



THE RISE OF SETTLEMENT & VERDICT VALUES OF SEXUAL ABUSE AND MOLESTATION CLAIMS

A new risk
for institutions
to manage

BY DAVID SOUCY, SENIOR CLAIMS EXECUTIVE

Inside:

- Why the Increase in Claims? [Overview].....2
- Settlement & Verdict Examples3
- Unprecedented Increase in Settlements & Verdicts?.....5
- 6 Ways Institutions Can Reduce the Risk of Immense Verdicts.....6

DID YOU KNOW?

- > The Clergy Abuse Crisis has cost the Catholic Church over \$3 billion.¹
- > Following Jerry Sandusky's conviction for child molestation in 2012, Pennsylvania State University has paid out more than \$90 million to settle more than 30 civil claims that involved him.²
- > In 2018, more than 300 women and girls who say they were sexually abused by former USA Gymnastics team doctor have reached a \$500 million settlement with Michigan State University where he worked.³
- > In 2018, more than 463 former patients/students have filed lawsuits accusing former University of Southern California gynecologist of sexual misconduct during their exams.⁴

These cases have paved the way for public awareness and outrage over sexual abuse within institutions. This article is a current-day analysis of the sexual abuse and molestation exposure for public institutions.



Why the Increase in Sexual Abuse and Molestation Claims?

Although Sexual Abuse and Molestation Claims (hereafter referred to as "SAM") cases have always been a prevalent risk management issue within school districts (as well as many other institutions), the settlement and verdict values have increased significantly over the past five years and most notably within the past 12 months! We believe there are five main reasons for this increase:

1. **Public awareness** has put SAM cases at the forefront of the media spotlight, brought on by the #MeToo movement, along with the recent Nassar/Michigan State and Tyndall/USC cases.
2. Plaintiff lawyers have adopted **new trial techniques**, with a focus on making juries angry (as opposed to just garnering sympathy). These techniques include "Reptile Theory" which triggers jurors' survival instincts, to protect the community and punish the defendants by awarding large verdicts.
3. **SAM cases have become an easier target**; the top plaintiff lawyers are migrating towards focusing their efforts on championing these cases, likely for the financial gain.
4. **Defense counsel strategies are outdated** and have not yet caught up with the plaintiff bar.
5. We have seen an **erosion of traditional defenses**, such as lack of notice and statute of limitations.

We'll discuss these reasons in more detail later. First, let's look at some SAM verdicts and settlements from the last 15 months.



Settlement & Verdict Examples

California

In June 2018, a jury awarded **\$25.3 million** to a 16-year-old high school student in Long Beach who alleged sexual abuse by the head of an after-school sports program.

In August 2018, the Redlands Unified School District agreed to settlements totaling **\$15.7 million** in connection with lawsuits involving three teachers accused of molesting eight former special needs students.

In December 2017, a jury awarded a former high school student **\$8 million** in her lawsuit against the Hacienda La Puente Unified School District and its science teacher, who admitted to molesting the plaintiff and another student.

Connecticut

In January 2018, a plaintiff reached a **\$900,000** settlement with the Roman Catholic Diocese of Norwich, after filing claims including negligence and reckless and wanton conduct in connection with allegations that he was sexually abused by a diocese priest from 1978 to 1981, while he was a minor.

Florida

In October 2017, the Palm Beach County School Board settled a lawsuit alleging that an elementary school teacher abused four female students, aged nine and ten, for **\$3.58 million**. The school district apologized for pursuing a "comparative negligence" defense claiming that the girls shared some responsibility for abuse.

In November 2017, after a damages trial, the jury returned verdict of **\$49.3 million** against a former high school teacher who raped a 16-year-old student. The teacher was found liable by default, and was also convicted of unlawful sexual activity with a minor and received a one-year prison sentence.

Georgia

In May 2018, a jury awarded **\$1 billion** in compensatory damages to a woman who was raped at age 14 by an armed security guard at an apartment complex where she was attending a party. The plaintiff sued the guard's employer, alleging negligence in its training and performance and in failing to keep the plaintiff safe. The court ruled that the company was liable for negligence, and jurors determined only the amount of damages.

Hawaii

In February 2018, a private school settled 32 claims alleging sexual abuse of male boarders by a psychiatrist who drugged and repeatedly abused them at weekend sleepovers between 1958 and 1985. The school entered into an **\$80 million** settlement, and also agreed to take steps to prevent future abuse such as setting up an independently-run hotline service. In discussing the settlement, plaintiffs' lawyer cited "MeToo" as a factor.

Illinois

In December 2017, a jury awarded **\$48 million** to the family of an 8-year-old child who died three weeks after she was examined by the county defendant child-abuse pediatrician, who allegedly failed to recognize and report obvious signs of sexual abuse. Had the pediatrician reported the abuse, the child would have been removed from the home where the abuse was taking place.

