

GIE034558 2007 OCT -6 PM 2: 36

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN DIEGO

GIE034558

11 A.B., G.G., S.H., and N.H.; S.H. and N.H. are
12 minors, by and through their Guardian Ad
13 Litem, their Mother, S.A.H.

CASE NO: _____

14 Plaintiffs,

ORIGINAL COMPLAINT FOR DAMAGES:

15 vs.

1. Common Law Negligence
2. Negligent Appointment, Retention and Supervision
3. Gross Negligence – Willful Misconduct
4. Breach of Fiduciary Duty

16 WATCHTOWER BIBLE AND TRACT SOCIETY
17 OF NEW YORK, INC., WATCHTOWER BIBLE
18 AND TRACT SOCIETY OF PENNSYLVANIA,
19 INC., JEHOVAH'S WITNESSES ALPINE
20 CONGREGATION AND DOES 1 Through 20,
21 Inclusive.

22 Defendants.

PLAINTIFFS' ORIGINAL COMPLAINT

23 COME NOW A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through
24 their Guardian Ad Litem, their Mother, S.A.H., Plaintiffs in the above-numbered and entitled
25 cause, and file this, their Original Complaint, and allege as follows:

I.

PARTIES

- 26 1. S.H., born August 28, 1990, is, and at all times mentioned herein, was a resident
27 of San Diego County, California.
- 28 2. Plaintiff N.H., born November 8, 1988, is, and at all times mentioned herein, was
a resident of San Diego County, California.

1 3. Plaintiff G.G., born October 17, 1986, is, and at all times mentioned herein, was a
2 resident of San Diego County, California.

3 4. Plaintiff A.B., born May 10, 1984, is, and at all times mentioned herein, was a
4 resident of San Diego County, California.

5 5. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a
6 corporation organized and existing under the laws of the State of New York, has conducted
7 business within the State of California through its agents and alter egos and may be served
8 with process through its California agent for service of process James M. McCabe, 4817
9 Santa Monica Avenue, San Diego CA 92107.

10 6. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a
11 corporation organized and existing under the laws of the State of Pennsylvania, has
12 conducted business within the State of California through its agents and alter egos and
13 may be served with process at its offices located at 1630 Spring Run Road Extension,
14 Coraopolis, Pennsylvania 15108.

15 7. Defendant JEHOVAH'S WITNESSES ALPINE CONGREGATION is a corporation
16 organized and existing under the laws of the State of California. At all material times, it
17 maintained its offices at Kingdom Hall Building, 3408 East Victoria Drive, Alpine, San Diego
18 County, California, 91901.

19 8. Plaintiffs allege on information and belief that at all relevant times, defendants DOES
20 1 through 20 inclusive, are individuals and/or business or corporate entities incorporated
21 in and/or doing business in California.

22 9. The true names and capacities, whether individual, corporate, associate, or
23 otherwise, of defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs who
24 therefore sue such Defendants by such fictitious names, and will amend the complaint to
25 show the true names and capacities of each DOE defendant when ascertained. Plaintiffs
26 allege on information and belief that each defendant designated as a DOE is legally
27 responsible in some manner for the events, happenings, and/or tortuous, and unlawful
28 conduct that caused the injuries and damages alleged in this complaint.

1 10. The Defendant entities are collectively referred to herein as the "WATCHTOWER
2 DEFENDANTS" because each is the agent and alter ego of each other and operate as a
3 single business enterprise. Each Defendant was acting within the scope and course of his
4 or its authority as an agent, servant, and/or alter ego of the other and each of them
5 engaged in, joined in and conspired with the other wrongdoers in carrying out the tortuous
6 and unlawful activities alleged in this complaint.

7 **II.**

8 **JURISDICTION AND VENUE**

9 11. Each Plaintiff has been damaged in an amount exceeding the minimum jurisdictional
10 requirements of this Court.

11 12. Venue is proper in San Diego County, California because each minor plaintiff was
12 the victim of tortuous conduct within that county.

13 **III.**

14 **FACTS COMMON TO ALL CAUSES OF ACTION**

15 13. All paragraphs of this Complaint are based on information and belief, except for
16 those allegation, which pertain to the Plaintiffs and their counsel. Plaintiffs' information
17 and belief are based upon, inter alia, the investigation conducted to date by Plaintiffs and
18 their counsel. Each allegation in this Complaint either has, or is likely to have, evidentiary
19 support upon further investigation and discovery.

