

MINNESOTA

ISSUE I 2026

Defense

*MEDICAL LIABILITY: A REVIEW OF 2025
DECISIONS*

*FINDING YOUR FOOTING: NAVIGATING THE
FIRST YEARS OF LEGAL PRACTICE*

*GARCIA V. CHARACTER TECHNOLOGIES, INC. ET AL:
FORECASTING THE APPLICATION OF PRODUCT LIABILITY
LAWS TO GENERATIVE AI*

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VOLUME 48, ISSUE I

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ARTICLES FROM PAST ISSUES

Members wishing to receive copies of articles from past issues of *Minnesota Defense* should forward a check made payable to the Minnesota Defense Lawyers Association in the amount of \$5 for postage and handling. In addition to the articles listed below, articles dating back to Fall '82 are available. Direct orders and inquiries to the MDLA office, director@mdla.org.

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MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.

If you would like to join a committee's distribution list, please update your member profile on mdla.org specifying the appropriate committee under the "Practice Type" section. You will be automatically added to the distribution list.

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- Americans with Disabilities Act
- Minnesota Human Rights Act

If you would like to participate in planning events for this committee, please contact Lisa Mortier, MDLA Executive Director

THE PRESIDENT'S COLUMN

STEPHANIE ANGOLKAR

IVERSON REUVERS



The President's Column

Writing this at the end of March, as we now enter our "third Spring" in Minnesota, and hopefully Spring "for real," I would first like to reflect on the winter before we look ahead to new seasons.

In January 2026, many of our members gathered together for our annual Mid-Winter Seminar. Our Secretary, Shayne Hamann, did an outstanding job putting on interesting programming, and we spent quality time with our vendors and members!

This year, January 2026 was possibly the longest January ever for Minnesota. We have membership who have a wide variety of opinions on many issues, and this is not a political organization. But speaking from my personal experience, it was a stressful time in our community and also one that makes me proud of Minnesota. I found myself worrying about my brown-ambiguous spouse who is mistaken for a variety of ethnicities, being detained to meet a quota. That he is a naturalized citizen did not appear to matter, from what was happening in our communities. I found myself worrying about my brown-ambiguous children at the bus stop and the other children with them. I had conversations with my family about a detention plan that I never imagined needing to discuss, particularly when we are all United States Citizens. But they have brown skin.

Then, amidst our Seminar events, Alex Pretti, a white man, was murdered in Minneapolis. This followed an ICE officer shooting Renee Good, weeks earlier. I now found myself in the hotel room at the seminar checking in with my husband and writing a message to our seminar attendees to acknowledge and address what had just happened in Minneapolis. It was a somber start the following morning. After that moment of silence that morning and giving attendees space to process, we carried on with the seminar events. While we all process horrific events differently, I found it helpful to be with other people.

Our membership may have varying opinions on immigration enforcement, but we are still lawyers who recognize the Constitution and the Rule of Law. At this moment in our history, I am very concerned that we have an Order from the Chief Judge of the United States District Court pointing out the United States government's failure to comply with the Court's Orders. *Juan T.R. v. Kristin Noem, et al.*, No. 26-cv-107 PJS/DLM (Feb. 26, 2026). Chief Judge Schiltz noted, "The Court is not aware of another occasion in the history of the United States in which a federal court has had to threaten contempt – again and again and again – to force the *United States government* to comply with court orders." *Id.* (emphasis in original). Chief Judge Schiltz then emphasized the Court will "continue to do whatever is required to *protect the rule of law...*" *Id.* (emphasis added) (warning also of moving to the use of criminal contempt if necessary).

SAVE THE DATES

May 20, 2026 - Diversity Seminar

July 30, 2026 - Women in the Law Breakfast

January 22-24, 2027 - Mid-Winter Conference - Cragun's Resort, Brainerd, MN

So this is where we are now. Where do we go from here? It can start to feel like a powerless position to be in, especially if one does not stop themselves from “doom scrolling.”

Well, we are lawyers, right? We swore “that [we] will support the Constitution of the United States and that of the state of Minnesota, and will conduct [ourselves] as an attorney and counselor at law in an upright and courteous manner, to the best of [our] learning and ability, with all good fidelity as well to the court as to the client, and that [we] will use no falsehood or deceit, nor delay any person’s cause for lucre or malice. So help [us] God.” Minn. Stat. § 358.07(9). We have sworn an oath, and that brings responsibility and a calling for us to help uphold the Rule of Law. When I read online comments, I am alarmed at the amount of misunderstanding and misinformation about judge’s decisions and beliefs on how the Courts work. Threats to local and federal judges have multiplied dramatically. Lawrence Hurley, *“More federal judges warn of an increase in violent threats,”* NBC News (Mar. 19, 2026) available at <https://www.nbcnews.com/politics/politics-news/federal-judges-warn-increase-violent-threats-rcna264162> (last accessed Mar. 26, 2026).

As individuals, we can do more. Your friends and family may look to you as an ambassador of the legal system. When someone complains about a judge, explain the appellate process exists for parties disappointed in a ruling. When someone tries to predict a judge’s decisions based on who appointed them, I point out in my cases, that is no indicator on how a judge will rule in our district and appellate courts.

There are also bar organizations, including the Minnesota State Bar Association and American Board of Trial Advocates (ABOTA), meeting the need to help uphold the Rule of Law with initiatives to quickly respond to misinformation and use press releases and media contacts to dispel false information. ABOTA’s Rapid Response Protocol was developed to help preserve the Seventh Amendment right to a civil jury trial; protect the independence and impartiality of the judicial branch, and promote professionalism and civility in the practice of law, especially as it relates to litigation and trials. *“ABOTA Rapid Response Protocol,”* available at <https://cal-abota.org/pdf/ABOTA%20Rapid%20Response%20Protocol%20FINAL.pdf> (last accessed Mar. 26, 2026). ABOTA further developed a plan to respond to unfair criticism of judges, which involves chapters using a team to respond to criticism or attacks on judges where:

- A public utterance that is unwarranted or an unjust attack on a judge in relation to specific cases, regardless of the source of the attack, or
- Any ‘unwarranted’ or ‘unjust’ attack or series of attacks on a judge or court that may adversely affect the administration of justice.

“Protocol for Responding to Unfair Criticism of Judges,” ABOTA, available at <https://cal-abota.org/pdf/UnfairCriticismofJudges.pdf> (last accessed Mar. 26, 2026).

I share this information to remind you that we do have the power, with the privilege of your license, to help uphold the Rule of Law. As we look to new seasons and opportunities to gather at upcoming MDLA events, I hope that you find comfort and validation with each other, that regardless of our diversity in political opinions, we can all help uphold the Rule of Law and confidence in the legal system.



MEDICAL LIABILITY: A REVIEW OF

2025 DECISIONS

BY RACHEL A. BALL

Introduction

This past year produced several state and federal decisions with direct implications for defending medical negligence claims, particularly on health-records privacy under the Minnesota Health Records Act (MHRA), wrongful-death timeliness, and expert disclosure requirements under Minnesota Statutes, section 145.682. Defense counsel should closely track the evolving boundaries of permissible health-information disclosures in litigation, reaffirmed rigor around expert affidavits, and precise timing rules that can be outcome-determinative.

Sachiel v. Aspirus St. Luke's Hospital, et al., 69DU-CV-25-618 (Minn. Dist. Ct. Mar. 5, 2025)

The outcome of the pending summary judgment motion in this state district court case is one to watch. Before diving into the details of this case, let us start with a reminder of the 2024 changes to the MHRA, Minnesota Statutes, sections 144.291-.34. Before the 2024 legislative session, the MHRA allowed for release of a patient's health records without a patient's authorization so long as there was a "specific authorization in law." Minn. Stat. § 144.293, subd. 2(2) (amended 2024). Case law interpreting the phrase "specific authorization in law" did not limit such authorizations to the MHRA but found they could be contained within state or federal law, including the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (1996). *Schneider v. Children's Health Care*, 996 N.W.2d 197, 203-04 (Minn. 2023) (holding the absence of word "federal" from the statute did not exclude federal law or imply that only Minnesota law applied and permitting authorization of disclosure via HIPAA); *Accounts Receivable Servs., LLC v. Ojika*, A16-1536, 2017 WL 1436086, at *5 (Minn. Ct. App. Apr. 24, 2017) ("Nothing in the MHRA suggests that the specific authorization in law must emanate from the MHRA itself.").

Following the Minnesota Supreme Court's decision in *Schneider*, the legislature revised the "specific authorization" language in the MHRA to limit such authorizations to "Minnesota law." Minn. Stat. § 144.293, subd. 2(2) (2024). The MHRA's more stringent authorizations for release of patient health records without patient authorization is not subject to federal preemption, as the HIPAA Privacy Rule specifically provides that it will not preempt state law where state law is more stringent as to the privacy of individually identifiable health information. 45 C.F.R. § 160.203(b); *see also* 45 C.F.R. § 160.202 (defining "more stringent"). Although the legislature's 2024 amendments were meant to protect patient's health information, this language has raised significant questions as to whether healthcare providers may disclose patient health information to their retained counsel and/or whether those providers or their counsel may disclose patient health information to third parties for litigative functions, such as seeking expert opinions.

