

Indiana Supreme Court Ruling Relieves Employer's Liability in *Respondeat Superior* Claims

By Laurie Boyce

"Respondeat Superior" (Latin: "let the master answer") is a legal doctrine which states that, in many circumstances, an employer is responsible for the actions of employees performed within the course of their employment. Also referred to as the "Master-Servant Rule", is recognized in both common law and civil law jurisdictions.

On June 27, 2008 the Indiana Supreme Court handed down a decision in *Barnett v. Clark* that dramatically limits vicarious liability claims, and clarified the intentions of the term *respondeat superior*. The Supreme court overturned a Court of Appeals decision and affirmed summary judgment for the Trustee of Pleasant Township in Steuben County on a *respondeat superior* theory in an employee rape case.

In *Barnett v. Clark*, Debra A. Barnett asserted that Pleasant Township Trustee, Camelia Clark, is vicariously liable for the sexual misconduct of her employee, Donald Clark. The Indiana Court of Appeals had found that the Trustee could be liable for the rape under a theory of *respondeat superior*, even though the employee's actions in raping an aid recipient were clearly outside the course and scope of his employment. The Appeals Court found that an issue of fact existed, and summary judgment was denied for Camelia.

The Court of Appeals found in *Barnett v. Clark* that "The determination of whether an employee was acting within the scope of his employment does not turn on the type of act committed. An employer can be vicariously liable for the criminal acts of an employee. The test is whether the employee's actions were at least for a time authorized... If some of the employee's actions were authorized, the question of whether the unauthorized acts were within the scope of employment is one for the jury. However, if none of the employee's acts were authorized, there is no *respondeat superior* liability and summary judgment is proper." It was determined in *Barnett v. Clark* that Donald's conduct was a mixture of authorized and unauthorized acts. He was performing his duties both before and after his misconduct. Whether his conduct was in the scope of employment was an issue of fact, and a matter for the jury to decide.

The Indiana Supreme Court was asked to reverse the Court of Appeals, to keep this type of *respondeat superior*

litigation from spiraling out of control. This was requested on behalf of IACT, the Indiana Chamber of Commerce, the Indiana Insurance Institute, The Indiana School Boards Association, and several other amici (friends of the court). The Indiana Trial Lawyers Association argued that an employer should be found liable for an employee's actions merely because the employment relationship brought the employee into contact with the victim.

The Indiana Supreme Court unanimously ruled that the Court of Appeals' decision and the arguments of the Indiana Trial Lawyers Association misconstrued the prior *respondeat superior* rulings, and found that liability for sexual misconduct will only apply where "the employee was

explicitly authorized or impliedly authorized to touch or confine the victim." Because of this decision, the question of whether or not an employer is liable for an

employee's actions under *respondeat superior* can now be resolved on summary judgment, and likely will result in a decision in the employer's favor. Thus, the employer is relieved of potential liability for gross misconduct by an employee, and resolving a case at the summary judgment stage should result in lower overall litigation costs.



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