20 14. The WATCHTOWER DEFENDANTS comprise a hierarchical organization made up of
21 different corporations and other entities. The Watchtower Bible and Tract Society of New
22 York is the parent organization of all entities of Jehovah's Witnesses in the United States.
23 The "Governing Body" establishes policies and dictates practices for Jehovah's Witnesses
24 throughout the world, and operates through various corporate entities including the Watch
25 Tower Bible and Tract Society of Pennsylvania.

26 15. Local congregations are led by Elders, Ministerial Servants and Pioneers who are
27 appointed by the Governing Body and/or the Watchtower Bible and Tract Society of New
28 York Local Congregation. Elders, Ministerial Servants and Pioneers are agents of the

1 Watchtower Bible and Tract Society of New York and the Governing Body and are required
2 to obey and follow the rules handed down by the Governing Body and the Watchtower
3 Society.

4 16. Through their rules and policies, the WATCHTOWER DEFENDANTS assumed a duty
5 to protect children in their organization, including Plaintiffs. The WATCHTOWER
6 DEFENDANTS negligently failed to exercise reasonable care in fulfilling that duty.

7 17. The WATCHTOWER DEFENDANTS undertook the responsibility to instruct their
8 elders as to what to do when they received allegations of child sexual abuse. They
9 promulgated policies and rules directing the elders to call the WATCHTOWER
10 DEFENDANTS' "Legal Department" for direction about whether to report allegations of
11 sexual abuse to police and law enforcement. The policies were designed to prevent
12 cooperation with, if not frustrate, secular investigations. Elders were sometimes instructed
13 to make anonymous calls from telephone booths so that law enforcement authorities would
14 be unable to contact them for more information.

15 18. The WATCHTOWER DEFENDANTS promulgated policies and rules requiring local
16 congregations, through their elders, to investigate allegations of child sexual abuse. They
17 enacted evidentiary and procedural rules governing the formation and operation of "judicial
18 committees," comprised of elders, which gathered and considered evidence, questioned
19 witnesses and rendered judgments about whether child sexual abuse had or had not
20 occurred. Often these judgments were based on the "two witness rule," which allowed
21 allegations of child sexual abuse to be disregarded unless the perpetrator confessed or
22 there were two eye witnesses to the crime. Additionally, the elders were instructed not
23 to reveal to law enforcement authorities the results of their investigations.

24 19. The WATCHTOWER DEFENDANTS assumed the duty to punish organization
25 members who were guilty of child sexual abuse. Since the allegations were often
26 concealed from secular authorities, the perpetrators often received no punishment except
27 for that meted out by the WATCHTOWER DEFENDANTS. Sometimes the offenders were
28 "disfellowshipped," or expelled from the organization. Other times their punishment was

1 secret; they were "privately reprov'd" or placed on "restrictions" so that other
2 congregation members would not know that a dangerous child abuser was in their midst.

3 20. The WATCHTOWER DEFENDANTS' policies, which were ostensibly promulgated to
4 protect children in the organization, emphasized secrecy above all other concerns. Victims
5 of child sexual abuse, and their families, were routinely told not to inform secular
6 authorities. Victims were often discouraged, if not prevented, from obtaining appropriate
7 medical and psychological care or from confiding in their siblings or close friends. Instead,
8 they were instructed to rely on elders for counsel.

9 21. The WATCHTOWER DEFENDANTS instructed the local congregations and elders to
10 make written reports to the WATCHTOWER DEFENDANTS' "Service Department" about
11 allegations of child sexual abuse leveled against elders, ministerial servants and pioneers,
12 as well as written reports of judicial committee actions concerning child sexual abuse
13 allegations made against any Jehovah's Witness. The WATCHTOWER DEFENDANTS have
14 for years maintained files and, more recently, a computerized database containing such
15 information. The WATCHTOWER DEFENDANTS undertook the responsibility to compile this
16 information to protect congregation members and they therefore assumed a duty to utilize
17 this information with reasonable care. However, despite having confidential information
18 that would allow parents, law enforcement authorities and even elders to identify sexual
19 predators and actually take steps to protect children, the WATCHTOWER DEFENDANTS
20 negligently concealed this information from the persons who needed it most urgently.

21 22. The WATCHTOWER DEFENDANTS have, at all material times, had the ability to
22 know when a "known pedophile," a term they sometimes use, moves from one
23 congregation to another. However, they have negligently failed to utilize the information
24 they have compiled to monitor the movement of sexual predators through their
25 organization and issue appropriate warnings. The WATCHTOWER DEFENDANTS
26 promulgated rules and policies that require the former congregation to write a "letter of
27 instruction" when a member moved to another congregation. However, the
28 WATCHTOWER DEFENDANTS negligently failed to take any steps to ensure that such a

1 letter was actually sent or that the letter contained accurate information and adequate
2 warnings. If a sexual predator moved from a congregation where he was known to be a
3 pedophile, but then moved a second time, the WATCHTOWER DEFENDANTS' rules did not
4 even require the first congregation's letter to be passed along to the third congregation.