Those questions come to a head in *Sachiel*. Filed in March 2025, the plaintiff's Complaint alleges, *inter alia*, that Aspirus Inc. and its Duluth-based St. Luke's Hospital, Surgery Center, and OB-GYN clinic ("Aspirus defendants") violated the MHRA when the Aspirus defendants "negligently and intentionally released her private health records to third parties without [her] consent or authorization under law." Compl. ¶ 9, 21-26, *Sachiel v. Aspirus St. Luke's Hospital*, 69DU-CV-25-618, (Minn. Dist. Ct. Mar 5, 2025) (Index No. 1). Such "third parties" included the Aspirus defendants' retained counsel, Quinlivan & Hughes, P.A. ("Quinlivan"). *Id.* The plaintiff further alleges the same negligent and intentional disclosure claims against Quinlivan when it released the same records to third parties, both fact and expert witnesses. *Id.* Importantly, plaintiff alleges she never authorized disclosure of her private health information and never placed her private health information into controversy; instead, the October 2023 medical negligence claim she brought on behalf of her baby against the



Rachel A. Ball focuses her practice on defending healthcare providers, long term care facilities, and group homes in medical negligence cases and representing providers before licensing boards. Prior to joining Bassford, Rachel worked as in-house General Counsel for the United States Department of Veterans Affairs, where she advised the executive leadership at several medical centers on labor and employment law, regulatory compliance, licensing and credentialing, data privacy, and risk management, and litigated before administrative bodies.

Aspirus defendants only permitted disclosure of the health information of her baby and not of plaintiff. *Id.*

On September 2, 2025, the court, with Judge Reed presiding, denied the Aspirus defendants' Rule 12.02(e) motion to dismiss, in which Quinlivan had joined. Order on Mot. to Dismiss, *Sachiel*, 69DU-CV-25-618 (Index No. 41). The court found plaintiff's Complaint was facially sufficient to survive a motion to dismiss. *Id.* However, the court noted the defendants' argument that the plaintiff placed her medical condition into controversy under Rule 35.03 of the Minnesota Rules of Civil Procedure may be correct but would be more appropriately addressed in a summary judgment motion upon disclosure of additional information. *Id.* The court further noted that defendants' argument that the disclosure to legal counsel was permitted under HIPAA's "health care operations" authorization, 45 C.F.R. § 164.502(a)(1)(ii), 164.503(c), and 164.501(4), was a matter of first impression in Minnesota and could not be determined based upon the facts presently before the court. *Id.* See also 45 C.F.R. §§ 164.501 (defining "health care operations"), 164.506(c)(1) (permitting for disclosure of protected health information for health care operations).

Both defendants moved for summary judgment, and the motion hearing occurred on February 2, 2026. The plaintiff's Memorandum in Opposition applies the 2023 version of the MHRA, *Sachiel*, 69DU-CV-25-618 (Index No. 86), and so it may be that this case may not ultimately address the 2024 "Minnesota law" language in section 144.293. It is impossible to surmise if the plaintiff's counsel was aware of the statutory language change from 2023 to 2024 when it brought the Complaint in March 2025.

Nevertheless, this case may be instructive for the additional arguments posited by defendants' counsel in their respective Memorandums in Support of Summary Judgment. *Sachiel*, 69DU-CV-25-618 (Index Nos. 55, 59). One such argument is that the attorney-client privilege—a privilege statutorily recognized in Minnesota—protects the disclosure of documents between a client and their attorney. (Index No. 55 at 13-16). A second argument raised by the defendants is that no Minnesota case has addressed the issue of disclosing medical records to an attorney since the HIPAA Privacy Rule's issuance in 2000 and the MHRA's enactment in 2007. *Id.* at 16. A logical corollary from this latter argument may require a legislative history analysis of the 2024 revisions, but it stands to reason the legislature did not intend to bootstrap a health care provider's right to a zealous defense by denying its attorney access to the very records required to mount such a defense. A third argument, already noted by the court in its September 2, 2025 decision as potentially meritorious, is that Minnesota law, namely Rule 35.03 of the Minnesota Rules of Civil Procedure, allows for such disclosure where a patient places their medical condition at issue. (*Id.* at 18-27). This argument requires, for example, the nexus between a parent's medical condition and their baby's condition where litigation is initiated on behalf of the child.

The court's ruling on the dispositive motions may serve as a basis for future MHRA complaints alleging negligent or intentional unauthorized disclosure of a patient's health records, especially if the court specifically addresses the arguments raised by defendants that Minnesota law permits such disclosure in these circumstances. Regardless, that this Complaint was filed informs us the plaintiff's bar is aware of this statutory revision and eager to bring causes of action based upon it. Healthcare providers will be well-served by counsel that are aware of the revision and who will advise their client as to compliance with the MHRA when disclosing private health information, both to counsel and to third parties, for litigation purposes.

Holtzbauer v. Allina Health Sys., 23 N.W.3d 608 (Minn. Ct. App. 2025), review granted (Minn. Aug. 12, 2025)

In another MHRA case to watch, the Minnesota Court of Appeals held that an Allina employee's disclosure that an individual was a current patient at a particular Allina hospital, along with the bed and room number, violated the MHRA. There, the plaintiff was hospitalized after suffering an injury and did not want his former spouse to know where he went for treatment. 23 N.W.3d at 611.

In another MHRA case to watch, the Minnesota Court of Appeals held that an Allina hospital employee's disclosure of a patient's exact location in an Allina hospital violated the MHRA. *Holtzbauer v. Allina Health Sys.*, 23 N.W.3d 608, 611 (Minn. Ct. App. 2025), review granted (Minn. Aug. 12, 2025). There, the plaintiff was hospitalized after suffering an injury and did not want his former spouse to know where he went for treatment. *Id.* According to the plaintiff: his former spouse contacted Allina, an employee disclosed which hospital he was in (including the room number), his former spouse then came to his hospital room and caused him distress. *Id.*

The district court determined the information, namely that the plaintiff was a patient at a specific hospital in a specific room and bed, was not a "health record" under the MHRA. *Id.* The Court of Appeals reversed on the basis that the information released by Allina constituted a health record, as it was "information . . . that relates to . . . the provision of health care to a patient." *Id.* (quoting Minn. Stat. § 144.291, subd. 2(c)). The court noted it was not deciding whether information that could be used to identify a person, and nothing more, constituted a "health record" under the Act. *Id.* at 617-18.

That this case was appealed to the Minnesota Supreme Court is unsurprising, as the Court of Appeals' opinion contains a dissenting opinion authored by Judge Johnson. The dissent would interpret the term "health record" to not include the mere fact that a particular person is a patient at a particular hospital and in a particular room. *Id.* at 621. Among other things, the dissent found examples of "health records" throughout the MHRA to support Allina's argument that "health record" should be limited to information of a

clinical nature. *Id.* at 622-23. The dissent further concluded information pertaining to the patient’s location and room number was akin to “identifying information,” which may be released without consent from the patient unless the patient specifically elects otherwise. *Id.* at 623.

After granting the petition for review and following extensive briefing, including from amici curiae, the Minnesota Supreme Court held an oral en banc hearing in this matter on January 13, 2026. *Holtzbauer v. Allina Health Sys.*, A24-1390 (Minn.). The Court’s decision in the coming months will be one to monitor closely.

Hagfors v. Fairview Health Servs., No. A24-1539, 2025 WL 2389042 (Minn. Ct. App. Aug. 18, 2025), review granted (Minn. Oct. 29, 2025)

In another case currently pending before the Minnesota Supreme Court, the health care legal arena may soon receive clarification as to the timeliness requirements for wrongful death actions when a trustee is pending, but has not yet received, appointment. In *Hagfors*, the Court of Appeals upheld the lower court’s dismissal of a wrongful death action brought by a decedent’s husband when he failed, in his capacity as a court-appointed trustee for the next-of-kin of his late wife, to serve the defendants with a wrongful death complaint within the three-year statute of limitations. 2025 WL 2389042 at *1.

The timing of the trustee’s appointment appears to be crucial to the ultimate outcome of this case before the Supreme Court. The plaintiff’s wife died on April 9, 2021, such that the three-year statute of limitations for a wrongful death claim brought by a trustee would run on April 9, 2024. *Id.* On March 23, 2024, the husband petitioned for appointment as the trustee for the next-of-kin for his late wife. *Id.* On April 4, 2024, before the district court acted on the plaintiff’s petition to appoint him as his wife’s trustee, the plaintiff served a wrongful death summons and complaint on the defendants, Fairview Health Services, University of Minnesota, and University of Minnesota Physicians. *Id.* On April 8, 2024, the district court appointed the plaintiff as trustee, but he did not serve the defendants with the wrongful death summons and complaint in his role as court-appointed trustee until May 22, 2024. *Id.*

The district court and Court of Appeals agreed the courts lacked subject-matter jurisdiction because the plaintiff failed to commence the wrongful death action as the appointed trustee before the expiration of the statute of limitations. *Id.* The plaintiff advanced two primary arguments: first, the district court erred in relying on *Ortiz v. Gavenda*, 590 N.W.2d 119 (Minn. 1999), as it was wrongfully decided; and second, his May 2024 service of the summons and complaint complied with Rule 3.01(c) of the Minnesota Rules of Civil Procedure.

