

Navigating Rhode Island Sex Abuse Claims: Risk, Insurance, and Litigation Strategies

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Tim Conlon
Glen Feinberg
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July 30, 2026 / 1:00 – 2:30 P.M.



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Marshall Gilinsky is a shareholder in Anderson Kill's Boston office, practicing in the firm's Insurance Recovery and Commercial Litigation groups. He co-chairs the firm's Sexual Harassment and Abuse Insurance Recovery Group.

Over his nearly 30-year career representing policyholders, Marshall has recovered hundreds of millions of dollars for clients, litigating claims under property, business interruption, CGL, E&O, D&O, and life insurance policies, including complex claims stemming from 9/11, Hurricane Katrina, Superstorm Sandy, and Boston's "Big Dig."

Marshall's frequently writes and lectures on insurance topics and is regularly quoted in The New York Times, The Wall Street Journal, National Law Review, CNN, and Business Insurance.



TIMOTHY J. CONLON

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Tim Conlon is a Partner at DarrowEverett, serving as Practice Leader for the Private Client Group and Co-Chair of the Family Law Practice Group. His practice focuses on complex family court litigation and civil cases on behalf of children abused in the care of others, including lead counsel roles in high-net-worth divorces involving multiple business assets, intergenerational trusts, and testifying experts.

Tim has handled high-profile matters throughout his career, from computer crime investigations in the 1980s to chairing and settling Rhode Island's clergy abuse cases on behalf of dozens of victims, and recently forced the division of more than \$16 million in cryptocurrency just before the 2022 crash. He co-authored *Electronic Evidence for Family Law Attorneys* (2017, ABA) and is completing a second ABA book on cryptocurrency and digital assets. He has appeared on NBC Nightly News and ABC World News Tonight and been quoted in The New York Times, Wall Street Journal, The Boston Globe, and Providence Journal.

Before joining DarrowEverett, Tim built a 30-plus-year practice in family law and child sexual abuse litigation, beginning his career with Rhode Island trial court judges and the Chief Justice of the Rhode Island Supreme Court before entering private practice in 1986. His honors include the 2025 Lifetime Achievement Award from New England Law Awards, The Best Lawyers in America® Lawyer of the Year (2014, 2016, 2019, 2022), and Lawdragon 500 Leading Family Lawyer (2023–2026), among others.



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Glen Feinberg provides trial and litigation services to clients in commercial, employment/discrimination, and professional liability disputes, focusing on the defense of individuals and institutions sued for claims involving severe emotional distress and psychiatric injury — work that often implicates New York's Child Victims Act and similar laws nationwide. In handling these sensitive matters, Glen draws on a network of esteemed local counsel as well as his knowledge of neurobiology and cutting-edge psychotherapy techniques.

Glen's representative cases include *RG v iD Tech*, in which he developed evidence proving a client's employee had been wrongfully convicted, leading to dismissal of the case; *AB v Clarkstown Soccer* and *Jones v Archdiocese of New York*, in which he won summary judgment on lack-of-notice grounds; and *Marmelstein v Kehillat New Hempstead*, in which the New York Court of Appeals held his client owed no fiduciary duty and dismissed the case.

Glen began his legal career as an Assistant District Attorney under Robert Morgenthau in Manhattan. He is admitted in New York, the U.S. District Courts for the Southern and Eastern Districts of New York, and the U.S. Court of Appeals for the Second Circuit, and holds a J.D. from the University of Virginia School of Law and a B.A. from American University.



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Over the past 20 years, Brian has led research projects on behalf of clients across a broad range of industries, conducting document reviews at manufacturing facilities, records storage centers, law firms, and courts nationwide. His corporate experience includes researching target companies' insurance programs as part of due diligence in mergers and acquisitions.

Brian has also brought his research expertise to non-profits, universities, hospitals, churches, and other religious organizations, helping them reconstruct past insurance programs through hundreds of onsite document reviews at churches, schools, missions, offices, archives, and retreat centers.

Brian earned his B.A. in political science from American University and his M.A. in early modern political philosophy from the University of Chicago, researching the work of Machiavelli. He began his career on Capitol Hill, working for the House of Representatives' Education and the Workforce Committee.



TODAY'S AGENDA



- **Tim Conlon – The Rhode Island Sex Abuse Statute**
- **Glen Feinberg – Defending Sex Abuse Claims**
- **Marshall Gilinsky – Coverage for Sex Abuse**
- **Brian Della Torre – Finding Old Insurance Policies**

SECTION # 1

The Rhode Island Sex Abuse Statute

What we know



"Many adults in a child's life (parents, teachers, clergy, police officers, etc.) are extra-powerful people with even greater influence over children. ***Any adult child molester can simply exploit his or her size and adult status to influence and control a child's behavior. But the extra-powerful adult has even more influence and control.*** Parents, clergy, teachers, police officers, and others do molest children. Some child molesters exploit their status as stepfathers, guardians, big brothers, scout leaders, and so on to entice children into sexual activity."

