Below are some examples of evidence that Plaintiffs' attorneys have successfully marshaled to counter this argument.

First, the Jehovah's Witnesses organizational structure shows that elders and ministerial servants are indeed agents of the Church. In *J.W. v. Watchtower Bible and Tract Society of New York, Inc.*,⁴ California's appeals court provides a generally accurate description of the Jehovah's Witnesses hierarchy. The relevant upshot is that, "[e]lders are the highest authority at the congregational level," and, thus, are the Jehovah's Witnesses equivalent of Roman Catholic priests.⁵ In order to be appointed an elder, a person must first be a ministerial servant in

good standing.⁶ Top-down, the Jehovah's Witnesses, or, "Watchtower," as the parent-organization is known, is controlled by the Governing Body of eight elders, essentially the board of directors for Watchtower.⁷ Below the Governing Body are circuits generally comprised of 20 to 22 congregations.⁸ Below the circuit-level are local congregations, each managed by a body of elders, who select candidates for becoming elders and ministerial servants.⁹

Watchtower's own documents and policies elucidate the institution's agency relationship with its elders and ministerial servants, and reveal the Jehovah's Witnesses' own perception that a duty arises from those relationships. For example, in another California child sex abuse case,¹⁰ Watchtower produced a July 20, 1998 letter in which the organization admonishes All Bodies of Elders against appointing child sex abusers as elders or ministerial servants because, "this could result in costly lawsuits. . . . [C]ourt officials and lawyers will hold responsible any organization that knowingly appoints former child abusers to positions of trust, if one of these, thereafter, commits a further act of child abuse."¹¹ The letter concedes, "[t]hose who are appointed to privileges of services, such as elders and ministerial servants, are put in a position of trust. . . . this includes being more liberal in leaving children in their care and oversight." As for any attempt to mitigate the role of ministerial servants as compared to elders, the Watchtower policy manual, "Organized to do Jehovah's Will," instructs that ministerial servants are authorized to perform tasks otherwise reserved for elders, when an elder is unavailable, such as: (1) conduct Congregation Book Study; (2) handle Service Meetings; (3) handle parts of the Theocratic Ministry School; and (4) deliver public talks in the local congregation.¹²

Based on the above, courts have been persuaded that Jehovah's Witnesses congregations are liable for "violat[ing] [a] duty," when a clergy sex abuse victim's parents were "congregants, who in deciding to permit [the perpetrator] into their home reasonably relied on his status as an appointed ministerial servant as well as on his good standing and reputation within the congregation. . . ."¹³ In addition to the above, the California Court of Appeal rejected the notion that a plaintiff failed to sufficiently allege proximate cause when the sexual abuse had occurred off congregation premises, mainly relying on a respondeat superior discussion in Comment C to the Restatement (3d) of Agency § 7.05: "causation may not be present when the harm occurs outside the work environment. It does not reflect that causation cannot be found when the harm occurs outside the work environment."¹⁴

Understanding the structure, history, and policies of the Jehovah's Witnesses is important for proving the parent-institution's liability in a child sex abuse case; but this is just a start. Even if duty is established, other case-specific issues, such as, foreseeability of the abuse (or lack thereof), may warrant dismissal for failure to prove proximate causation.¹⁵

The attorneys at Robins Kaplan LLP understand child sex abuse cases against the Jehovah's Witnesses and are currently representing several survivors seeking to hold Watchtower accountable. If you or someone you know has a similar claim, we are available to discuss confidentially on the phone, by email, or in person. Please contact Ian Millican or Rayna Kessler directly, or by dialing 212.980.2334 or emailing CSAIntakeTeam@RobinsKaplan.com.

1. See Michael L. Zigelman and Rita Y. Wang, *INSIGHT: Are Insurers Collaterally Damaged by the New State 'Child Victim's Acts'?*, BLOOMBERG LAW, March 30, 2020, available at <https://news.bloomberglaw.com/us-law-week/insight-are-insurers-collaterally-damaged-by-new-state-child-victims-acts> (last visited: Jan. 15, 2021).

2. *Id.*

3. See, e.g., Def.'s Mtn. to Dismiss, NYSCEF Doc. No. 11, *Ewing v. The Governing Body of Jehovah's Witnesses, et al.*, Index No. 517900/2019 (Sup. Ct. Kings Cnty., NY).

4. *J.W. v. Watchtower Bible and Tract Soc'y of NY, Inc.*, 29 Cal. App. 5th 1142, 1147-48 (2018)

5. See *id.* at 1148.

6. *Id.*

7. See *id.* at 1147-48.

8. *Id.*

9. *Id.*

10. *Lopez v. Watchtower Bible and Tract Society of New York, et al.*, No. 37-2012-00099849-CU-PO-CTL (Sup. Ct. San Diego Cnty., Cal.).

