

[Court Limits Vicarious Liability for Actions of Putative Agent](#)

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[Oravec v. New York Life Ins. Co.](#), ___ Cal. App. ___, 2009 WL 1277742 (2nd Dist., June 10, 2009).

In a case litigated by Robert J. McKennon, a partner of Barger & Wolen, LLP and editor of this blog, the California Court of Appeals recognized significant limits on the vicarious liability of a principal based upon the acts or omissions of a putative agent.

Paul Oravec sued his investment advisor, Steven Roth, and Roth's purported principals New York Life Insurance Company and NYLife Securities, Inc. (Roth was a registered representative of the latter) after learning that his investment in a foreign currency trading operation known as "Tradex" was a Ponzi scheme. Oravec alleged that New York Life was Roth's employer at the time Roth purportedly made negligent misrepresentations to him about Tradex, and that New York Life was, thus, vicariously liable for Roth's conduct under various theories, including respondeat superior. Oravec, who never had any direct dealings with New York Life, asserted causes of action against New York Life for negligent misrepresentation, negligent hiring, negligent supervision, negligent interference with prospective economic advantage, breach of fiduciary duty and securities fraud.

New York Life demurred to Oravec's claims for negligent hiring, negligent interference with economic advantage and breach of fiduciary duty. The trial court sustained the demurrer without leave to amend. New York Life then moved for summary judgment on Oravec's remaining claims, and the trial court granted summary judgment in New York Life's favor. Oravec appealed.

The Court of Appeals affirmed the trial court's ruling in almost all respects. The demurrer to the negligent hiring claim was properly sustained because there was no nexus between the harm suffered (Oravec's failed investment in Tradex) and the hiring of, according to Oravec's allegation, an under-educated person who once pled no contest to negligently discharging a firearm. The demurrer to the claim for negligent interference with prospective economic advantage was properly sustained primarily because Oravec failed to allege any independent wrongful conduct by New York Life. Summary judgment as to the negligent misrepresentation claim was properly granted because the undisputed facts demonstrated that Roth was an independent contractor, not an employee, of New York Life. Summary judgment as to the negligent supervision claim was properly granted because as a broker/dealer, New York Life had no legal duty to supervise its registered representatives or agents (who are independent contractors) with respect to unauthorized business transactions such as Tradex. Finally, the securities fraud claim was properly summarily adjudicated because it was time-barred.

The only reversal was of the trial court's sustaining of New York Life's demurrer to the breach of fiduciary duty claim. The court held that Oravec adequately pled a "garden variety" state law claim for fiduciary duty and that all that was needed to adequately plead fiduciary duty was that Roth, as an employee and acting on behalf of New York Life: acted as a fiduciary (e.g., stockbroker); acted on Oravec's behalf with respect to his investments; failed to act as a reasonable careful broker would have acted under the same or similar circumstances; and Roth's failure to do so was a substantial factor in causing Oravec's harm.