Seth L. Goldstein, The Sexual Exploitation of Children at 5

(1987)

Who Can Sue?

- A child who has undergone conduct that constitutes "sexual abuse" or "sexual contact" or other specified sex crime.
- R.I. Gen. Laws § 11-37-1
 - **(7)** "Sexual contact" means the intentional touching of the victim's or accused's intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault.
 - **(8)** "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's body or by any object into the genital or anal openings of another person's body, or the victim's own body upon the accused's instruction, but emission of semen is not required."

What is “child” and what is “abuse”?

Without Consent	Under 18	Sexual Penetration	First degree sexual assault R.I. Gen Laws § 11-37-2
		OR Sexual Contact	OR Second degree sexual assault R.I. Gen Laws § 11-37-4
	(both also apply to adults)		
	Under 14	Sexual Penetration	First degree sexual molestation R.I. Gen Laws § 11-37-8.1
Irrespective of Consent (“Consent” cannot lawfully be given)	Between 14 – 16	OR Sexual Contact	OR Second degree sexual molestation R.I. Gen Laws § 11-37-8.3
		Sexual Penetration	Third degree sexual assault R.I. Gen. Laws § 11-37-6(b)(2)
	14 – 18	AND Perpetrator is over 18 Sexual Penetration OR Sexual Contact AND Perpetrator is “Supervisory or disciplinary power” AND over 18 years old UNLESS (A) Engaging in sexual penetration or contact consensually; [AND] (B) Between the ages of sixteen (16) and twenty (20) years; AND (C) No more than thirty (30) months apart in age.	Third degree sexual assault R.I. Gen. Laws § 11-37-6(b)(2)

Why does that matter?



R.I. Gen Laws § 9-1-51 (as enacted July 1, 2019)

“(a)(1) All claims or causes of action brought against a perpetrator defendant by any person for recovery of damages for injury suffered as a result of sexual abuse shall be commenced within the later to expire of:

- (i) Thirty-five (35) years of the act alleged to have caused the injury or condition; or
- (ii) Seven (7) years from the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act.

Provided, however, that the time limit or commencement of such an action under this section shall be tolled for a child until the child reaches eighteen (18) years of age....”

Claims against ‘perpetrator’ defendants to be brought retroactively, even if they were previously time-barred under earlier versions of the law.

BUT not for non-perpetrator defendants.

Why does that matter?



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BUT not for non-perpetrator defendants.

Why does that matter?



R.I. Gen Laws § 9-1-51 (as enacted TODAY)

“(a)(1) All claims or causes of action brought against a perpetrator defendant party by any person for recovery of damages for injury suffered as a result of sexual abuse, **including alleging negligent supervision of a person that sexually abused a minor, or that the defendant's conduct caused or contributed to the childhood sexual abuse by another person to include, but not be limited to, wrongful conduct, negligence or default in supervision, hiring, employment, training, monitoring, or failure to report and/or the concealment of sexual abuse of a child shall be commenced within the later to expire of:**

(i) Thirty-five (35) years of the act alleged to have caused the injury or condition;
or

(ii) Seven (7) years from the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act.

Provided, however, that the time limit or commencement of such an action under this section shall be tolled for a child until the child reaches eighteen (18) years of age...”

NOW Claims against ‘perpetrator’ defendants can be brought even if they were previously time-barred under earlier versions of the law through June 30, 2028.

The Targets



- The Institutions (Camps, Schools, Religious, and Civic Organizations)
- The individual Supervisors @ the Institutions

Examples

[METRO](#)[WEATHER](#)[POLITICS](#)[SPORTS](#)[BUSINESS](#)[PUZZLES](#)[RHODE ISLAND](#)[GLOBE MAGAZINE](#)[OPINION](#)[HEALTH CARE](#)

“Through his various positions of authority and provisions, he was able to befriend Jane Doe, manipulate her, and gain her trust and dependence,” the affidavit said. “Cassidy’s psychologically complex and emotionally triggered ruse allowed him to introduce his sexual desires masked as tasks for a greater humanitarian purpose; training her to stifle her discomfort and fear in order to control her in situations she would instinctually deem as uncomfortable, as well as finding confidence in deceitfulness and posing as an adult when necessary.”



Sean Cassidy of Pawtucket, R.I. RHODE ISLAND
STATE POLICE

The girl attended the school and played for several of its sports teams, which were coached by Cassidy. He was also her private trainer for pitching lessons and conditioning sessions off school grounds.