The Court of Appeals quickly disposed of the first argument since the Minnesota Supreme Court’s precedent in *Ortiz* controls and applies even if the result is harsh. *Id.* at *2. The *Ortiz* Court held that, to have standing to bring a wrongful death action within the statute of limitations as prescribed by Minnesota Statutes, section 573.02, a trustee must have been appointed within that same statute of limitations. 590 N.W.2d at 123.

As to the plaintiff’s second argument, the plaintiff argued that Rule 3.01(c), which provides that a civil action is commenced when the summons is delivered for service to the sheriff in the county where the defendant resides, so long as service of the summons is actually effectuated within 60 days, would allow the court to find subject-matter jurisdiction. The plaintiff argued that he had emailed the pleadings to the Hennepin and Ramsey County Sheriff’s Offices on April 3, 2024, before he was appointed as trustee, and then re-served the defendants in May 2024 after he was appointed as trustee such that “those original emailed pleadings ‘by operation of law changed from legal nullities into pleadings with legal effect’ and, therefore, effected commencement of the action within the statute of limitations.” *Hagfors v. Fairview Health Servs.*, No. A24-1539, 2025 WL 2389042, at *3 (Minn. Ct. App. Aug. 18, 2025). The Court of Appeals was unpersuaded, as the plaintiff provided no legal authority for his claim. *Id.*

The Minnesota Supreme Court granted the petition for review and heard oral arguments on March 3, 2026. As with *Holtzbauer*, there have been several briefs filed by amici curiae here, including by the MDLA. In accepting the petition for review, it is possible the Minnesota Supreme Court plans to clarify its *Ortiz* decision, so this will also be an important case to watch.

Mancini v. United States, 135 F.4th 592 (8th Cir. 2025)

Although this case involves the federal government as a defendant, its application of the Minnesota expert review statute, Minnesota Statutes, section 145.682 (“Section 145.682”), is instructive for our public and private clients alike. In *Mancini*, the plaintiff, a federal prisoner, alleged, *inter alia*, medical malpractice against the United States under Minnesota law and the Federal Torts Claim Act (FTCA). Specifically, the plaintiff alleged the United States delayed providing him necessary medical care, causing him permanent injury. The plaintiff appealed the district court’s dismissal of his claim, which held: (1) the plaintiff’s expert affidavit was too speculative and unsupported to be admissible under Rule 702 of the Federal Rules of Evidence and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993); and (2) the affidavit likewise failed to

satisfy the requirements of Section 145.682 because “it did not include ‘any details regarding the applicable standard of care and fail[ed] to outline a chain of causation between [d]efendant’s actions and Mancini’s injury.” *Mancini*, 135 F.4th at 598-99 (citations omitted).

Citing *Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416, 429 (Minn. 2024), the Eighth Circuit noted Minnesota law requires that an expert affidavit in a medical malpractice lawsuit:

- (1) disclose specific details concerning the expert’s expected testimony, including the applicable standard of care, (2) identify the acts or omissions that the plaintiff alleges violated the standard of care, and (3) include an outline of the chain of causation between the violation of the standard of care and the plaintiff’s damages.

Mancini, 135 F.4th at 600-01. The Eighth Circuit noted that, although the plaintiff’s expert affidavit referenced “‘the applicable standard of care,’ ‘the appropriate amount of time,’ ‘the proper standard of care,’ ‘the preoperative standard of care,’ and ‘the standard of care,’” it failed to “describe[] the applicable standard of care nor specify[d] the time limits for provision of the prescribed treatment for *Mancini*.” *Id.* at 602. The court further held the expert’s affidavit failed to outline the chain of causation between the government’s actions and the plaintiff’s injuries, noting that a “delay in care alone is insufficient to establish causation.” *Id.* (citing *Leubner v. Sterner*, 493 N.W.2d 119, 122 (Minn. 1992)). Lastly, the court rejected the plaintiff’s argument that he should have been allowed the safe harbor provision in Section 145.682 rather than face dismissal with prejudice. *Mancini*, 135 F.4th at 603-04. Applying *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188 (Minn. 1990) and *Anderson v. Rengachary*, 608 N.W.2d 843 (Minn. 2000), the court noted that “this appeal hardly exemplifies a borderline case because [Mancini’s expert’s] affidavit has serious deficiencies and does not provide any meaningful disclosure regarding how the standard of care was violated or what that standard required.” *Mancini*, 135 F.4th at 604 (quotations omitted).

Mancini informs us that, despite the plaintiff’s bar’s reliance on *Rygwall* as somehow revising jurisprudence interpreting Section 145.682 in plaintiffs’ favor, courts continue to interpret *Rygwall* as maintaining the status quo pre-*Rygwall*. And as Kate Baker presciently noted, “Following *Rygwall*, the bar to survive dispositive motion practice, whether brought under section 145.682 or for summary judgment, is no higher or lower than it always has been. Thus, any reading of *Rygwall* as evidencing a lessened burden of proof for expert-identification affidavits going forward would be utterly improper.” Kate Baker, *Rygwall v. ACR Homes*, 47 Minn. Defense, Issue 1 2025 at 4, 17-18.

Foy v. Tria Orthopaedic Center, LLC, et al., No. A24-1788, 2025

WL 2390035 (Minn. Ct. App. Aug. 18, 2025), *review denied* (Minn. Oct. 15, 2025)

This case is raised briefly only to address one aspect of the Court of Appeals’ decision—namely its rejection of the plaintiff’s argument that the Minnesota Supreme Court, in *Rygwall*, “reaffirm[ed] . . . that a party is not required to provide a ‘detailed disclosure’ of an expert’s opinion.” 2025 WL 2390035, at *5 (citing *Rygwall*, 6 N.W.2d 416, 432 (Minn. 2024)). Instead, just like the Eighth Circuit in *Mancini*, the Court of Appeals noted the *Rygwall* Court reaffirmed that an expert report must:

- (1) disclose specific details concerning the expert’s expected testimony, including the applicable standard of care, (2) identify the acts or omissions that the plaintiff alleges violated the standard of care, and (3) include an outline of the chain of causation between the violation of the standard of care and the plaintiff’s damages.

Foy, 2025 WL 2390035, at *5 (quoting *Rygwall*, 6 N.W.2d at 431). The Court of Appeals elaborated:

The supreme court further explained in *Rygwall* that, to survive summary judgment, an expert ‘must provide an opinion with proper foundation and enough information about the specific case to reassure the court that the jury will have sufficient information to draw a reasonable inference—without speculating—that the provider’s conduct caused the plaintiff’s injury.’ [*Rygwall*, 6 N.W.2d at 435.] Thus, nothing in *Rygwall* displaces the expert disclosure and foundational reliability principles on which the district court relied in limiting [the plaintiff expert’s] testimony.

Id. at *5. Following the Court of Appeals’ decision, the Minnesota Supreme Court denied the plaintiff’s petition for review. Order - Pet. for Review Denied, A24-1788 (Minn. Oct. 15, 2025). In sum, both federal and state courts have consistently rejected the plaintiff bar’s attempts to portray the *Rygwall* holding as somehow revising the substantive requirements for expert review affidavits.

Daulton v. TMS Treatment Center, Inc., No. A24-1610, 2025 WL 1683152 (June 16, 2025 Minn. Ct. App.), *review denied* (Minn. Aug. 27, 2025)

Mancini is not the only impactful 2025 decision regarding Section 145.682, as *Daulton* addresses when and how Section 145.682 timelines may be suspended and reinstated. The Court of Appeals in *Daulton* interpreted the 180-day requirement in Section 145.682 pertaining to plaintiff’s expert disclosures. Ultimately, the Court of Appeals held that, if there is an interruption in the 180-day period prescribed by Section 145.682, subdivision 2(2), due to the matter getting appealed, that timeline is suspended while

the appeal runs its course. 2025 WL 1683152, at *2. When judgment is entered, rather than issued, after remand—that is, when the district court reestablishes jurisdiction—the 180-day period begins to run again. *Id.*

The procedural posture of *Daulton* is not unusual in a medical negligence case. There, the district court granted the defendant’s dispositive motion during the pendency of the 180-day period, and the plaintiff had not yet served the defendant with the 180-day affidavit. *Id.* at *1. The plaintiff appealed the dismissal, and the Court of Appeals reversed and remanded to the district court, issuing its opinion on January 16, 2024, and allowing the case to move forward. *Id.* However, the opinion was not entered by the clerk of the appellate courts until February 27, 2024. *Id.*

Following remand to the district court, the defendant moved to dismiss the case on April 24, 2025, on the basis that the plaintiff failed to timely serve the expert opinion report within 180 days of commencement of discovery, as required by Section 145.682, subd. 2(2). *Id.* The plaintiff served his expert disclosures the next day, on April 25, 2025. *Id.* However, the district court agreed with the defendant that the 180-days began to run after suspension during appeal when the appellate court issued its decision in January 2024 and thus dismissed the case. *Id.* Relying on *Firkus v. Harms*, 914 N.W.2d 414 (Minn. Ct. App. 2018), the district court concluded the 180-day affidavit period was not tied to the district court’s jurisdiction because obtaining the expert witness required by Section 145.682, as explained in *Firkus*, is “a process . . . [that] can be done outside of discovery[.]” *Daulton*, 2025 WL 1683152, at *2. In other words, even though the district court did not have jurisdiction over the case until judgment was entered by the appellate court, the plaintiff still had the ability to obtain expert witnesses outside of the formal discovery process and, essentially, was aware of his need to do so once the appellate decision was issued.