5 23. These are but a few examples of the WATCHTOWER DEFENDANTS assuming a duty
6 to protect children in the organization but failing to exercise reasonable care in fulfilling
7 that duty.

8 24. Frederick McLean was appointed Ministerial Servant by the Governing Body and/or
9 the Watchtower Bible and Tract Society of New York. A Ministerial Servant is an agent of
10 the Watchtower Bible and Tract Society of New York, the Governing Body and the other
11 Watchtower Defendants.

12 25. A Ministerial Servant is held out by the Watchtower Defendants to be a person of
13 good character and responsibility and a person one can trust to supervise minor children.
14 Parents within the Watchtower organization are encouraged to view Ministerial servants
15 as role models for their children. Children within the organization are taught to look up to
16 and respect Ministerial Servants.

17 26. The WATCHTOWER DEFENDANTS knew, or should have known, that Frederick
18 McLean was a pedophile. Nevertheless, he was appointed Ministerial servant and allowed
19 to occupy a leadership position in the Jehovah's Witnesses organization.

20 27. Beginning in approximately 1991, McLean used the position of trust that his status
21 as a Ministerial Servant represented and conferred, to obtain access to Plaintiffs so that he
22 could sexually abuse them. He abused SH and NH from approximately 1993 to 1999. He
23 abused GG from approximately 1992 to 1999, and abused AB from approximately 1991 to
24 1999. The abuse occurred primarily in San Diego County, California.

25 IV.

26 FIRST CAUSE OF ACTION 27 COMMON-LAW NEGLIGENCE

1 28. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through
2 27 of this Complaint as if fully set forth herein.

3 29. Plaintiffs allege that at all times herein mentioned, WATCHTOWER DEFENDANTS
4 assumed a duty to protect Plaintiffs from sexual predators within the WATCHTOWER
5 DEFENDANTS' organization. The WATCHTOWER DEFENDANTS knew or should have
6 known that Plaintiffs were at risk of foreseeable harm by their agent, Frederick McLean,
7 but failed to act to protect them from such harm. The WATCHTOWER DEFENDANTS
8 breached their duty to Plaintiffs, thereby causing great harm to Plaintiffs.

9 30. Despite the fact that the Watchtower Defendants knew or should have known of
10 McLean's history of pedophilia, they negligently failed to warn Plaintiffs or their families of
11 McLean's history of sexually abusing children.

12 31. Despite the fact that the WATCHTOWER DEFENDANTS knew, or should have
13 known, of McLean's history of pedophilia, they negligently permitted him to be alone with
14 children, including Plaintiffs, in the congregations.

15 32. As a legal result of Defendants' conduct as described herein above, Plaintiffs have
16 suffered, and will continue to suffer great pain of mind, body, shock, emotional distress,
17 physical manifestations of emotional distress, embarrassment, loss of self-esteem,
18 disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and
19 will continue to be prevented from obtaining the full enjoyment of life.

20 **V.**

21 **SECOND CAUSE OF ACTION**
22 **NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION**

23 33. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through
24 32 of this Complaint as if fully set forth herein.

25 34. Plaintiffs allege that at all times herein mentioned, the WATCHTOWER
26 DEFENDANTS knew or should have known of McLean's propensity to use his position as
27 a leader in the local congregations to engage in acts of sexual abuse of young, vulnerable
28

1 and defenseless victims such as Plaintiffs. The WATCHTOWER DEFENDANTS failed to
2 adequately investigate, evaluate, and otherwise research McLean's background prior to
3 appointing him to a leadership position and allowing him unsupervised access to young
4 victims such as Plaintiffs.

5
6 35. Despite the fact that the WATCHTOWER DEFENDANTS knew, or should have
7 known, of McLean's history of pedophilia, they negligently appointed him to the office of
8 Ministerial Servant when they knew or should have known that he would be allowed
9 unsupervised access to minor children in the course and scope of his duties.

10
11 36. The WATCHTOWER DEFENDANTS negligently failed to monitor and/or supervise
12 McLean despite their actual or constructive knowledge that he posed a potential and
13 foreseeable danger to children.

14
15 37. As a legal result of Defendants' conduct as described herein above, Plaintiffs have
16 suffered, and will continue to suffer great pain of mind, body, shock, emotional distress,
17 physical manifestations of emotional distress, embarrassment, loss of self-esteem,
18 disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and
19 will continue to be prevented from obtaining the full enjoyment of life.