The girl told investigators that she saw Cassidy daily at school, and that he sent messages through her school email and by text. She said he also offered to set up an Instagram account for her, even though her parents didn’t allow her to use social media. She declined.

Examples

LOCAL

Exclusive: Inside police report of Ponaganset teacher



Mark Reynolds

Providence Journal

May 20, 2026, 5:06 a.m. ET



It was late in the evening on an autumn night in 2025. The young man, still in his teens, was not building on his recent four-year stint at Ponaganset High School by studying in college. Or by experiencing military life. Or by working to launch some other type of career. He was not relaxing with his friends.

He was in the parking lot of state police headquarters in Scituate, where he would file a complaint about his 39-year-old former teacher, Alisha Crins.

His complaint would set off a wave of state police investigative work leading to a 2026 indictment that accuses the Cranston woman and former teacher of third-degree sexual assault.

The Caps



- R.I. Gen. Laws § 9-31-3

“In any tort action against any city or town or any fire district, any damages recovered therein shall not exceed the sum of one hundred thousand dollars (\$100,000).”
- BUT
 - R.I. Gen. Laws § 9-31-12
- The *only* basis for the AG to refuse to indemnify is pursuant to RIGL § 9-31-9, where they have determined:
 - “(1) The act or omission was not within the scope of employment;
 - (2) The act or the failure to act was because of actual fraud, willful misconduct, or actual malice;
 - (3) The defense of the action or proceeding by the attorney general would create a conflict of interest between the state of Rhode Island and the employee or former employee;
 - (4) Within ten (10) days of the time he or she is served with any summons, complaint, process, notice, demand, or pleading, the employee or former employee fails to deliver the original or a copy thereof to the attorney general or his or her designee; or
 - (5) The state employee or former state employee refuses to cooperate fully with the attorney general's defense.

The Caps



- BUT

- R.I. Gen. Laws § 9-1-31

“Each school committee and the council on elementary and secondary education shall protect and save harmless any public school teacher, any supervisor, administrator, or licensed professional employee, any employee whose position requires a certificate from the department of education or council on elementary and secondary education, any employee whose position directly involves work with students, and any employee of the council on elementary and secondary education from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, or suit for actions resulting in accidental bodily injury to or death of any person, or in accidental damage to or destruction of property, within or without the school building, or any other acts, including but not limited to infringement of any person’s civil rights, resulting in any injury, which acts are not wanton, reckless, malicious, or grossly negligent, as determined by a court of competent jurisdiction, provided the teacher, supervisor, or administrator, at the time of the acts resulting in the injury, death, damages, or destruction, was acting in the discharge of their duties or within the scope of their employment or under the direction of the school committee or the council on elementary and secondary education.”

What Do You Sue For?

Ordinary Negligence



- Negligent Hiring
- Negligent Supervision
- Negligent Retention

Ordinary Negligence

When Rhode Island cops looked into Bell's background, they made a chilling discovery. Bell had been accused of inappropriate conduct at almost every coaching job he had held. About ten years earlier in Bend, Ore., he was fired for allegedly pinching a student's breast and inappropriately touching her buttocks.

Bell was also investigated in Medford, Ore. These allegations were not substantiated; however, he was fired from Flip City Gymnastics because of his behavior.

Officials claim that Bell would tickle and trap the girls in a tunnel he built, under the guise of being playful. Police say Bell would often come out of the tunnel appearing noticeably aroused. Once, Bell allegedly pinned a young girl in the tunnel and began to touch her breasts, according to officials. When the girl told him to stop, Bell responded that it didn't matter because her breasts weren't big enough to touch anyway, police say.



[View Larger](#)

James Bell, seen here from the side, is suspected of molesting several young children while coaching at a Middletown, R.I. YMCA.

Passing the Trash



“Often, as a way to save time and money, an administrator will cut a deal with the union in which he agrees to give a bad teacher a satisfactory rating in return for union help in transferring the teacher to another district. The problem teacher gets quietly passed along to someone else. Administrators call it “the dance of the lemons” or “passing the trash.”

Howard Fuller, the superintendent of Milwaukee public schools from 1991 to 1995, explains: “Administrators found they needed to trade bad teachers because it’s easier than getting rid of them. We had one teacher who put a student’s head down the toilet. He simply got moved to another school.”

The Dance of the Lemons, Hoover Digest
January 30, 1999

Examples



"A. ...[I]n August of '83, a mutual friend and administrator of another school invited me to go to lunch, and he suggested that we go with Mr. Corkery, who was the principal of Nathaniel Greene. He picked me up. Then driving over to Greene from West, he says, "So, Lou, I hear you're getting Messa." I says, "Yup."