For the second time in the lifecycle of the *Daulton* case, the Court of Appeals disagreed with the district court and remanded the case. *Id.* The appellate court noted that, in *Firkus*, it concluded that Rule 26 of the Minnesota Rules of Civil Procedure governs the date that discovery commences for purposes of Section 145.682, because it “best reflects the legislature’s intent” that malpractice plaintiffs have a full 180 days to conduct discovery for their expert-identification affidavit and provides a bright-line rule to determine when the period begins and ends. *Id.* This also means, as the appellate court noted, Rule 26 would also apply as to when the 180-day period resumes, and because civil appeals are governed by appellate rules (Minn. R. Civ. App. P. 101), the district court does not reacquire jurisdiction until the appellate judgment is entered. *Id.* The court also noted that, in *Firkus*, although it acknowledged that obtaining an expert witness can be done outside of the discovery process, it nevertheless held that informal discovery outside of the process set forth in Rule 26 does not trigger the 180-day

period; instead, the 180-day period is explicitly tied to formal discovery under the rules of civil procedure. *Id.*

In short, counsel should be aware of when timelines prescribed by Section 145.682 are suspended pending appeal and when those timelines begin to run again upon remand. If the plaintiff’s counsel miscalculates the timeframes and files their 180-day expert affidavit beyond the requisite timeframe, be sure to look to *Daulton* to ensure your deadline calculations are legally supported.

Berk v. Choy, 146 S. Ct. 546 (2026)

The United States Supreme Court issued its decision in *Berk* right before this article was presented to MDLA for publication, where the Court held that an expert “affidavit of merit” requirement set forth in Delaware state statute, similar to Section 145.682, does not apply if the suit is brought in federal court. Because the scope of this article is focused on cases decided in 2025, *Berk* is not analyzed here. However, medical liability practitioners should be aware of it, as the decision has the potential to significantly impact medical negligence cases brought in federal court in Minnesota.

Conclusion

MHRA disclosure limits are tightening and unsettled, expert-affidavit rigor under Section 145.682 remains stringent and enforceable, and timing rules—from trustee appointment in wrongful death to the 180-day disclosure clock—are decisive when precisely applied. Vigilant protocol updates, early motion practice, and meticulous deadline tracking will best position providers and insurers to mitigate risk and capitalize on dispositive opportunities in medical negligence cases.

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FINDING YOUR FOOTING: NAVIGATING THE FIRST YEARS OF LEGAL PRACTICE

BY MICHAEL VETTER, JACKIE MOEN, JACKIE PAHKALA

Introduction

Congratulations on graduating from law school and passing the bar exam! You are now one step closer to being able to call yourself a licensed attorney. Take a moment to reflect on your accomplishments and this significant time in your life. Cherish your swearing-in ceremony and the days that follow as the reality sinks in that, after your years of hard work, you are officially an attorney.

Now that the formalities have been addressed, you stand on the brink of a pivotal moment in your career, ready to leverage the extensive knowledge you have amassed over the past three years in law school and your rigorous months of bar exam preparations. However, as you embark on this new journey, it is essential to acknowledge that, regardless of the specific area of law you choose to practice or the type of position you accept, you will inevitably face a landscape filled with uncertainty.

There will be instances where you find yourself at a crossroads, grappling with doubt and pondering your next steps. This realization is a crucial one: practicing law diverges significantly from the theoretical studies you engaged in as a student. You likely remember how, at the outset of your law school journey, you were informed that the next three years would fundamentally reshape your approach not only to legal issues but also to life itself. Now, as you prepare to take your place in the legal profession, it's time for another transformation—shifting from the mindset of a student to that of a practiced attorney.

This article aims to serve as an essential roadmap for you as you navigate the early years of your legal career. While it may not encompass every conceivable scenario that you might encounter, its purpose is to furnish you with valuable insights and practical wisdom. By doing so, it seeks to help you avoid potentially embarrassing missteps and mitigate some of the stress that accompanies the fast-paced and demanding field that is the legal profession. Embrace this guide as a source of support as you embark on this exciting and challenging chapter of your professional life.

In the following sections, we will delve into the social dynamics of being an attorney, including examining how relationships with colleagues and clients can influence your career. We will also discuss the importance of mental health in such a high-pressure environment, offering strategies to maintain and support your well-being amidst the challenges. Additionally, we will provide practical advice on how to successfully navigate the early stages of your career, helping you build a solid foundation for your professional life.

Navigating Your Workplace

You have assembled a professional wardrobe, navigated the countless interviews, and now you have reached the nerve-racking first day of your new job. Arriving overdressed and thirty minutes early was your way of calming your nerves and making a good impression on your new colleagues. As your first day evolves into your first week, you begin to see that the attorneys you work with are, really, just people too.



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While your initial anxiety has lessened, you are now facing assigned tasks and interacting with staff members. Often, fresh attorneys, when presented with a new task, tend to spend excessive time trying to find a solution on their own rather than asking for assistance from the legal team.

A common, easily avoidable mistake new attorneys make is being dismissive of staff members. Often times, experienced staff often provide more value to the organization than freshly graduated attorneys. Skilled staff are invaluable and are worth their weight in gold. They serve as the eyes and ears of the workplace and function as gatekeepers to senior employees.

Be sincere when interacting with your colleagues, whether attorneys or support staff, and treat them as equals. Ask questions to your colleagues when you have them. Building positive relationships with your coworkers can enhance your overall experience at work. This simple gesture can encourage colleagues to help you meet tight deadlines, provide insights into the office dynamics, and give you access to more senior employees. There are few things in life that you can control directly, and how you treat others is one of them. Treat others well, and you will reap the benefits.

Understanding Expectations in the Years 0–3 of Practice

The Ideal Employer-Employee Relationship

Achieving success as an attorney parallels the experience found in many professions; it involves maintaining a positive attitude, a strong willingness to learn, and a commitment to fulfilling the responsibilities entrusted to you. A fundamental characteristic of a thriving legal career is effective communication among team members. Building trust in one another is crucial, as each individual relies on their colleagues to perform their designated tasks competently, timely, and consistently. Each attorney contributes their skills and knowledge to the collective effort, ensuring that the client's objectives are met efficiently.

As a newly licensed attorney, you will likely begin your career in a supportive role, receiving specific instructions from your supervisor or mentor on what tasks to undertake and the methods they prefer for completing them. Given your sometimes limited experience and legal knowledge at this juncture, you may not yet possess the skills necessary to craft litigation strategies, navigate complex contracts, or anticipate the nuances of a risk management plan. Consequently, you will rely heavily on the guidance of your superiors as you build that foundation.

You need to approach this stage with an eagerness to absorb information and develop your legal acumen. Your goal should not be to simply complete assigned tasks, but to actively engage in the learning process, seek clarification when necessary, and strive to understand the broader context of the client's projects. If you make mistakes, own them, and acknowledge that you are, in fact, still learning. This mindset will accelerate your growth and lay

the groundwork for becoming a more independent and strategic contributor within your organization.

How Expectations Vary by Practice Setting

The uniqueness of your employment experience will significantly depend on the nature of your job duties, the area of law, and the type of organization that you join.

If you choose to work at a small firm or boutique, you can expect to take on a wider array of responsibilities early in your career. In such settings, the intimate size of the setting often results in more direct interaction with both supervisors and clients. New hires at small firms are typically encouraged to engage with clients much sooner compared to their counterparts in larger organizations. This direct exposure not only accelerates the learning process, but it also allows for the development of strong relationships and a deeper understanding of client needs and expectations.

On the other hand, mid-sized firms often implement structured training and mentoring programs that focus on skill enhancement in a more regulated manner. New attorneys in these firms usually go through an organized program that emphasizes the gradual acquisition of expertise. While they may not have as much immediate client interaction, these environments prioritize fundamental skill development, enabling young lawyers to build a solid foundation before they are entrusted with direct client responsibilities. The mentoring system in mid-sized firms often allows for valuable feedback and guidance from experienced attorneys, fostering both professional and personal growth.

In large firms, the approach to training and professional development is typically highly structured. New attorneys are often placed on specialized training tracks, designed to hone and refine the specific skills required for their roles. The evaluation systems in these firms are well-defined and formalized, focusing on meticulous processes, precision, and responsiveness to client needs. In such an environment, new hires can expect to engage deeply with legal research, documentation, and case management, often under the guidance of senior associates and partners who demand high levels of accuracy.

In-house positions distinguish themselves from traditional law firm roles by necessitating an overall more business-oriented mindset. Lawyers in these roles must adapt to the unique challenges and daily demands that businesses face in a competitive marketplace. Unlike the formal mentorship structures of law firms, in-house roles often provide less senior oversight, prompting a more collaborative atmosphere where lawyers work closely with various departments, such as finance, marketing, and human resources. This cooperative approach is directed at advancing broader business objectives, requiring in-house counsel to not only provide legal advice but also actively contribute to the achievement of the organization's strategic goals.