20
21 **VI.**

22 **THIRD CAUSE OF ACTION**
23 **GROSS NEGLIGENCE/WILFUL MISCONDUCT**

24 38. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through
25 37 of this Complaint as if fully set forth herein.

26 39. Plaintiffs allege, at all times mentioned herein, that the WATCHTOWER
27 DEFENDANTS demonstrated a conscious indifference to the safety and welfare of Plaintiffs.
28 The WATCHTOWER DEFENDANTS knew or should have known of the dangerous

1 propensities of their agent, Frederick McLean, yet failed to act to protect the health, safety
2 and welfare of children in the WATCHTOWER DEFENDANTS' organization thereby allowing
3 Plaintiffs to be sexually abused. But for the WATCHTOWER DEFENDANTS' willful
4 misconduct and gross negligence in failing to implement safeguards to protect Plaintiffs,
5 the sexual abuse would have been prevented.
6

7 40. Plaintiffs further allege that WATCHTOWER DEFENDANTS' actions, constituting
8 willful misconduct and gross negligence described herein above, caused significant mental,
9 emotional, and physical injuries as a result of the acts of sexual abuse described
10 herein above.
11

12 41. As a legal result of Defendants' conduct as described herein above, Plaintiffs have
13 suffered, and will continue to suffer great pain of mind, body, shock, emotional distress,
14 physical manifestations of emotional distress, embarrassment, loss of self-esteem,
15 disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and
16 will be continue to be prevented from obtaining the full enjoyment of life.
17

18 **VII.**

19 **FOURTH CAUSE OF ACTION**
20 **BREACH OF FIDUCIARY DUTY**

21 42. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through
22 41 of this Complaint as if fully set forth herein.

23 43. Plaintiffs allege, at all times mentioned herein, that by assuming the responsibility
24 to protect and care for Plaintiffs, who were young and vulnerable, the WATCHTOWER
25 DEFENDANTS created a fiduciary relationship with Plaintiffs. The WATCHTOWER
26 DEFENDANTS occupied positions of trust and confidence with Plaintiffs and such
27 relationship imposed on them a duty to act to protect Plaintiffs' best interests.
28

1 44. Plaintiffs further allege that because of this special relationship, Plaintiffs placed
2 their trust and confidence in the WATCHTOWER DEFENDANTS to protect them from harm
3 and to warn Plaintiffs of the potential harm. The conduct described above constituted a
4 breach of the fiduciary duty owed to Plaintiffs by WATCHTOWER DEFENDANTS.
5

6 45. As a legal result of Defendants' misconduct as described herein above, Plaintiffs
7 have suffered, and will continue to suffer great pain of mind, body, shock, emotional
8 distress, physical manifestations of emotional distress, embarrassment, loss of self-
9 esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were
10 prevented and will continue to be prevented from obtaining the full enjoyment of life.
11

12 **VIII.**
13 **PRAYER**

14 WHEREFORE, Plaintiffs demand judgment against the WATCHTOWER DEFENDANTS
15 individually, jointly and severally as follows:

- 16 **1.** For general damages according to proof;
17 **2.** For past and future medical expenses according to proof;
18 **3.** For past and future loss of earnings according to proof;
19 **4.** For prejudgment interest;
20 **5.** For costs of suit incurred herein; and
21 **6.** For such other and further relief as the Court deems just and proper.
22
23

24 **Dated:** September 29, 2006

NOLEN & ASSOCIATES



Rudy Nolen, Esq.,
Attorneys for Plaintiffs.

ENDORSED

OCT 16 2006

Clerk of the Napa Superior Court
By: M.M. FIELDS
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, et al.

Defendants.

Case No.: 26-22191
JCCP No. 4374

RULING ON SUBMITTED
DISCOVERY MOTIONS

Plaintiffs' Motions To Compel Discovery came on for hearing on October 13, 2006. The court, having read and considered the papers in support of and in opposition to the motion and having heard oral argument, took the motions under submission and now rules as follows:

Plaintiffs' Motion to Compel Depositions and/or for Protective Order re: the Woodland Elders (Motion #1)

The Watchtower defendants have informed the plaintiffs that, at the depositions of four Church Elders, they will invoke the clergy-penitent privilege and object to "any inquiries concerning judicial investigations and judicial committees." Plaintiffs seek an order compelling the deponents to attend their depositions and to respond to such inquiries.