"So, you know, I hear he puts his hands on kids."

I said "You mean he hits kids?" He said "You'll see"...."

Deposition of Fillipelli October 1, 1991 at 39-40.

Examples



Date	Official	Complaint	Explanation	Warning
Prior to 1980	DelGizzo	Hand on student's thigh while in Messa's truck on field trip	Unintentionally stroked leg while shifting truck.	Never have students in your truck. Between 1981-82
	Gizzarelli	"'He touches us,' this and that and so forth"	"He [Messa] just looked at me"	He was told [before] at West. I figured why tell him again, you know.
Spring, 1980	Tutalo	Hand on student's buttocks	Was praising student for performing well in class.	Messa advised he was placing himself in a tenuous situation.
October, 1982	Corkery	Pinching boys on the buttocks	Patted them on the rear to get them working.	Desist from touching students.
Spring, 1983	Fillipelli	Messa "made some kind of contact" with one of his students	Allegation not pursued, no questioning of Messa by Fillipelli or others on behalf of school department.	Allegation not pursued, no questioning of Messa by Fillipelli or others on behalf of school department.
Oct, 1984	Fillipelli	touching the "private parts"	put some paper or school work in child's back pocket	Such actions, as you have learned, can be considered a serious matter by parents.

Negligence Per Se



- Reporting Requirements, R.I. Gen. Laws § 40-11-3
- Rhode Island Safe School Act, R.I. Gen. Laws § 16-21-34
- Rhode Island Civil Rights Act, R.I. Gen. Laws § 42-112-1

Reporting, R.I. Gen. Laws § 40-11-3

- R.I. Gen. Laws § 40-11-3
 - **"(a)** Any person who has reasonable cause to know or suspect that any child has been abused or neglected as defined in § 40-11-2, or has been a victim of sexual abuse by another child, shall, within twenty-four (24) hours, transfer that information to the department of children, youth and families, or its agent, which shall cause the report to be investigated immediately..."

DISCOVERY

What Do You Look For?

			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

INTERNET ARCHIVE

Wayback Machine

https://ymcagreaterprovidence.org/

Go

MAY JUL AUG

2007 01 2008 2009

About this capture

852 captures

4 Dec 2000 - 11 Mar 2026

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Discovery Requests



- Training
 - Interrogatories:
 - “Describe any and all training provided to staff and supervisors regarding camper safety, professional conduct, and reporting inappropriate conduct from June 1, 2004 through present, including the frequency and content of these trainings, a list of each and every individual responsible for conducting these trainings, as well as a list of each employee who attended said trainings.”
 - Request for Production of Documents:
 - “All documents related to the training of staff and supervisors on camper safety, professional conduct, the establishment of appropriate boundaries between staff and campers, and reporting inappropriate conduct or breach of boundaries, including training materials, attendance records, and instructor information from June 1, 2004, to present.”

Discovery Requests



- Policies & Procedures

- Interrogatories:

- “State in detail all policies and procedures in effect from June 1, 2004, to and including the present regarding the establishment and maintenance of appropriate boundaries and relationships between staff and campers, including any and all policies and procedures relating to exchange of personal contact or social media information between staff and campers, the continuation of relationships between staff and campers outside the timeframe of camp, and any other such as policies regarding relationships, inappropriate boundaries, or boundary violations between staff and campers.”

- Request for Production:

- “All writings, manuals, booklets, handbooks and the like, which describe, concern or refer to the policies, procedures or other directives relative to, or otherwise regarding East Providence High School, or its operation or oversight in effect during the 2012 and 2013 school years, including but not limited to policies and procedures concerning: The placement of students with IEPs; Monitoring or oversight of those persons; Sexual conduct between students in those programs; Complaint or grievance procedures regarding the conduct of such students; Internal investigations of reports or complaints made regarding such persons; The enforcement of the foregoing policies and procedures; and any revisions to same from that date through the present.”

Discovery Requests



- Enforcement of Both

- Interrogatories:

- “State in detail all policies and procedures in effect from June 1, 2004, to and including the present regarding the reporting, investigation, and response to inappropriate boundaries and relationships between staff and campers, including the exchange of personal contact or social media information between staff and campers, the continuation of relationships between staff and campers outside the timeframe of camp, and any other such as policies regarding relationships, inappropriate boundaries, or boundary violations between staff and campers, whether such allegations or reports were received directly from staff or indirectly from campers.”