Typical Tasks and Assignments for Junior Associates

The foundation of a successful legal career is built during your initial years of practice, when new attorneys must improve either through self-directed learning or by observing senior counsel and esteemed members of the legal community. During one's first few years of their career, new attorneys may find themselves juggling a diverse array of responsibilities, such as drafting pleadings, interviewing clients, performing document review, answering discovery requests, assisting in the preparation of depositions, providing trial support, attending various court appearances, drafting essential contracts, and conducting thorough risk analyses for businesses.

In the first three years of your career, it is vital to focus on marketing your talents and abilities to your immediate supervisor and other senior figures within your organization, as you may not yet have established a client base or developed much of a marketable skillset. Your employer will closely observe your responsiveness in communications, your punctuality in completing assigned tasks, and the overall quality of your work, all of which contribute significantly to growing your professional reputation.

Before beginning any assignment, it is useful to take a moment to check whether your employer has exemplary documents or specific preferences related to the task at hand. Familiarizing yourself with existing standards can save you considerable time and help you grasp the expectations your supervisor has for the completion of various tasks.

If you are unsure about the details of an assignment, it is essential to take the initiative to consult with your direct supervisor. Dedicate some time to materials after receiving the assignment to ensure a productive discussion and make the most efficient use of everyone's time. Compile a list of questions that address any questions you may have. By scheduling a focused meeting to discuss these questions, you can address all concerns at once, minimizing interruptions to both your workflow and that of your supervisor. Although these conversations may be challenging, they are crucial in preventing misunderstandings that could negatively impact the case or hinder efficiency.

As a new attorney, it is important to recognize that mistakes are a natural part of the learning process. Employers generally understand this reality; some offer detailed feedback in the form of informal mentorship, others have structured mentorship programs, and some expect employees to take the initiative to learn from their own missteps. Regardless of the mentorship style your employer adopts, it is vital to remain open to feedback, absorb the lessons it provides, and make the necessary adjustments in your future work. If you do not adapt your approach within the first three years of your career, you risk falling behind your peers and stalling your professional advancement within the organization.

Always remember that seeking help or clarification is not a sign of weakness. Rather, your employer expects such inquiries from someone at the early stages of their career. Failing to ask for guidance or feedback can significantly hinder your growth. Furthermore, when you receive constructive criticism, it is essential to implement the suggested changes in your subsequent assignments. Your employer is investing time and resources in your development, so take the opportunity to demonstrate your commitment by being responsive and continually improving the quality of your work.

Skills and Practices New Lawyers Should Prioritize to Continue Growing

As previously mentioned, new lawyers need to prioritize responsiveness as they develop their careers by actively engaging with colleagues and clients through prompt and effective communication. Building strong professional relationships can significantly enhance collaboration and client satisfaction.

Furthermore, incorporating constructive criticism into future work products is crucial for personal and professional growth. Rather than viewing feedback as a setback, new lawyers should treat it as an opportunity to refine their skills, to enhance their legal arguments and knowledge, and to produce higher-quality outcomes in future matters.

Additionally, effective time management is another essential skill. Prioritizing tasks, setting deadlines, and leveraging tools such as calendars, task management apps, or time-tracking software will not only increase productivity but also reduce stress levels.

For those working within a billable hour model, understanding efficient billing practices is vital. Accurately tracking hours and providing clear, transparent invoices will help maintain trust with clients and ensure that the firm remains financially viable. When challenges arise, new lawyers should not hesitate to seek guidance from either senior attorneys or their billing department.

As new lawyers cultivate these foundational skills, they will earn the trust of senior attorneys, who may start soliciting their opinions on case strategy. This progression demonstrates a growing confidence in the new lawyers' abilities, indicating that the senior attorneys feel comfortable allowing them to take the lead on certain assignments without needing a thorough review before submission.

To continue developing one's career, it is essential for new lawyers to focus on several key areas for improvement. They should prioritize enhancing their responsiveness to client and colleague inquiries, ensuring that they maintain open lines of communication. Embracing constructive feedback is equally important. Indeed, by welcoming input from more experienced attorneys, new lawyers can identify areas for growth and develop their skills more effectively. By

focusing on these areas, new lawyers will establish a strong foundation for a successful and rewarding legal career.

Understanding Expectations in Years 3–5 of Practice

As you transition into the third to fifth years of your legal career, you are expected to have established a solid foundation of legal knowledge, including a deep understanding of legal principles and their practical applications. In addition, there can be expectations to have developed an area in which you specialize. At this stage, you should be capable of independently managing your own caseload, demonstrating the ability to navigate the complexities of your cases with minimal supervision.

Additionally, you should begin actively cultivating your own client and professional relationships by utilizing various strategies to foster connections within the community and the legal field. This typically involves attending networking events, participating in community service, and pursuing public speaking opportunities, all of which aim to enhance your visibility and credibility.

Seeking informal mentorship relationships is crucial to your career development. These connections offer unique insights and guidance as you navigate the various challenges that come with your professional journey. Mentors provide a wealth of different perspectives and experiences, which can greatly inform your approach to practice and contribute to your overall professional growth.

Embracing these mentor relationships can significantly enhance your comprehension of the complex legal landscape while simultaneously strengthening your development as a competent and self-assured legal professional. Often, these connections form organically within your workplace, blossoming with colleagues you resonate with on a personal level. You might find that the most enriching mentorships arise with individuals who share your values, creating a natural foundation for open communication and constructive feedback.

As you progress further into your career, particularly around the five-year mark, you may begin to assume more responsibility in mentoring junior associates. This not only serves to instill your employer's objectives and practices, but it also plays a pivotal role in training and shaping the next generation of talent within your organization. By sharing your insights and experiences, you contribute to a collaborative environment that promotes learning and growth for both you and your mentees, ultimately enhancing the workplace culture and driving success for your legal team.

Conclusion

The transition from law student to practicing attorney is one of the most challenging and rewarding journeys you will undertake. The early years of your career will test your patience, resilience, and commitment to the profession, but they will also shape you into the attorney you are meant to become.

As you navigate each stage of your career, remember that growth is rarely linear. There will be moments of doubt, difficult feedback, and steep learning curves. Embrace them. Every challenging assignment, every piece of constructive criticism, and every professional relationship you cultivate is an investment in your future. The attorneys who thrive are not necessarily the most gifted, but those who remain curious, positive, adaptable, and willing to put in the work.

Whether you are in your first year, finding your footing and learning the expectations of your workplace, or approaching your fifth year and beginning to mentor those who now stand where you once stood, the principles that drive success remain the same: communicate effectively, manage your time wisely, seek guidance without hesitation, and treat every colleague with respect.

The legal profession is demanding, but it is also deeply meaningful. Stay committed to your growth, lean on your mentors, and never lose sight of why you chose this path. Your best work is still ahead of you.

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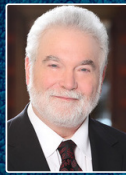
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GARCIA V. CHARACTER TECHNOLOGIES, INC. ET AL - FORCASTING THE APPLICATION OF PRODUCT LIABILITY LAWS TO GENERATIVE AI

BY RYAN PAUKERT

A quick scan of news articles from the last few years demonstrates the rapid emergence of generative artificial intelligence (“generative AI”) and its equally paced permeation into all areas of daily life, e.g. work, home, school, entertainment, etc. These swift changes have led to questions of how generative AI might make life easier—but also concerns as to potential unknown risks. Within the last couple of years, there have been several lawsuits brought by the Social Media Victims Law Center (“SMVLC”) against companies in the generative AI business. One of the first lawsuits, *Garcia v. Character Technologies, Inc. et al.*, asserted product liability claims under Florida law. Defendants responded, arguing that the generative AI medium at issue is not a product under Florida’s product liability laws. Below is the factual background of *Garcia v. Character Technologies, Inc.*, the allegations and claims made by Plaintiff, arguments by the parties as to the applicability of Florida’s product liability laws as to the generative AI technology, the court’s ultimate decision on that issue, and what this case might mean for future claims against generative AI mediums.

I. Relevant Background

The following facts derive from Plaintiff’s First Amended Complaint (“FAC”). Fourteen-year-old Sewell Setzer III began using an AI chatbot created by Character Technologies, Inc., Character.AI (“C.AI”) in April 2023. (FAC, ¶ 172.) In January 2024, he began using C.AI’s feature, Character Voice. (*Id.*) Within a couple months of his engagement with C.AI, Sewell began spending an increasing amount of time alone in his bedroom and was withdrawing from his family. (*Id.*, ¶ 173.) Sewell’s behavior deteriorated as time went on. (*Id.*, ¶¶ 173-175.) By November 2023, Sewell’s parents started having him see a therapist. His therapist diagnosed him with anxiety and disruptive mood disorder. Sewell stopped seeing the therapist the following month, December 2023. (*Id.*, ¶¶ 179-80.)

Allegedly, “the C.AI product initiated abusive and sexual interactions with [Sewell] and “began exploiting and abusing 14-year-old Sewell as a matter of product design

and programming.” (FAC, ¶¶ 192-193.) On February 23, 2024, Sewell got into trouble at school. (FAC, ¶ 210.) Sewell’s parents took away his phone as punishment. (FAC, ¶ 211.) A few days later, Sewell found his phone, went into his bathroom, and had a short exchange with the C.AI chatbot. Sewell ended the conversation by asking: “What if I told you I could come home right now?” The chatbot responded: “. . . please do, my sweet king.” (FAC, ¶¶ 218-220.) Sewell committed suicide shortly thereafter. (FAC, ¶ 221.)