Iowa

In November 2017, the Marion Independent Community School District paid **\$1.8 million**, or \$600,000 per claim, to settle three lawsuits against the district and a teacher for not preventing and protecting students from sexual abuse in a kindergarten classroom. The lawsuits were filed after a former teenage classroom volunteer was found guilty of sexual abuse at the school.

Michigan

In October 2017, a court awarded a 16-year-old plaintiff **\$1.8 million** against a former professional baseball player who sexually assaulted her twice while working as a substitute teacher.

Minnesota

In May 2018, the Archdiocese of St. Paul and Minneapolis settled with 450 victims of clergy sexual abuse for **\$210 million**. According to media reports, approximately \$40 million will be paid by the archdiocese, while the remaining \$170 million will be paid by its insurers.

New Hampshire

In May 2018, the State of New Hampshire settled for **\$6.75 million** with grandparents who brought a lawsuit on behalf of their grandchildren who were sexually abused by their parents. The lawsuit alleged that the defendants were negligent for allowing the parents unsupervised visits with

the 18-month and 4-year-old granddaughters, even though the police were investigating reports that the parents had molested other children at a homeless shelter.

New Jersey

In September 2017, the Vineland Board of Education settled a lawsuit involving a former teacher's sexual relationship with a 16-year-old student for **\$275,000**.

New York

In March 2018, a jury awarded **\$16 million** in compensatory damages to a minor female who alleged that she was sexually harassed, assaulted, abused, and fondled by a teacher during two school years in an NYC public school classroom.

In October 2017, the Archdioceses of New York and Brooklyn settled six claims of sexual abuse by priests for **\$1.8 million**. The settlements ranged from \$50,000 to \$450,000 for cases of abuse that allegedly occurred from the 1950s through the 1980s.

Oklahoma

In March 2018, Tulsa Public Schools, District 1 settled a claim for \$300,000 by a minor student alleging that her male teacher inappropriately groomed, hugged, kissed, fondled, groped, and had sexual contact with her on school premises and at other locations.

Oregon

In August 2017, the State of Oregon Department of Human Services settled a lawsuit for **\$750,000** filed on behalf of minor plaintiffs aged 7, 8 and 9 who alleged that they were physically, emotionally, and sexually abused and exposed to pornographic material and sexual touching at their foster home.

Pennsylvania

In May 2018, a Pennsylvania archdiocese settled a claim for **\$5.99 million** involving clergy sexual abuse of a minor. The lawsuit, a wrongful death and survivor action brought by the deceased claimant's estate, alleged that a parish priest had sexually abused the claimant, who was an altar boy and student at the parish, from ages 12 to 14.

Utah

In September 2017, after a bench trial, a judge ordered Fundamentalist Church of Jesus Christ of Latter-Day Saints President Warren Jeffs to pay **\$16 million** (\$4 million compensatory and \$12 million punitive damages) to a plaintiff who he forced, at age 14, to marry her 19-year-old cousin. The plaintiff described nonconsensual sex and repeated rapes.

Washington

In February 2018, the Washington Department of Social & Health Services (DSHS) settled with a plaintiff for **\$3.1 million** who alleged that DSHS failed to protect her from her biological father, a known rapist. After DSHS placed the 2-year-old plaintiff in her father's care despite his status as a registered sex offender, the child reported she was abused and molested by him resulting in his conviction of child molestation. ■



Unprecedented Increase in Settlements & Verdicts?

Why has there been a sudden increase in the value of sexual abuse and molestation claims? Have our laws changed, or has the mistreatment of children gotten worse? Neither. But there are a handful of reasons for the unprecedented increase in verdicts and settlements.

Public Awareness

The media has been spotlighting many cases, leading their news headlines:

- Catholic Archdiocese
- Boy Scouts of America
- Penn State – Sandusky
- Michigan State – Nasser
- USC – Tyndall

Plaintiff Attorneys Have Improved Trial Techniques

Four new plaintiff counsel techniques we've seen include:

- **Reptile Theory (Jury anger)**⁵ – This method first focuses on the jury's fear that the defendant's inaction increased the risk to the community and its children with the implicit message that the jurors' children are endangered. This then turns to anger with the jury, empowered now to render an award without boundaries.
- **Responsibility/Accountability of the Defendant** – Plaintiff counsel argues the defendant did not take responsibility for his/her actions and is cavalier and uncaring. In addition the defendant's lawyer is only motivated to save the defendant and should not be trusted.
- **Grooming** – Plaintiff counsel will discuss "grooming" to further establish liability against the institution. The psychological science behind grooming behaviors is well established and plaintiff experts will lay out the various techniques the perpetrator implements to establish an emotional connection with the child to gain their trust and later abuse them.

- **The Effects of Sexual Abuse are Lifelong** – Plaintiff counsel discusses the impact the abuse will have on the plaintiff for his/her entire life. Counsel will specifically break down the challenges that the plaintiff will face in the future, including troubled relationships and the need for a lifetime of psychological therapy, which can equate to immense damages.

