

*Henry Schein, Inc. v. Archer & White Sales, Inc.*  
No. 17-1272 (U.S. Jan. 8, 2019) (Kavanaugh, J.)

**Background:** Archer & White Sales, Inc. sued Henry Schein, Inc. for allegedly violating federal and state antitrust law.<sup>1</sup> Invoking the Federal Arbitration Act and the arbitration clause in the parties’ contract, Schein moved to compel arbitration and argued that the arbitrator should decide whether the parties’ dispute fell within the scope of the arbitration clause.<sup>2</sup> Under the Federal Arbitration Act, the arbitrator decides whether a dispute is subject to arbitration when the arbitration clause delegates that arbitrability question to the arbitrator.<sup>3</sup> In response to Schein’s motion, Archer & White invoked an exception to this rule, which provides that even when an arbitration clause delegates the arbitrability question to the arbitrator, the court should nonetheless resolve the arbitrability question if the defendant’s argument for arbitration is “wholly groundless.”<sup>4</sup> The district court concluded that Schein’s argument for arbitration was wholly groundless and thus denied Schein’s motion to compel arbitration.<sup>5</sup> The Fifth Circuit affirmed the district court’s order.<sup>6</sup>

**Issue:** Does the “wholly groundless” exception exist?<sup>7</sup>

**Conclusion:** No.<sup>8</sup>

**Reasoning:** The Court held that when the parties’ contract delegates the arbitrability question to the arbitrator, the court cannot override the contract—“even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless.”<sup>9</sup>

**Disposition:** The Court vacated the Fifth Circuit’s judgment and remanded the case to the Fifth Circuit for further proceedings.<sup>10</sup>

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<sup>1</sup> *Henry Schein, Inc. v. Archer & White Sales, Inc.*, No. 17-1272, slip op. at 2 (U.S. Jan. 8, 2019).

<sup>2</sup> *Id.* at 2–3.

<sup>3</sup> *See id.* at 1.

<sup>4</sup> *Id.* at 3, 4.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2, 5.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 8.

**First Element: Defendant owed a duty of care to Plaintiff.**

To prevail on a negligence claim, the plaintiff must show that the defendant owed a duty of care to the plaintiff. *Cite*

- Your proof charts are a great place to get down on paper and start refining your proposed jury instructions.
- Your legal outlines provide a fast resource for filling out this part of the proof charts.

*Good Facts on Duty-of-Care Element*

<ul style="list-style-type: none"><li>• Your master fact timeline can serve as a clearinghouse for all the good facts you've assembled for this element of the claim.</li><li>• Just like the fact timeline, make sure you include a citation for where all these facts came from.</li></ul>	<ul style="list-style-type: none"><li>• As you get closer to trial, you can use the proof chart to think through how exactly you are going to get these facts into evidence.</li></ul>
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*Bad Facts on Duty-of-Care Element*

<ul style="list-style-type: none"><li>• As important to capturing good facts is capturing bad facts.<ul style="list-style-type: none"><li>○ We often use sub-bullets to capture thoughts and strategies for how to respond to bad facts and take the sting out of them.</li></ul></li></ul>	<ul style="list-style-type: none"><li>•</li></ul>
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**Second Element: Defendant breached the duty of care owed to Plaintiff.**

To prevail on a negligence claim, the plaintiff must show that the defendant breached the duty of care owed to the plaintiff. *Cite*.

## FACT TIMELINE

[Paragraph summary for each plaintiff.]

[Paragraph summary for each defendant.]

[Paragraph summary for each third party.]

**01/01/2021:** For each fact entry, you should provide a citation for where that fact came from, like this. Am. Compl. at 5, ¶ 27, ECF No. 10. Including the citations also makes writing the background sections of briefs more efficient, because you don't have to go hunting around for a citation.

It's often very handy to link each citation so that you can click on the link and it pulls up the underlying document.

**01/02/2021:** One virtue of creating a fact timeline is that the process often illuminates significant timing issues that you may not have otherwise spotted. Here, for instance, it might be significant that this event took place only one day after the prior event.

**06/30/2021:** Another virtue of creating a fact timeline is that the process often illuminates gaps in the narrative. Here, for example, there's about a six-month gap between this event and the prior event. You may need to figure out what happened in that intervening time. Annotating the fact timeline with comment bubbles is a great way to capture what additional facts and discovery you may need.

**07/02/2021:** One shortcut for putting together your separate key-facts timeline is to highlight key facts in the master timeline. Creating the key-facts timeline then just becomes an exercise in deleting the unhighlighted entries.

## OUTLINE OF NEGLIGENCE CLAIM

**To prevail on a negligence claim, the plaintiff must establish four elements: (1) the defendant owed the plaintiff a duty of care; (2) the defendant breached that duty; (3) the plaintiff suffered damages; and (4) the defendant's breach of the duty of care caused the plaintiff's damages.**

### ELEMENT NO. 1: DUTY OF CARE

**To prevail on a negligence claim, the plaintiff must show that the defendant owed a duty of care to the plaintiff.**

*Example Case:* The court rejected the plaintiff's negligence claim because he had failed to establish that the defendant owed a duty of care to the plaintiff.

- Use bullets and sub-bullets to flesh out the sub-rules and exceptions that surround the duty-of-care element.

*Example Cases:* Under your bullets and sub-bullets, write up a short synopsis of cases in which the rule or sub-rule controlled the outcome of the case.

- You would want a bullet, for example, providing the test for how courts determine when a defendant owes the plaintiff a duty of care.

### ELEMENT NO. 2: BREACH

**To prevail on a negligence claim, the plaintiff must show that the defendant breached the duty of care that it owed to the plaintiff.**

- Bullets and sub-bullets fleshing out this element.

*Example Cases:* For your example cases, obviously the closer the cases are to your facts, the better.

When you find a key case, highlight it in your outline, and create a separate case brief for that case.