11. On July 20, 1998, the Watchtower Bible and Tract Society of Britain sent a nearly identical letter to All Bodies of Elders. This letter contains the same section, verbatim, concerning child sex abuse by elders and ministerial servants and is publicly available at https://jw2go.org/php/letter/1990.php?view=19980720LTE_bi.pdf (last visited: Jan. 15, 2021).

12. *Organized to do Jehovah's Will* at 58.

13. *Beal v. Broadard, et al.*, No. SUCV200205765C, 2005 WL 1009632 at *4 (in denying partial summary judgment the court also found, per Restatement (Second) of Torts § 323, that when "a church or its agent assumes the care and control of an individual for Bible study or other ministerial or religious purposes that individual relies on the instructor's status of good standing within her church. . . .").

14. *J.W.*, 29 Cal. App. 5th at 1165 (emphasis in original).

15. *Beal*, 2005 WL 1009632 at *4-5.



GOING REMOTE: 2021 EMERGING TRENDS FOR MEDICAL MALPRACTICE LITIGATION

BY SETH ZAWILA



**SETH
ZAWILA**

With the COVID-19 crisis driving everything online, medicine has been no exception. Telemedicine appointments are becoming more and more of our everyday life and changing the way healthcare operates. While telemedicine brings advantages, such as accessibility and efficiency, it also brings many dangers. Beyond the foremost danger of virtual care not reaching the accepted standards of medical care, it is likely to present legal pitfalls for personal injury attorneys practicing in the medical malpractice space. For example, ignorance of your case's telemedicine aspects can present thorny jurisdictional problems.

Robins Kaplan has noticed this increasing trend and has identified important practice thoughts to help you avoid potential pitfalls from this trend. Key among them: When reading the medical record, don't presume that the patient-client's physical treatment location is the appropriate jurisdiction. Consider and analyze what aspects of the negligent care may have occurred in another county or even outside the state. For example, was a blood culture negligently analyzed at an outside facility across county or state lines? Or was your client's breast cancer missed by a radiologist working remotely (a growing norm) in another state? Perhaps a critical neurophysiological monitor reading during a surgery was missed, but the negligence was from a neurologist performing live remote review many time zones away.

The point is this: Telemedicine is rapidly changing the time, place, and scope of medical care. Don't just assume that the care occurred in the location your client recalls or at the first location listed on the medical records. If our experience has shown anything, it is this: The devil is in the details and will come out from a close reading of the record. This diligence will both help you from falling into an unexpected jurisdictional pitfall and allow you to consider potentially more favorable venues if any arguable portion of the care occurred in a less favorable one.

ROBINS KAPLAN FILES INJECTAFER CASE

BY CAROLINE MOOS



**CAROLINE
MOOS**

Robins Kaplan LLP has filed a case in the E.D. of Pennsylvania related to injuries stemming from the administration of Injectafer (ferric carboxymaltose). Injectafer is an iron replacement drug delivered intravenously to treat individuals with iron-deficient anemia. It has been linked to severe hypophosphatemia (HPP) — a dangerously low level of phosphorus in the blood that can cause life-threatening complications.

Symptoms of severe HPP include extreme fatigue, muscle weakness, and confusion. If left untreated, severe HPP can cause seizures, respiratory failure, heart failure, rhabdomyolysis, and osteomalacia.¹ And, in the most serious cases, severe HPP can even lead to coma and death.²

Injectafer has been FDA-approved and in use in the United States since July 2013. But numerous clinical studies overwhelmingly point to Injectafer's propensity to cause severe HPP at rates drastically higher than its competitors.³ Despite these studies, it was not until February 2020 that the label was updated to include a warning for "Symptomatic Hypophosphatemia."⁴ However, the drug's label still does not warn of the severity or frequency of hypophosphatemia that Injectafer can cause, nor does it detail the serious injuries that can result from severe HPP.

Robins Kaplan LLP continues to investigate cases in which individuals have been treated with Injectafer and subsequently suffered serious side effects related to severe HPP. If you or someone you know has suffered from these side effects, please call us at 1.800.553.9910.

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1. Ulmel EA, Econs MJ. *Approach to the hypophosphatemic patient*. J Clin Endocrinol Metab. 2012;97(3):696-706. doi:10.1210/jc.2011-1319.
 2. Wang et al., *Impact of hypophosphatemia on outcome of patients in intensive care unit: a retrospective cohort study*. BMC Anesthesiol. 2019 May 24;19(1):86. doi: 10.1186/s12871-019-0746-2.
 3. See Wolf M, et al., *Effects of Iron Isomaltoside vs Ferric Carboxymaltose on Hypophosphatemia in Iron-Deficiency Anemia: Two Randomized Clinical Trials*, JAMA. 2020; 323(5):423-443 (Feb. 2020); Wolf M, et al. *Randomized trial of intravenous iron-induced hypophosphatemia*. JCI Insight. 2018;3(23) (Dec. 2018).
 4. Injectafer [package insert]. Shirley, NY: American Regent, Inc. February 2020.



