Employment Alert
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Supreme Court Adopts Broad Standard of Liability in "Cat's Paw" Case

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On March 1, 2011, the United States Supreme Court decided *Staub v. Proctor Hospital*, and approved the so-called "cat's paw" theory of employer liability. In the employment law context, the "cat's paw" theory of liability refers to situations in which a decision-maker is influenced by the bias of another, usually a lower-level supervisor, when taking an adverse employment action against an employee. In a victory for employees, the *Staub* Court unanimously held that employers may be liable for employment discrimination based on the discriminatory motive of a supervisor who influenced, but did not make, the ultimate employment decision.

Facts of *Staub*

Staub worked as a technician for Proctor Hospital and was also a member of the U.S. Army Reserves. Staub was terminated in 2004 and claimed that his termination was motivated, in part, by his supervisors' hostility to his obligations as a military reservist. Staub alleged that his supervisors assigned him additional shifts without notice to "pay back the department for everyone else having to bend over backwards to cover his schedules for the reserves." Staub also alleged that his immediate supervisor referred to Staub's military obligations as "a bunch of smoking and joking and a waste of taxpayers' money." Staub's supervisor disciplined Staub for repeatedly violating a company rule requiring him to stay in a designated work area when he was not seeing patients. Staub denied violating any rule and claimed that no such rule existed. Despite Staub's denials, Proctor Hospital's Vice President of Human Resources relied on the supervisors' accusations, as well as her own review of Staub's personnel file, to support her decision to terminate Staub's employment.

Staub sued Proctor Hospital under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), claiming that his supervisors' military animus influenced the Vice President of Human Resources' decision to terminate Staub's employment. A jury found Proctor Hospital liable and awarded damages, but the Seventh Circuit reversed and found that Proctor Hospital was entitled to judgment as a matter of law because the ultimate decision-maker, the Vice President of Human Resources, did not act with discriminatory intent and relied on more than the biased supervisors' statements in reaching her decision to terminate Staub's employment.

Supreme Court's Holding

The Supreme Court reversed, holding that "if a supervisor performs an act motivated by antimilitary animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA." The Court reasoned that proximate cause requires only "some direct relationship between the injury asserted and the injurious conduct alleged." The Court concluded that a lower-level supervisor's biased report may constitute a causal factor if the ultimate decision-maker relies upon the biased report without determining whether the discipline or termination was otherwise justified. The employee is required only to show that a biased supervisor's discriminatory intent was a proximate cause of, or had some direct relation to, the termination. The Court also rejected

the argument that the Vice President of Human Resources' independent investigation and review of Staub's personnel file insulated Proctor Hospital from liability as a matter of law. Instead, the Court found that if the employer's investigation results in adverse employment action "for reasons unrelated to the supervisor's original biased action," then the employer will not be liable.

Lessons for Employers

The *Staub* decision has far-reaching implications that may extend beyond USERRA claims. The opinion is written broadly and specifically compares USERRA's statutory framework to that of Title VII, suggesting that the Court's reasoning is applicable to Title VII and other anti-discrimination laws. The "cat's paw" theory of liability will be attractive to plaintiffs and their attorneys, who will likely spend far more time exploring the motivations of lower-level supervisors in employment discrimination claims. A court may deny summary judgment if an employee can raise a question of fact regarding whether a supervisor evaluated or disciplined the employee unfairly based on a legally protected classification, even if the supervisor played no role in the termination decision. A manager considering discipline or termination must investigate and confirm that a supervisor has not tainted the discipline process with discriminatory motives. A good antidote to "cat's paw" liability is adequate and regular supervisor training.

If you have any questions regarding this or any other workers' compensation or labor and employment law issue, please contact any member of the Labor and Employment Section at 419-241-6000 or visit our website at www.eastmansmith.com.

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Carrie L. Sponseller, member, joined Eastman & Smith Ltd. in 2001 and practices in the Firm's Labor and Employment Group. Ms. Sponseller's practice covers the range of employment issues, including counseling on employment polices and handbooks, training, representing employers in administrative proceedings, defending against discrimination claims and providing guidance on the ADA, FMLA, drug testing, privacy, harassment, workers' compensation and a host of other employment law issues. In 2009, Ms. Sponseller was certified by the Ohio State Bar Association as a Labor and Employment Law Specialist. Ms. Sponseller is licensed to practice in Ohio and is a member of the Ohio State, American and Toledo Bar Associations.

Ms. Sponseller received her bachelor of arts degree from Bowling Green State University, cum laude, in 1998. She graduated cum laude from the University of Toledo College of Law in 2001 where she served as a member and Note & Comment Editor of The University of Toledo Law Review.

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