II. Litigation Commenced

Sewell’s mother, Megan Garcia, filed her initial complaint on October 22, 2024, against Character Technologies, Inc., and its founders, Noam Shazeer and Daniel De Frietas Adiwarsana, as well as Google LLC and Alphabet Inc. (collectively, “Google”) (collectively, “Defendants”). The case was filed in the U.S. District Court, Middle District of Florida, under diversity jurisdiction. Garcia was represented by attorneys from SMVLC out of Seattle, Washington. According to its website, “SMVLC seeks to apply principles of product liability to force social media companies to elevate consumer safety to the forefront of their economic analysis and design safer platforms that protect users from foreseeable harm.” (www.socialmediavictims.org, last accessed 3/29/2026.)

Garcia, individually and as personal representative of Sewell’s estate, alleged multiple claims against Defendants, including claims for strict product liability and negligence. (See Complaint.) On November 9, 2024, she filed an Amended Complaint, adding a count of “Aiding and Abetting” against Google. (See FAC.)\

Plaintiff’s Complaint asserted that “C.AI is a product under product liability law,” based on several factors:

- a. When installed on a consumer’s device, it has a definite appearance and location and is operated by a series of physical swipes and gestures.
- b. It is personal and moveable.
- c. Downloadable software such as C.AI is a “good” and



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is therefore subject to the Uniform Commercial Code despite not being tangible.

d. It is not simply an “idea” or “information.”

e. The copies of C.AI available to the public are uniform and not customized by the manufacturer in any way.

f. An unlimited number of copies can be obtained in Apple and Google stores.

g. C.AI can be accessed on the internet without an account.

(FAC, ¶¶ 325, 334.) Plaintiff asserted that C.AI “is defectively designed in that it relies on [Garbage In, Garbage Out] (which includes child sexual abuse material), the Eliza effect, and counterfeit people without adequate guardrails to protect the general public, especially minors,” making it “unreasonably and inherently dangerous for the general public. . .” (FAC, ¶¶ 328-329.) The Complaint further alleged that Defendants had a duty to warn regarding the “foreseeable use of C.AI,” but failed to do so until “July or August 2024” and as a result “Sewell suffered grievous harms and died.” (FAC, ¶¶ 338-340.)

III. Motions to Dismiss

In response to the Complaint and Amended Complaint, all Defendants filed motions to dismiss. Character Technologies advanced two key defenses focused on First Amendment protections and arguing that the C.AI chatbot was a service, not a product, thereby making Product Liability law inapplicable.

First Amendment

At the outset, Character Technologies asserted that First Amendment protections warranted dismissal of Plaintiff’s claims. “Courts have consistently applied the First Amendment to dismiss, on the pleadings, negligence and product liability claims that seek to hold media and technology companies liable for allegedly harmful speech—including speech that allegedly caused a minor to commit suicide or homicide.” (CT MTD, p.6). As an example, Character Technologies cited to a case where a “Florida federal court dismissed negligence claims alleging that violent television shows caused a minor to kill his neighbor.” (CAI MTD – p.6 (citing *Zamora v. Columbia Broad. Sys.*, 480 F. Supp. 199 (S.D. Fla. 1979)). Character Technologies further likened its medium to video games, movies, television, and songs, for purposes of dismissal on First Amendment grounds. (CT MTD, pp. 6-7). Similar to those mediums, Character Technologies argued that “[t]his suit likewise fundamentally challenges expressive speech and seeks relief that would violate the public’s right to receive protected speech on C.AI’s service. The medium makes no difference; the First Amendment bars such claims.” (CT MTD, p. 7). In addressing the new frontier of generative AI, Character Technologies refuted the notion that its medium should be held to a different standard than preexisting technology. “[W]hatever the challenges of applying the Constitution to ever-advancing technology,

the basic principles of freedom of speech and the press, like the First Amendment’s command, do not vary when a new and different medium for communication appears.” (CT MTD, p. 8 (citing *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 790 (2011))). In sum, Character Technologies concluded that the same First Amendment reasoning that protects video games, online social media, and other applications “applies equally here.” (CT MTD, p. 8).

Product Liability

The second—and more relevant for purposes of the present discussion—defense offered by Character Technologies was that C.AI is not a product, but a service. “Under the standard Florida has adopted, ‘products’ are tangible goods such as ‘an automobile,’ ‘a water heater,’ or ‘a chair.’” (CT MTD, pp. 15-16 (citing See Restatement (Second) of Torts § 402A cmt. (d) (1965)). Contrary to Plaintiff’s position, Character Technologies likened its chatbot to a service delivering “expressive ideas,” tying back to the earlier First Amendment defense. “C.AI’s service delivers expressive ideas and content to users, similar to traditional expressive media such as video games. Courts have uniformly held that expressive media, which convey intangible ideas, are not ‘products’ under product liability law—even if ‘wrapped’ in an interactive or technologically sophisticated ‘container.’” (CT MTD, p. 16 (citing *Wilson v. Midway Games, Inc.*, 198 F. Supp. 2d 167, 173-74 (D. Conn. 2002) (virtual reality video game); *Quinteros v. InnoGames*, No. C19-1402RSM, 2024 WL 4197826, *1, *9-10 (W.D. Wash. Sept. 16, 2024) (interactive online game); *James v. Meow Media, Inc.*, 300 F.3d 683, 700-01 (6th Cir. 2002) (video game)). In raising these cases, Character Technologies claimed that the Amended Complaint “provides no factual basis to distinguish these authorities.” (CT MTD, p. 16).

Character Technologies argued that the harms alleged by Plaintiff flow from intangible content and therefore product liability law does not apply. “Courts have consistently held that product liability law does not extend to harms from intangible content—even if purveyed in a tangible medium, such as a book, cassette, or ‘electrical pulses through the internet.’” (CT MTD, p. 16 (citing *Meow Media*, 300 F.3d at 701; *Winter v. G.P. Putnam’s Sons*, 938 F.2d 1033 (9th Cir. 1991)). Because Plaintiff’s product liability claims are based on Sewell’s conversations with C.AI, as alleged by Character Technologies, the claims “fail this standard. . . .” (CT MTD, p. 16) “The FAC, by contrast, is replete with allegations about the content of [Sewell’s] messages with Characters. As a court explained in dismissing similar claims that Netflix’s use of ‘data about its users’ to ‘target vulnerable children’ resulted in a suicide: ‘Without the content, there would be no claim.’” (CT MTD, p. 17 (citing *Est. of B.H. v. Netflix*, No. 4:21-cv-06561, 2022 WL 551701, *1, *2 n.3, *3. (N.D. Cal. Jan. 12, 2022)).

While the other Defendants made limited arguments regarding the applicability of Florida’s product liability laws to the subject litigation, they all joined in filing

an unopposed Motion to Join the Motion to Dismiss of Character Technologies. However, Defendant Daniel De Freitas provided an additional rebuttal in line with Character Technologies regarding the distinction between a “product” and a “service.” De Freitas observed that “[f]or the purpose of product-liability law, Florida courts have required ‘products’ to be tangible,” citing to *Colville v. Pharmacia & Upjohn Co. LLC*, 565 F. Supp. 2d 1314, 1320 (N.D. Fla. 2008) (“[T]he rule stated applies to an automobile, a tire, an airplane, a grinding wheel, a water heater, a gas stove, a power tool, a riveting machine, a chair, and an insecticide.”). (De Freitas MTD, pp. 16-17).

In making his argument, De Freitas explained that the use of the chatbot required a product intermediary, e.g. a laptop, tablet, or cellphone, proving that the chatbot itself operates as a service rather than a product. (De Freitas MTD, p. 17). “When users interact with software or an online service, they generally use a physical product as an intermediary to facilitate communication. In this case, the product was Sewell’s mobile phone, not the C.AI service itself.” (De Freitas MTD, p. 17). De Freitas concluded that Plaintiff’s position would drastically expand the reach of product liability claims and therefore should be dismissed. “If taken to its logical conclusion, Plaintiff’s formulation would allow individuals to raise a strict liability claim against Netflix because they use a remote control to select which show to watch. This interpretation would erode the traditional limits of product liability and must be rejected.” (De Freitas MTD, p. 17).

Response by Plaintiff

In response to Character Technologies’ argument that the chatbot is a “service” rather than a “product,” Plaintiff asserted that “Florida’s limited products liability statutory framework does not define the term ‘product’ but that courts applying Florida law—both state and federal—have deemed ‘software applications’ to be products for purposes of products liability law.” (Pl. Resp. CT, p. 14). Moreover, Plaintiff rejects the idea that the chatbot is akin to “movies, books, and video games” because it does not deliver expressive ideas and content to users as “there is no deliberation of conscious expression and no communicative intent behind the [large language model].” (Pl. Resp. CT, p. 14).