- Request for Production of Documents:

- “All policies, whether promulgated or otherwise issued by you, or imposed upon you by any governmental entity, regarding your conduct, the supervision and enforcement or same, and in particular the investigation and reporting (both within and without of EPHS and EPSC) of complaints, allegations or reports against or regarding you during the term of your employment with EPSD, including all documents reflecting the dissemination and enforcement of same to or with EPSD personnel.”

Examples

From [REDACTED]@warwickschools.org>
Subject: Fwd: Exam Review
Date: January 16, 2013 11:16:45 AM EST
To [REDACTED]@gmail.com

Mi Favorito...attached is the review. let me know what you think.

[REDACTED]

Science Teacher

Warwick Veterans Memorial High School

Phone # (401)734-3200 ext. 335

Fax# (401)734-3214

[REDACTED]@warwickschools.org

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Examples



From: [REDACTED]@warwickschools.org>
Subject: Re: Homeostasis Lab REVISED
Date: January 2, 2013 4:35:39 PM EST
To: [REDACTED]@gmail.com

Wow...great lab report. Wish I could get this from all my students.
You are a woman of many talents...
The only change I see is in the intro paragraph, 4th sentence..I
think affect should be spelled with an "E"..effect.
Really nice job though. You should be able to upload anytime as it
should be in your e-portfolio. Just let me know if it isn't or if there
is anything else I can do.

[REDACTED]
Science Teacher
Warwick Veterans Memorial High School
Phone # (401)734-3200 ext. 335
Fax# (401)734-3214

Examples



From: [REDACTED]@juno.com>

Subject: Re: Ultimatum

Date: January 17, 2013 6:30:33 PM EST

To: [REDACTED]@gmail.com

yes...most important for privacy.

Okay...could do an investigation on the frequency of earthquakes in New England

or...

an investigation into the pleasures of sexual intimacy culminating in a real life encounter that could never be forgotten...or something like that.

If I'm not on the same page then tomorrow will be awkward so choose the first and it will be respected.

Damages

Damages



- Warning: These are profoundly damaged people

- They are in Denial

Except when they are Angry

- They are bipolar

Super Appreciative

OR

Downright Hostile

- Delayed Disclosure

“Disclosure of [child sexual abuse] is a complex, lifelong process. The process of disclosure often takes decades, and the “ideal” timing of disclosure should be up to the victim. Over 70% of victims do not disclose within five years of their experience of abuse. Most victims are only able to acknowledge and describe the abuse in adulthood. Approximately 1 in 5 victims of child sexual abuse never disclose their experiences of abuse.”

March 4, 2026, Report on Child Sexual Abuse in the Diocese of Providence, Office of the Attorney General, State of Rhode Island (citing Andrew Ortiz, Delayed Disclosure, Child USA (2024))

Damages



- Delayed Disclosure
- There are often many treatment interventions or ‘issues’ that give rise to intervention that have no explicit linkage to SA
- For Example:
 - Behavior issues
 - Substance use
 - Sexually inappropriate behavior
 - Detox Suicide Attempts

None of which is presented in the context of SA

Damages

Long-term outcomes of childhood sexual abuse: an umbrella review

[Helen P Hailes](#)^{1,#}, [Rongqin Yu](#)^{1,#}, [Andrea Danese](#)², [Seena Fazel](#)³

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The publisher's version of this article is available at [Lancet Psychiatry](#) 

