



# COUGHLIN DUFFY LLP

CASE ALERT, NO. 8

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## Supreme Court Broadens Scope of Liability for Sexual Abuse



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On August 8, 2006, in *Hardwicke v. American Boychoir School et al.*, the New Jersey Supreme Court held that under the Child Sexual Abuse Act (“CSAA”), the American Boychoir School (“School”) in Princeton, although a charitable, non-natural person and institutional entity, was a “person” standing “*in loco parentis*” within the household subject to liability under the CSSA for claims arising from alleged sexual abuse of a student. In a 5-1 ruling, the Court concluded that the state’s Charitable Immunity Act (“CIA”) protects charities from negligence claims only, not from claims that are based on “willful, wanton or grossly negligent conduct.” In addition, the Court held that under the 2006 amendment to the CIA that eliminated the immunity of statutory entities for claims arising from the negligent hiring, supervision or retention of any agent or employee who commits sexual assault against a minor, the plaintiff asserted sufficient allegations to support such an action against the School. The Court further found that an employer may be held vicariously liable for the acts of its employees for child abuse claims brought under common law.

The Court’s decision stems from sex abuse claims involving administrators at American Boychoir School. Plaintiff John W.

Hardwicke alleged that he was repeatedly molested by the school’s music director and three other employees from 1969-1971, when he attended the school. Hardwicke fought for the right to sue the school over the alleged abuse, contending that the CIA, which is intended to protect nonprofits from negligence lawsuits, does not apply to sex abuse cases.

The Court relied on extrinsic evidence gleaned from the legislative intent and New Jersey’s strong public policy to hold both active and passive child abusers accountable, and determined that the School “is a person under the passive abuse provision of the CSAA.” Next, the Court concluded that there existed sufficient exercise of parental authority by the School to bring it “within the *in loco parentis* requirement of the CSAA.” The Court further determined that the evidence established that the School environment was a “household” under the CSAA because it provided food, shelter, educational instruction, and various other characteristics of a household to its full time students. Thus, the Court held that the School was a “person” standing “*in loco parentis*” within the “household”. The Court concluded that Hardwicke’s allegations that the School knowingly permitted

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or acquiesced in the sexual abuse he endured stated a viable cause of action under the CSAA. In addition, the Court examined the legislative intent of the CIA and determined that it protects charities from negligence claims only, not from claims that are based on "willful, wanton or grossly negligent conduct."

The Court ruled that the trial court must determine after a hearing whether the discovery rule provisions of the CSAA applicable to common law claims based on sexual abuse tolled the two-year statute of limitations as to Hardwicke. The Court's ruling allows Hardwicke to proceed with his lawsuit against the prestigious music school and significantly alters the potential liability of schools and charitable entities arising from sexual abuse claims.