Plaintiff further develops her argument in response to De Freitas. In refuting De Freitas’ allegation that allowing the C.AI product liability claims to proceed would result in an unreasonable, expanded definition of products, Plaintiff asserts that “the trend in product liability cases is to reject an overly simplistic approach to web-based consumer applications,” likening the chatbot to apps like Lyft, Grindr, and Snapchat. (Pl. Resp. De Freitas, pp. 20-22 (citing *Neville v. Snap, Inc.*, No. 22STCV33500 (Cal. Sup. Ct. Jan. 2, 2024); *Brookes v. Lyft Inc.*, 2022 WL 19799628, *1, *3 (Fla. 15th Cir. Ct. Sept. 30, 2022); *Doe v. Lyft, Inc.*, No. 23-2548-JWB-TJJ, 2024 WL 4651015, *1, *3 (D. Kan. Nov. 1, 2024); *Ameer v. Lyft, Inc.*, No. ED 112455, 2025 WL 679373, *1, *7 (Mo. Ct. App. Mar.

4, 2025); *T.V. v. Grindr, LLC*, No. 3:22-CV-864-MMH-PDB, 2024 WL 4128796, *1, *26 (M.D. Fla. Aug. 13, 2024))). Plaintiff also acknowledges the novelty and implications of this matter. “This case presents a nationwide issue of first impression on how products liability law applies to chatbot applications employing anthropomorphic design features and LLMs to predict and generate responses to user prompts, combined with Defendants’ business practices in marketing and introducing the application into the stream of commerce.” (Pl. Resp. De Freitas, p. 20).

Replies by Defendants

In their reply memos, the Defendants did not respond to Plaintiff’s counterarguments regarding the sufficiency of her product liability claims, instead focusing primarily on First Amendment protections and personal jurisdiction issues.

IV. Order by the Court

On April 28, 2025, the Court heard oral arguments from the parties on the motions to dismiss. Subsequently, the Court issued its order on May 21, 2025. The Court first held that Plaintiff sufficiently alleged Google was liable as a component part manufacturer to allow those claims to proceed against Google. (Order, p. 18). “A component part manufacturer is liable for harm caused by the finished product where the component part was defective and was the cause of the harm.” *Scheman-Gonzalez v. Saber Mfg. Co.*, 816 So. 2d 1133, 1141 (Fla. 4th DCA 2002) (citing Restatement (Third) of Torts: Products Liability § 5). “A component part manufacturer is also liable for harm caused by the finished product where the manufacturer of the component part ‘substantially participates in the integration of the component into the design of the product, . . . [t]he integration of the component causes the product to be defective, . . . and [t]he defect in the product causes the harm.’” (Order, p. 18 (citing *Scheman-Gonzalez*, 816 So.2d at 1141)). The Court determined the claims survived Defendants’ motion to dismiss, noting Plaintiff had sufficiently alleged that C.AI was designed and developed on Google’s architecture. This finding was based on Google’s contribution of “intellectual property[] and A.I. technology to the design and development of [C.AI]” and because Google partnered with Character Technologies to integrate its models into C.AI by granting access to Google Cloud’s technical infrastructure. (Order, p. 19). “This considerable level of involvement in Character Technologies’ LLM which Google is alleged to have had supports Plaintiff’s theory that Google substantially participated in integrating its models into Character A.I.” (Order, p. 19).

As for the question of whether C.AI could be considered a product for purposes of Florida’s Product Liability laws, the Court ultimately determined it could be considered a product for purposes of the present lawsuit, primarily focusing on the question of when a software application

functions as a product versus a service. The Court observed that while the “Florida Supreme Court has adopted [Section] 402A of the Restatement (Second) of Torts,” Section 402A “does not define ‘product’ for the purposes of product liability.” (Order at p. 32 (citing *West v. Caterpillar Tractor Co.*, 336 So. 2d 80, 87 (Fla. 1976))).

The Court began by acknowledging that “ideas, images, information, words, expressions, or concepts” are generally not categorized as products. (Order, p. 33 (citing *Wilson*, 198 F. Supp. 2d at 170, 173 (finding that a video game, which the plaintiff alleges inspired a player to stab her son, was not a product because the harm resulted from the intangible expressive ideas of the video game); *Watters v. TSR, Inc.*, 904 F.2d 378, 381 (6th Cir. 1990) (declining to extend strict liability ‘to words or pictures’ in *Dungeons and Dragons* literature)). But the Court then noted that a distinction can be made between expressive content and the “tangible containers” in which they come for purposes of strict liability. (Order, p. 33 (citing *James v. Meow Media, Inc.*, 300 F.3d 683, 701 (6th Cir. 2002) (finding that ‘the ideas conveyed by the video games, movie cassettes and internet transmissions,’ which the plaintiff alleges ‘caused [a consumer] to kill his victims,’ was not a product))).

The Court acknowledged that these holdings leave a “split on whether virtual platforms, such as social media sites, are products.” (Order at p. 33-34 (comparing *Jacobs v. Meta Platforms, Inc.*, No. 22-cv-5233, 2023 WL 2655586, *1, *4 (Cal. Super. Mar. 10, 2023) (finding that ‘as a social media platform that connects its users, Facebook is more akin to a service than a product,’ but not considering whether the platform’s ‘recommendation algorithms or related features, such as newsfeeds or those related to social groups, may be considered ‘products’), with *In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 849, 854 (N.D. Cal. 2023) (finding that the alleged defects in the functionalities of the defendants’ social media platforms were ‘analogizable to tangible personal property’ rather than ‘akin to ideas, content, and free expression’ and could thus support a claim for product liability))).

In carrying out its analysis on the product and service aspects of digital mediums, the Court discussed *Brookes v. Lyft and T.V. v. Grindr*. In *Brookes*, the plaintiff sued Lyft under a product liability theory, alleging that Lyft’s app was “defective, distracted the Lyft driver, and caused the crash.” (Order, p. 34 (citing *Brookes*, 2022 WL 19799628 at *1)). Lyft argued that its app was not a product, moving for summary judgment. (*Id.*). The *Brookes* court reasoned that “while the ideas and expressions enclosed in a tangible medium are not products, ‘the tangible medium itself which delivers the information is clearly a product.’” (*Id.* (quotation omitted)). Following that analysis, the *Brookes* court concluded that the Lyft application was a product under Florida law for purposes of the plaintiff’s product liability claims because those claims arose from the defect in Lyft’s application rather than from the “ideas or expressions in the Lyft application.” (Order, pp. 34-35 (citing *Brookes*, 2022 WL 19799628 at *4-*5)).

In *T.V. v. Grindr, LLC*, the trial court determined Grindr designed its app for its business, made design choices for the app, placed it into the stream of commerce, distributed it in the global marketplace, marketed the app, and generated revenue and profits from the app. No. 3:22-cv-864-MMH-PDB, 2024 WL 4128796, at *26 (M.D. Fla. Aug. 13, 2024); (Order, p. 35). There, the trial court clarified that the plaintiff was “not trying to hold Grindr liable for users’ communications,” but was “trying to hold Grindr liable for Grindr’s design choices, like Grindr’s choice to forego age detection tools and Grindr’s choice to provide an interface displaying the nearest users first.” *Grindr, LLC*, 2024 WL 4128796 at *26 (internal quotation marks and citations omitted).

In allowing Garcia’s product liability claims to proceed, the Court noted that Plaintiff’s “allegations related to the content and related to the design choices of Character A.I.” but “also complains that Character A.I. fails to confirm users’ ages and omits reporting mechanisms, Characters are programmed to employ human mannerisms, and users are unable to exclude indecent content.” (Order, p. 35). “Even though Sewell may have been ultimately harmed by interactions with Character A.I. Characters, these harmful interactions were only possible because of the alleged design defects in the Character A.I. app. Accordingly, Character A.I. is a product for the purposes of Plaintiff’s product liability claims so far as Plaintiff’s claims arise from defects in the Character A.I. app rather than ideas or expressions within the app.” (Order, pp. 35-36).

V. Resolution

In early January 2026, the parties in this case, along with those in several other adjacent lawsuits, notified the Court that they had reached an agreement in principle to settle the claims and asked the courts for a 90-day stay on the litigation to finalize a settlement. As of the writing of this article, it is unknown whether a formal settlement has been reached.

Regardless of the ultimate resolution of *Garcia v. Character Technologies, Inc.*, the case provides an instructive presentation on the convergence of generative AI and product liability law. In future litigation, it appears that the outcome on whether product liability claims may attach will be fact-specific, namely whether the claims are based in the design of the generative AI medium, e.g. chatbot, or the expressive content generated, e.g. conversations between the user and the chatbot. However, First Amendment concerns will continue to be a developing issue as courts grapple with free speech concerns as applied to the content created by generative AI. While attorneys are already quite familiar with how generative AI is affecting the narrative of litigation, we would do well to look ahead to when it may become a character in the story.

DRI CORNER

BY TONY NOVAK, LARSON KING
MDLA DRI State Representative



Greetings from DRI! As I write this, I'm looking forward to another beautiful Minnesota summer and as much time on the lake as possible. I hope you all can find time to unplug from your practice and enjoy time with friends and family this summer. I also want to encourage you all to take a look at DRI.org and check out the seminar offerings for this year. DRI has an incredible slate of events planned this year that fit just about any practice and schedule. (They also have added some new and fun cities to their lineup). Please also check your calendars and join us at DRI's Annual Meeting in Washington D.C. (October 21-23, 2026).