Summary

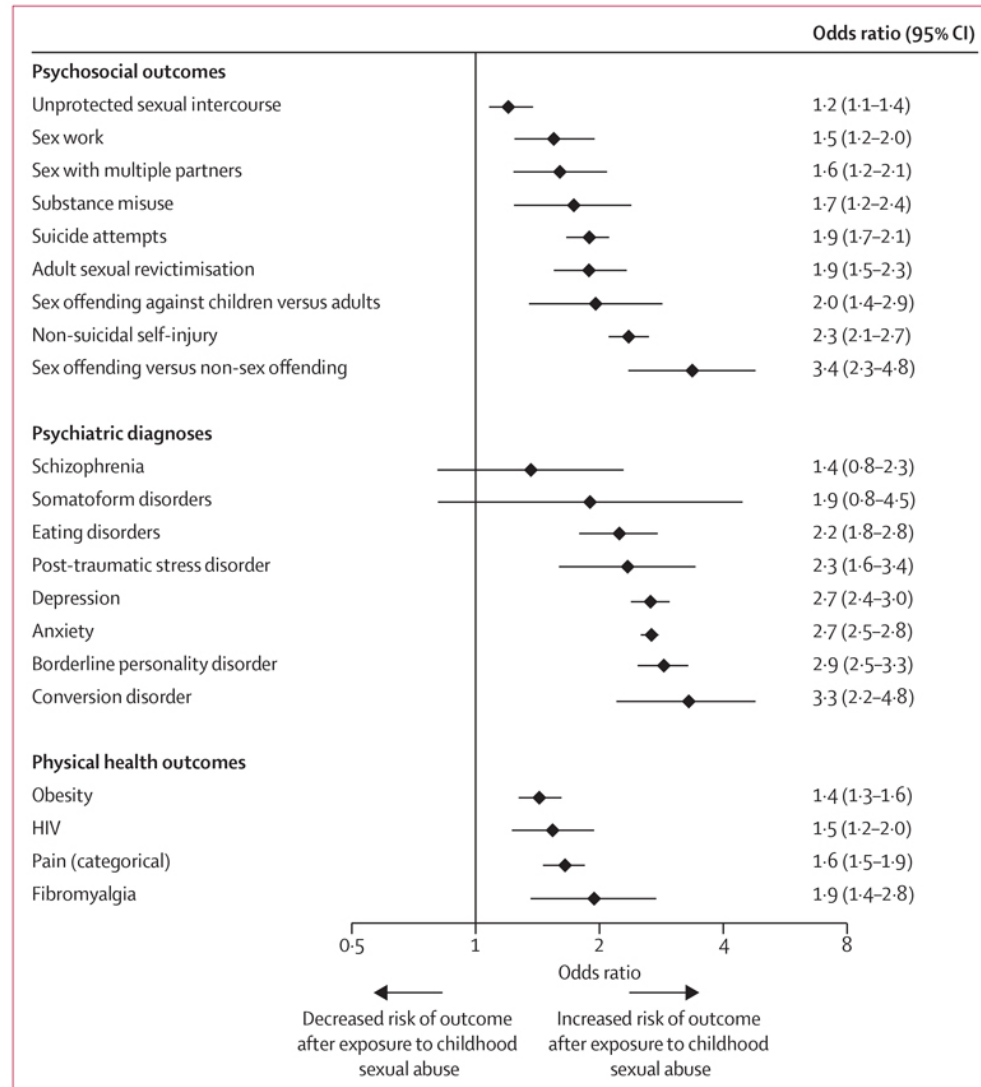
Background

Although many meta-analyses have examined the association between childhood sexual abuse and subsequent outcomes, the scope, validity, and quality of this evidence has not been comprehensively assessed. We aimed to systematically review existing meta-analyses on a wide range of long-term psychiatric, psychosocial, and physical health outcomes of childhood sexual abuse, and evaluate the quality of the literature.

- Findings:

“This umbrella review found that childhood sexual abuse is associated with elevated risks of long-term psychosocial, psychiatric, and physical health outcomes. In particular, there is high-quality evidence for associations between childhood sexual abuse and two psychiatric disorders (schizophrenia and post-traumatic stress disorder) and one psychosocial outcome (substance misuse). Because both relative risks and absolute rates for certain outcomes following childhood sexual abuse have been shown to be increased, this review suggests prioritising interventions that reduce the development of those outcomes that have a high-quality evidence base...”

Damages



Damages

Dr. Lisa Rocchio is a forensic psychologist who testified as an expert witness for the prosecution during the 2021 sex trafficking trial of [Ghislaine Maxwell](#). Her testimony provided a framework for jurors to understand the psychology of [childhood sexual abuse](#). 

Key Aspects of Dr. Rocchio's Testimony

- **The 5 Stages of Grooming:** Dr. Rocchio outlined the calculated process perpetrators use to manipulate victims:
 1. **Selection & Identification:** Targeting vulnerable individuals.
 2. **Access & Isolation:** Getting close to the victim and isolating them from others.
 3. **Deception:** Using lies and manipulation to build a false sense of trust.
 4. **Desensitization:** Normalizing [sexualized conversations](#) and physical contact.
 5. **Coercive Control:** Establishing dominance to continue the abuse and prevent the victim from speaking out.  The New York Times +1
- **Delayed Disclosure:** She testified that younger victims are significantly more likely to delay reporting abuse due to trauma, confusion, and fear, often not disclosing it until adulthood.  Courthouse News +1
- **Connection to Maxwell:** The prosecution utilized Dr. Rocchio's testimony to link Maxwell's behavior—such as taking girls on shopping trips and asking about their personal lives—to the recognized desensitization and grooming phases.  The New York Times

SECTION # 2

Defending Sex Abuse Claims



**Plaintiff must prove that
he or she was abused.**

Reasons to suspect false memory:

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- The story makes no sense

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- Signs of mental illness that may suggest a tendency to confabulate.