Financial Gain

- **SAM cases have become easy targets** by plaintiffs to make exorbitant amounts of money, which has attracted the top plaintiff lawyers in the country.

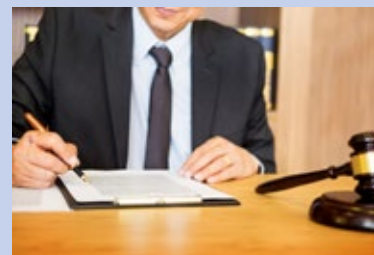
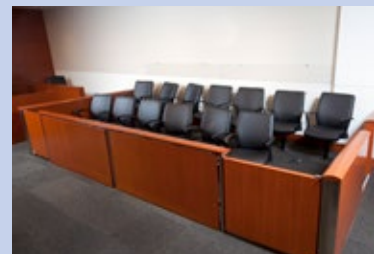
Traditional Defenses No Longer Effective

- **"Lack of actual notice" defense** is less effective. Constructive notice frequently equates to the "District should've known," creating at least a question of fact to be submitted to a jury.
- **Statute of limitations** are being extended in many states making the defense less effective.

Defense Attorneys Playing Catch-Up

- **Defense bar has not kept pace with the plaintiff lawyers** and implements dated techniques that are no longer effective such as denying all liability, failing to take responsibility and failing to provide a number for damages at trial.

continued



The parameters of SAM verdicts are widening. The media saturates the public and jurors with horrific stories of sexual abuse conditioning them to award massive amounts of money in cases where liability is frequently only questionable. In addition, plaintiff lawyers have honed their skills on focusing on school apathy to make the jury angry, while the defense often fails to offer an adequate explanation to deescalate the situation.

The science behind grooming behaviors is now well established and is being used by plaintiff lawyers to establish an insidious risk that the defendant failed to neutralize. Also, the effects of SAM abuse are potentially lifelong.

Plaintiff experts will suggest an award of damages that includes lifelong therapy, versus a more reasonable figure. This pattern of juries awarding huge verdicts seems to be growing from one to the next. It has (not surprisingly) attracted the attention of the best plaintiff lawyers in the field. Nevertheless, let's focus on methods that are within our control to mitigate the risk. ■

6 Ways Institutions Can Reduce the Risk of Immense Verdicts

- 1 Retain qualified defense counsel.
- 2 Secure plaintiff's deposition and an independent medical examination of the plaintiff.
- 3 Consider the potential application of a "lack of notice" defense. Keep in mind that some level of notice (generally actual or constructive) is necessary to hold a public institution liable for a SAM case.
- 4 Evaluate dispositive motions for summary judgment based on lack of notice, statute of limitations and/or causes of action that are not supported by the facts.
- 5 Consider early mediation.
- 6 If the case proceeds to trial, accept responsibility (without admitting liability) when applicable.
 - Have a theme, tell a story, personalize the defendants and provide a reasonable number (in the event you lose) rather than leave it up to the plaintiff counsel and the jury.
 - If plaintiff has yet to seek any psychological treatment, carefully weave this into your defense to mitigate the damages.

Although this article illustrates the increasing exposure of SAM claims for public entities, we do not need to be held hostage by it. The risk can be mitigated by taking the necessary steps to evaluate liability and damages early – as opposed to having a jury render a verdict based more upon emotion than facts.

We hope this information helps shed light on this exposure and that we can work with you if you need help managing this risk. ■



About the Author

David Soucy is a Senior Claims Executive and Second Vice President for Genesis in our Los Angeles office. He may be reached at Tel. 213 236 1732 or david.soucy@gumc.com.



Endnotes

¹ <https://www.npr.org/2018/08/18/639698062/the-clergy-abuse-crisis-has-cost-the-catholic-church-3-billion>.

² <https://www.cbsnews.com/news/penn-state-settlements-jerry-sandusky-accusers-covered-1971-abuse-claim-joe-paterno>.

³ https://mersonlaw.com/larry-nassar-msu-sex-abuse-settlement/?gclid=EA1aIQobChMt_jqjsTF3QIVDYvICh2kVA1_EAAYAiAAEgL0tvD_BwE.

⁴ <https://losangeles.legalexaminer.com/legal/sexual-abuse/usc-reaches-tentative-215-million-settlement-in-dr-tyndall-abuse-cases>.

⁵ <https://www2.stetson.edu/advocacy-journal/recognizing-and-defeating-the-reptile-a-step-by-step-guide>.

GENESIS®

A Berkshire Hathaway Company

This information was compiled by Genesis Management and Insurance Services Corporation and is intended to provide background information to our clients, as well as to our professional staff. The information is not intended to be legal advice. It's time sensitive and may need to be revised and updated. You should consult with your own legal counsel before relying on it.

Genesis provides reinsurance solutions to its clients through General Reinsurance Corporation and insurance through Genesis Insurance Company, which is licensed in the District of Columbia, Puerto Rico and all states. Genesis Insurance Company has its principle place of business in Stamford, CT and operates under NAIC Number 0031-38962.