LITIGATOR MARK HALLBERG JOINS ROBINS KAPLAN LLP



Veteran litigator **Mark A. Hallberg** has joined the firm's Personal Injury and Medical Malpractice Group. For more than 41 years, Hallberg has represented individuals and families in medical malpractice, personal injury, and wrongful death actions. Over that period, he has tried more than 75 trials to jury verdict.

A recognized leader in the personal injury and medical malpractice bar, Hallberg is certified as a civil trial specialist by the National Board of Trial Advocacy and by the Minnesota State Bar Association. He is also a fellow in the invitation-only American College of Trial Lawyers and an associate in the American Board of Trial Advocates.

In addition to managing his litigation practice, Hallberg has served as an adjunct professor at Mitchell Hamline School of Law, where he has taught the medical malpractice course for more than 20 years.

FIRM WELCOMES THREE ASSOCIATES TO MASS TORT, PERSONAL INJURY AND MEDICAL MALPRACTICE GROUPS

Robins Kaplan is pleased to welcome Francisco Zornosa, Caroline Moos, and Casey Matthiesen to the firm. Francisco and Caroline join the Mass Tort Group and Casey joins the Personal Injury and Medical Malpractice Group.



Francisco Zornosa is a litigator with significant courtroom, trial, and writing experience. Before joining Robins Kaplan, Francisco was an assistant district attorney at the New York County (Manhattan) District Attorney's Office, where he was assigned to the Office's Trial Division, Human Trafficking Response Unit, and Sex Crimes Unit. Before joining the District Attorney's Office, Francisco clerked for U.S. District Court Judge Madeline H. Haikala in the Northern District of Alabama (Birmingham, AL). Francisco earned his juris doctorate from the Florida State University College of Law. While in law school, Francisco served as the editor-in-chief of the *Florida State University Law Review*.



Caroline Moos has dedicated her legal career to serving as a fierce advocate for the underdog. In the Mass Torts Practice Group, she represents clients who have been harmed by pharmaceutical drugs and medical devices. Caroline is a graduate of Mitchell Hamline School of Law, where she served as president of the Student Bar Association, editor-in-chief of the *Mitchell Hamline Law Journal of Public Policy and Practice*, and competed at the National Native American Law Student Association Moot Court Competition.



Casey Matthiesen practices in the areas of medical malpractice, personal injury, business litigation, and American Indian law and policy. Prior to joining Robins Kaplan and entering the private practice of law, Casey attended the University of South Dakota where she received dual bachelor's degrees in Criminal Justice and Political Science. She is a graduate of the University of St. Thomas Law School in Minneapolis, MN.

RECOGNITION



TARA SUTTON NAMED TO LAWDRAGON '500 LEADING LAWYERS IN AMERICA' LIST

Tara Sutton has been named to *Lawdragon's* "500 Leading Lawyers in America" list for the sixth consecutive year. According to *Lawdragon*, the list is the leading guide to the nation's best lawyers and judges. It comprises private lawyers from a wide range of practices, as well as in-house counsel, law professors, judges and neutrals, government attorneys, and public interest lawyers. Those named to the list represent less than one-half of one percent of the legal profession, placing them among the most elite group of legal professionals.



PHIL SIEFF SELECTED AS A FELLOW OF THE LITIGATION COUNSEL OF AMERICA

Phil Sieff has been selected as a Fellow of the Litigation Counsel of America (LCA). The LCA is a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. The organization selects fellows based upon effectiveness and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation.

CASE RESULTS



**ROBERT
BENNETT**



**ANDREW
NOEL**



**KATHRYN
BENNETT**



**MARC
BETINSKY**

\$2.3 MILLION SETTLEMENT IN SHERBURNE COUNTY JAIL SUICIDE LAWSUIT

Continuing their prosecution of cases arising from deaths by suicide in correctional facilities, the civil rights team settled a federal lawsuit against Sherburne County and MEnD Correctional Care for a total of \$2.3 million. The Civil Rights and Police Misconduct Group consists of Robert Bennett, Andrew Noel, Kathryn Bennett and Marc Betinsky.



**PETER
SCHMIT**



**SETH
ZAWILA**

\$995,000 SETTLEMENT IN MEDICAL NEGLIGENCE CLAIM RESULTING FROM UNTREATED HOSPITAL INFECTION

Peter Schmit and Seth Zawila secured a \$995,000 settlement on behalf of a woman who received a positive test for a highly concerning heart infection during a hospital visit but was discharged from the hospital without treatment for that infection. After the woman went home, she sadly suffered a severe stroke from the untreated infection, which resulted in significant permanent disabilities.

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ROBINS  KAPLAN LLP

REWRITING THE ODDS