Reasons to suspect false memory:

- The story makes no sense
- Signs of mental illness that may suggest a tendency to confabulate.
- Recovered memory of abuse later in life

Notice of dangerousness:

Notice of dangerousness:

- Plaintiff must prove that the defendant knew or should have known of the abuser's dangerous propensity

Actual notice – someone told you the abuser had abused a child.

Constructive notice- the defendant engaged in observable conduct that should have led you to suspect he had a propensity to abuse children.

What is grooming?

The grooming included but was not limited to the teacher allowing PLAINTIFF to stay in in the classroom to read during recess, the teacher cajoling and otherwise requiring PLAINTIFF to stay in from recess to review schoolwork, the teacher allowing PLAINTIFF to take board games and books from the classroom closet for his personal and exclusive use and the teacher asking PLAINTIFF about his family.

It is difficult – if not impossible- to detect grooming before an act of abuse has been committed.

Did your organization depart from the standard of care by failing to provide reasonable supervision?

The standard of care must be judged by what was known at the time of the abuse and how similar organizations acted at that time.

The defendant may be held liable only for damages caused by its negligence.

The defendant is not responsible for:

The defendant is not responsible for:

- Pre-existing or unrelated mental illness

The defendant is not responsible for:

- Pre-existing or unrelated mental illness
- Damages resulting from other events such as parental neglect and abuse

Resolution Strategy

Assess liability and damages early



Use discovery to educate plaintiff's counsel about:

Use discovery to educate plaintiff's counsel about:

- Whether the plaintiff was abused

Use discovery to educate plaintiff's counsel about:

- Whether the plaintiff was abused
- Whether the defendant had notice of the abuser's propensity

Use discovery to educate plaintiff's counsel about:

- Whether the plaintiff was abused
- Whether the defendant had notice of the abuser's propensity
- The extent to which factors other than abuse caused plaintiff's problems

SECTION # 3

Coverage For Sex Abuse and Locating Old Policies

Insurance for Abuse & Harassment Claims

- **These Claims Are Covered**

- Comprehensive General Liability (“CGL”) Policies
- Employment Practices Liability (“EPL”) Policies
- Directors & Officers (“D&O”) Policies
- Sexual Abuse Coverage

Insurance for Abuse & Harassment Claims (cont.)

- **Comprehensive General Liability (“CGL”) Policies**

- This type of policy is important for policyholders who are facing a large number of claims or claims that span many years. This is because, even where allegations of abuse occurred decades ago, CGL policies will still respond today.
- There is typically coverage under multiple policies as a single claim can span multiple years and trigger coverage in each policy year.
- Most CGL policies cover defense costs outside of policy limits.

Insurance for Abuse & Harassment Claims (cont.)

- **Employment Practices Liability (“EPL”) Policies**

- These policies are specifically designed to cover allegations of workplace harassment.
- They apply on a “claims made” basis, meaning that the policy in effect when the claim is made is the one that responds to the claim.
- Although EPL policies cover defense costs, that coverage usually erodes the policy’s limits.

Insurance for Abuse & Harassment Claims (cont.)

- **Directors & Officers (“D&O”) Policies**

- These are also “claims made” policies under which defense costs typically count against policy limits.
- Usually defined very broadly in standard form policies; they encompass allegations of “wrongful acts” directed against the company, institutions, or officers that are named as defendants in sexual harassment, abuse, and molestation cases.

Insurance for Abuse & Harassment Claims (cont.)

- **Sexual Abuse or Molestation Coverage**

- Sexual abuse or molestation liability coverage may exist as an endorsement to a CGL policy or as a stand-alone coverage
- Provides a separate limit for sexual abuse claims
- Typically excludes coverage to any person who committed, participated in or has knowledge of the abuse

Insurance Archaeology & the Quest to Find Lost Policies

- **Where To Look**

- **Insurance Companies:** Most make at least a nominal attempt at looking at their files and databases.
- **Insurance Brokers:** A great resource for documents as well as personal knowledge of insurance placed.
- **Outside Underlying Defense Counsel:** They may have files with evidence of policy information, usually in relation to old third-party lawsuits or claims they defended.
- **The Government or Other Third-Party Vendors:** If you did work for a local, state, or federal entity, then chances are you would have had to show proof of insurance.

Potential for Spoliation Sanctions

- “Spoliation of evidence in a prospective civil action occurs when evidence pertinent to the action is destroyed, thereby interfering with the action's proper administration and disposition.” *Cockerline v. Menendez*, 411 N.J. Super. 596, 620 (App. Div. 2010) (quoting *Aetna Life & Cas. Co. v. Imet Mason Contractors*, 309 N.J. Super. 358, 364, 707 A.2d 180 (App. Div. 1998)).
- “[T]o a great extent our traditional approach to spoliation begins with identifying the spoliator, because that, in and of itself, will impact on the available and appropriate remedies.” *Robertet Flavors, Inc. v. Tri-Form Constr., Inc.*, 203 N.J. 252, 272, 1 A.3d 658 (2010) (citing *Tartaglia v. UBS PaineWebber, Inc.*, 197 N.J. 81, 119–20, 961 A.2d 1167 (2008)).