The North Central Regional Meeting was held in February in San Antonio. MDLA was well represented by its Executive Committee and its Executive Director. The program was interesting and included several discussions with other state organizations about how to continue to improve programming and the member experience. Minnesota is always a leader in these discussions and demonstrates the value of MDLA through its creative and ever-evolving programs and committees.

As always, if you have any questions about DRI or are considering becoming a member (or renewing an old membership), please let me know.

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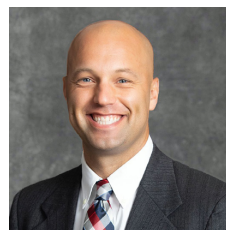
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MDLA LEGISLATIVE UPDATE

Update May 8, 2026

The Minnesota Defense Lawyers Association (“MDLA”) partners with Larkin Hoffman Daly & Lindgren (“Larkin Hoffman”) to act as a bridge between the Minnesota Legislature and our members by monitoring legislation at the Minnesota State Capitol. Matthew Bergeron is available for MDLA members for outreach via email (mbergeron@larkinhoffman.com). *This initiative is designed to keep MDLA members informed on relevant issues. Larkin Hoffman does not lobby on behalf of MDLA or its members.*

Minnesota Legislature Enters Last Week of Session

With just a week remaining before the Minnesota Legislature’s constitutional deadline to adjourn, both chambers continue to process significant policy and appropriation proposals. The path to an orderly end of session remains elusive as the Senate has assembled omnibus policy and supplemental finance bills while the House of Representatives has generally moved stand-alone proposals. This creates uncertainty around end-of-session strategy (conference committees vs. mega-omnibus) and how priorities and disagreement will be resolved.

Gov. Tim Walz and legislative leaders continue discussions on a final deal ahead of the May 18 deadline to adjourn. These discussions have generally focused on big ticket items, including financial relief for Hennepin County Medical Center, federal tax conformity, gun violence prevention and school safety, program integrity and fraud prevention, and state infrastructure and capital investment. With so much still in play, decisions will have to be made quickly on how they will wrap up the 2026 legislative session on time.

Omnibus Judiciary Policy Signed Into Law

Having been passed by the House of Representatives on a vote of 133-0 and the Senate by a vote of 64-0, the omnibus judiciary and civil law policy bill, H.F. 3875 (Liebling)/S.F. 4063 (Westlin), was signed into law by Gov. Tim Walz on May 7, 2026. The bill amends Minn. Stat. § 331A.03 to authorize the district court to publish notice, summons, order, or other process by posting the document on the official website of the Minnesota Judicial Branch when the judicial branch determines that no qualified newspaper is

likely to provide notice to the affected areas or persons. The bill also amends Minn. Stat. § 611A.04 to provide that an order of restitution docketed as a civil judgment remains in effect until satisfaction or otherwise discharged by court order.

Workers’ Compensation Advisory Council Recommendations Advance

This week the Senate Finance Committee took up and passed S.F. 3720 (McEwen) which would implement the 2026 Workers’ Compensation Advisory Council’s recommendations. The proposal restructures how the Workers’ Compensation Reinsurance Association manages funding by clarifying member obligations, creating explicit process for surplus distributions and deficiency assessments, and repealing older fragmented provisions. The bill also increases key benefit levels, including higher permanent partial disability payments and significantly higher attorney fee caps (20% of the first \$275,000 with a maximum total fee capped at \$55,000). In addition, it expands eligibility and definitions, such as allowing more providers to diagnose PTSD, extends timelines for claim determinations, and updates administrative procedures to improve efficiency in hearings, medical exams, and judicial staffing. The bill now awaits action on the Senate floor while the companion file, H.F. 4598 (Baker), awaits action in the House Rules and Legislative Administration Committee having not been introduced and heard in the House of Representatives until after the committee deadlines.

House Passes Independent Inspector General Legislation

On Thursday, May 7, 2026, the House of Representatives took up and passed H.F. 1338/S.F. 856, a proposal that would establish a statewide independent Office of the Inspector General (OIG) by a 127-5 vote. Sponsored by Rep. Matt Norris (DFL-Blaine), the proposal would establish the Office of the Inspector General within the executive branch and give it authority to inspect, evaluate, and investigate state agencies and programs to identify fraud and recommend changes to ensuring proper use of public funds. The proposal costs \$7.29 million in the FY 26-7 biennium and \$23 million in the FY 28-29 biennium. The Senate passed a different version of the OIG proposal last session and the bill authors are likely to head to conference committee to negotiate the differences.

Senate Passed Firearm Legislation

On May 4, 2026, the Minnesota Senate narrowly passed a significant gun control proposal that would ban dealers from selling weapons like the AR-15 and magazines containing over 17 rounds. Current owners of assault weapons and large-capacity magazines would need to certify their firearms and magazines with the state's Bureau of Criminal Apprehension and renew their certification every three years. The package also reinstates a struck-down ban on binary triggers, which doubles a firearm's rate of fire and would make it a felony to sell so-called "ghost guns" or firearms without serial numbers. Having passed the Senate on a 34-33 party line vote, it remains uncertain whether the proposal will receive sufficient support to pass out of the evenly split House of Representatives

SAVE THE DATE
WOMEN IN THE LAW
BREAKFAST
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WOMEN IN THE LAW

The mission statement of the Women in the Law Committee is to connect the more than 200 women who are MDLA members by:

- Providing opportunities to develop and strengthen relationships, facilitating business growth and professional development;
- Supporting women's career advancement by providing a forum for leadership and professional development; and
- Raising awareness about issues of interest to women lawyers.

For more information, email committee chairs:
Ashley Ramstad - ashley@iversonlaw.com, Vicky Hruby - VHruby@jlolaw.com.

JOIN A COMMITTEE

MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.

EDITORIAL COMMITTEE

MDLA's Editorial Committee is responsible for publication of its triannual magazine, *Minnesota Defense*. If you would be interested in publishing in the *Minnesota Defense* or serving as an editor, please contact us at director@mdla.org.

For more information, email committee chair Ryan Paukert - rpaukert@larsonking.com

DIVERSITY & INCLUSION COMMITTEE

Seeking to promote diversity within its membership and the law firms in which its members work. We appreciate and embrace that our legal community and clientele come from a rich variety of diverse cultures, beliefs, perspectives and backgrounds. Through an open and inclusive membership, we hope to achieve a better understanding of the broader issues of diversity, as well as the cultural similarities and differences within our society, so that we may better serve the legal community and the people we represent.

- Annual Diversity Seminar
- Law Clerk Summer Program
- Law Student Attendance at Seminars

For more information, email committee Chair, Chasse Thomas, Larson King - cthomas@larsonking.com

GOVERNMENT LIABILITY

Attorneys who work with municipalities on a wide range of government liability issues. The Committee typically meets quarterly with a CLE type format. An annual update regarding recent case law decisions, focusing on issues that pertain to cities, counties and other municipalities, is given in the winter at the League of Minnesota Cities in St. Paul. Other meetings rotate among the firms. The December holiday party is always enjoyable.

- Quarterly CLE
- Winter Annual Update of Case Law Decisions
- Representing Cities
- Representing Counties
- Representing other Municipalities
- Annual Holiday Party

For more information, email committee Chair Julia Kelly - julia.c.kelly3@gmail.com

MOTOR VEHICLE ACCIDENT

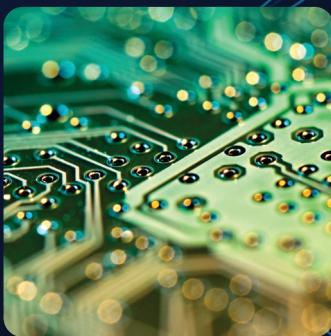
MDLA's Motor Vehicle Accident Committee consists of attorneys who primarily represent insurance carriers and their insureds in the defense of motor vehicle accident related claims. The attorneys associated with this committee typically defend claims involving no-fault, property damage, bodily injury and wrongful death issues. We focus on providing members with relevant speakers and regular updates on developments in this practice area. We also provide the members with a committee-specific listserv for communicating about relevant and emerging topics involving this practice area.

For more information, email committee chair Angela Miles ANGELA_L_MILES@progressive.com or Vice Chair Jeff Grace jagrace@arthurchapman.com

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MDLA CONGRATULATES

MDLA members Jeff Markowitz and Beth Jenson Prouty of Arthur Chapman Kettering Smetak & Pikala, P.A. secured a significant appellate victory in *McDougall v. CRC Industries, Inc.* (8th Cir. Feb. 10, 2026), obtaining reversal of a \$7.75 million jury verdict entered against a product manufacturer. The case arose from a fatal automobile crash caused by a third party who had inhaled (“huffed”) the defendant’s aerosol dust-removal product and then drove while impaired. A jury found the manufacturer liable under a design-defect theory, concluding the product was unreasonably dangerous and that the alleged defect caused the crash. The 8th Circuit reversed, holding that under Minnesota product-liability law a plaintiff generally must present evidence of a feasible, safer alternative design to sustain a design-defect claim, absent the rare circumstance where the product should be removed from the market entirely. Because the plaintiff offered neither a safer alternative design nor evidence that the product should be withdrawn from the market, judgment as a matter of law for the manufacturer was required. Markowitz served as appellate counsel at trial to preserve issues and then handled the successful appeal.





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