This court has previously ruled in the Track I cases that the penitential communication privilege does not apply to communications between the alleged abusers and the Judicial Committee. (See Court's ruling of September 29, 2005.) Although that ruling is not res judicata in non-track I cases, defendants provide no convincing reason why the court should rule differently in this case. For the reasons expressed in the earlier ruling, the court concludes that the witnesses may not assert the penitential communication privilege. To the extent the motion also encompasses the production of documents, defendants shall produce responsive documents, regardless of when they are dated. As plaintiffs note, it is possible that documents dated after the alleged abuse will contain relevant information. For these reasons, plaintiffs' motion #1 is GRANTED.

Plaintiffs' Motion to Compel PMK Deposition and Documents – General (Motion #2)

Plaintiffs have noticed the deposition of the Church defendants' Person(s) Most Knowledgeable (PMK) on a number of specified topics. Defendants have objected to six areas of inquiry, again invoking the clergy-penitent privilege. For the reasons discussed above and in the court's earlier ruling, the court finds that the clergy-penitent privilege does not apply to these areas of inquiry. Defendants also object to the scope of the document requests, claiming that documents that post-date the alleged abuse are not relevant or likely to lead to the discovery of admissible evidence. As above, the court finds that the documents are discoverable. For these reasons, plaintiffs' motion #2 is GRANTED.

Plaintiffs' Motion to Compel PMK Deposition and Documents – Legal (Motion #3)

Plaintiffs previously issued a PMK deposition notice concerning "any and all policies that the Jehovah's Witnesses organization had for handling accusations and proof of child sexual abuse from 1970 to the present." During that PMK deposition of Mr. Breaux, he identified functions that were handled by the Legal Department rather than by the Service Department, where he worked. As to these, he lacked the information necessary to provide responses.

Plaintiffs subsequently noticed a PMK deposition to inquire into (1) the organization, staffing and operation of the Legal Department; (2) the Legal Department's role in responding to

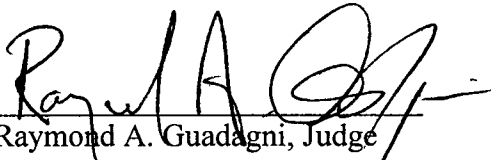
and investigating child sexual abuse allegations within the organization; (3) the development and use of "Child Abuse Telememos" which were forms developed to obtain and record information concerning reports of abuse (blank forms were produced in discovery); (4) records kept by or under the direction of the Legal Department concerning allegations of abuse; and (5) answers given to "survey questions" contained on one of the Telememos.

Defendants have objected that these areas of inquiry are protected by the attorney-client and/or work product privileges. As to the first two categories, plaintiffs contend that they concern only policies and implementation, and do not invade any privileges. As to categories 3 and 5, they assert only that the requested information is related to the blank documents they already received in discovery, and that the information goes to the heart of their case. Finally, as to category 4, they claim again, that no privileges would be invaded, because they seek general information about the types of records kept by the legal department.

The court agrees that items 1, 2 and 4, which seek general structural, policy and organizational information concerning the Legal Department, implicate neither the attorney-client nor the work product privileges. Items 3 and 5, on the other hand, seek protected information. As set forth in the declaration of the Church's associate general counsel, the Telememo forms are completed by attorneys or legal assistants based upon information provided them by congregation elders, and are used to assist in giving legal advice to the elders, as clients of the Legal Department. Similarly, any compilation of information, as from the "survey questions" constitutes attorney work product and is not discoverable.

For these reasons, the court will GRANT the motion as to items 1, 2 and 4 and will DENY the motion as to items 3 and 5.

Dated: 10/16/06


Raymond A. Guadagni, Judge

CERTIFICATE OF MAILING

Napa Courts

Civil, Criminal, Appeals, Small Claims

CHARISSA W., et al,

Plaintiffs,

vs.

CASE NO: 26-22191
JCCP No. 4374

WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, et al.

Defendants.

Rudy Nolen
Nolen & Brelsford
1501 - 28th Street
Sacramento, CA 95816

Sent by facsimile to: 916-733-0601 and by US Mail this date.

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Sent by facsimile to: 713-751-0030 and by US Mail this date.

Greg Love
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Sent by facsimile to: 817-335-2912 and by US Mail this date.

Robert J. Schnack
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11335 Gold Express Dr., Suite 1105
Gold River, CA 95670-4491

Sent by facsimile to: 916-930-2501 and by US Mail this date.

I hereby certify that I am not a party to this cause and that copies of the attached **RULING ON SUBMITTED DISCOVERY MOTIONS** mailed (first class postage pre-paid) to the above parties at Napa, California on this date and that this certificate is executed at Napa, California this date.

OCT 16 2006

DATE

M.M. FIELDS

Deputy Court Executive Officer