Working with your Ins. Co.

- When faced with allegations of abuse, it is important to notify insurance companies as quickly as possible. This keeps the insurance company from using “late” notice as an excuse not to provide coverage.

To expedite the process, follow these steps:

- Locate your insurance policies.
- Review the scope of your policies.
- Communicate with your insurance companies.
- Give notice under all policies that might apply.

Working with your Ins. Co. (cont.)

- **Locating Your Insurance Policies**

- After any claim, one of the first steps you should take is to locate all potentially applicable insurance policies and promptly notify those insurers of your loss.
- Since purchases of policies can span back decades, you may want to recruit the help of your insurance broker or an insurance archaeologist to help you locate past applicable policies.

Working with your Ins. Co. (cont.)

- **Review the Scope of Your Insurance Policies**
 - Understanding the full extent – and limitations – of the coverage you have purchased is important both at the point of purchase and at the time of a loss.

Working with your Ins. Co. (cont.)

- **Communicate With Your Insurance Company**
 - **Before you are faced with claims and allegations, develop a strategy for:**
 - Communicating with your insurance company and its adjusters to make sure that notice is given promptly.
 - Relaying required information.
 - Preserving loss details to the extent possible.

Working with your Ins. Co. (cont.)

- **Communicate With Your Insurance Company**
 - **The best practices for corresponding with your insurance company are:**
 - Provide the company with all reasonably requested information as soon as possible – create a system to confirm their receipt.
 - Communicate frequently so that the resolution of your issue feels more like a partnership than a provided service or obligation.
 - Take note of any insurance company misconduct or failure to perform and seek counsel if necessary.

Working with your Ins. Co. (cont.)

- **Communicate With Your Insurance Company**
 - It is essential to keep track of policy deadlines and notice requirements imposed by your insurance company or broker.
 - If you fail to comply with policy notice provisions, you risk forfeiting coverage or triggering a costly legal battle to obtain it.

Insurance Company Claims Handling Tactics

- Insurance companies often try to use a policyholder's discomfort against it.
- Embarrassment
- Control
- Fear of Other Claims
- Insurance Companies often force vulnerable policyholders to absorb otherwise covered costs in order to accomplish a quick, non-public resolution.

Insurance Company Claims Handling Tactics (cont.)

- **Precedent Allows Policyholders To Push Back:**

- Insurance companies have a duty to work with the policyholder to negotiate and pay reasonable settlements – in full.
- In considering the reasonableness of a proposed settlement amount, an insurance company must take into “consideration all the factors bearing upon the advisability of a settlement for the insured.”

Haugh v. All State Ins. Co., 322 F. 3d 227, 238 (3d Cir. 2003).

Insurance Company Claims Handling Tactics (cont.)

- **Precedent Allows Policyholders To Push Back:**

- Those considerations include, among other factors, the reputational harm and potential loss of goodwill that can result from a failure to settle. See [*Ladow v. Medical Ins. Exch.*](#), 892 F. Supp. 239, 241 (D. Nev. 1995) (“in determining whether to settle, the insurer has a duty to consider injury to the insured, such as emotional distress and injury to business goodwill that proximately flow from the failure to settle”); [*Bodenhamer v. Superior Court*](#), 192 Cal. App. 3d 1472, 1478-1479 (1987) (“An express term of the liability contract is to pay claims of third parties where the insured is liable. An implied promise is to process the claims in a manner which will not injure the insured, which in this case includes injury to the business.”); [*Tan Jay Internat. v. Canadian Indem. Co.*](#), 198 Cal. App. 3d 695, 704 (1988) (allowing bad faith award based on damage to policyholder’s reputation because of insurance company’s failure to settle); [*United States Fire Ins. Co. v. Button Transp., Inc.*](#), 2006 Cal. App. Unpub. LEXIS 3472, at *59 (Apr. 26, 2006) (allowing bad faith award based on policyholder’s loss of goodwill because of insurance company’s failure to settle); [*Rawan v. Continental Cas. Co.*](#), 483 Mass. 664, 685, 670-71 (Mass. 2019) (noting that a valuable purpose of liability insurance is the protection of the policyholder’s reputation and goodwill, and affirming the insurance company’s contractual obligations even where the policyholder acts unreasonably in connection with settlement negotiations in order to protect its reputation).

Questions & Answers

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