MINNESOTA

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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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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.

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.

To learn more about an MDLA committee, please visit www.mdla.org. Meeting times and dates for each committee are listed online.

Committees available include:

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RETAIL AND HOSPITALITY

Focused on the defense of retailers, restaurants, and hospitality businesses against suits for:

- Minnesota Civil Damage Act
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If you would like to participate in planning events for this committee, please contacl Lisa Mortier, MDLA Executive Director

THE PRESIDENT'S COLUMN

Stephanie Angolkar

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The President's Column

As we enjoy the beautiful outdoors Minnesota has to offer this summer, I hope you have had the opportunity to attend a recent MDLA committee event. It has been great to see so many of our committees hold a variety of events this year, and I am excited about upcoming opportunities to gather.

Support Staff/Paralegal Training Series

This spring, MDLA Board Members Melaina Mrozek and Samantha Flipp coordinated a "Support Staff/Paralegal Training Series," as a free benefit to MDLA member firms. These sessions were organized as a perk for MDLA member firms wishing to share tips and recommendations for staff. The topics included discovery, medical records and summaries, and trial preparation and support. These virtual sessions were very well attended and well-received!

Annual MDLA Diversity Seminar

Chasse Thomas and the Diversity Committee organized the 2026 MDLA Diversity Seminar in Minneapolis. This year, we also held our Board of Directors meeting just before the seminar. Attendees benefited from learning from Ann Motl from Bowman & Brooke on the subject of disability being a critical form of diversity in practice. We also heard from Chasse Thomas and Mohamed Ibrahim from Larson King regarding the impact of AI on race and diversity.

The Diversity Committee also organized the annual Diversity Clerkship Program, recruiting interested law students and connecting potential clerks with participating law firms for a 10-week experience in a defense law firm. Scholarships are also available for law students interested in attending our upcoming Trial Techniques Seminar in August and Mid-Winter Seminar in January!

This is a committee in need of additional volunteers. If you or someone in your firm is looking for a way to get meaningfully involved in MDLA, I encourage you to reach out to Chasse or myself to join the Diversity Committee!

MDLA Women's Breakfast

One of the most well-attended events MDLA holds each year is the Women's Breakfast, organized by the Women in the Law Committee. This year, the Committee will host the breakfast at the Minneapolis Club on July 30 at 8:30 a.m. The featured speaker is Jan Lehman, Executive Coach and best-selling author of Work Smart Do More. This event is open to all!

MDLA Release Deskbook

The last MDLA Release Deskbook was published in 2011. After a long hiatus, Board Members Lauren Nuffort, Samantha Flipp, and Ben Anderson took charge of beginning the process to recruit authors, edit, and publish

SAVE THE DATES

Augus 13-15, 2026 - Trial Techniques Seminar

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

an updated electronic Release Deskbook. Our hope is that it will be ready to release in time for the 2027 Trial Techniques Seminar! If you are interested in authoring or updating a chapter, please contact Lauren, Samantha, or Ben!

2026 Trial Techniques Seminar

Finally, I hope to see all of you at the 2026 Trial Techniques Seminar in Duluth August 13-15! MDLA Vice President (and our incoming President) Cally Kjellberg-Nelson has put together a great program. She has cleverly selected the theme, "I Survived Being a Civil Defense Lawyer in Minnesota." I have learned a lot about history reading the "I Survived" series with my children, and looking at the program Cally has prepared, I know we will learn a lot at this seminar!

The weekend kicks off with a welcome reception at the Duluth Entertainment and Convention Center and the President's Dinner at the Kitchi Gammi Club, as well as dinearounds organized at area restaurants in Canal Park. After a morning of programming Friday morning and the MDLA annual meeting and lunch, take in some sights like ships coming through the canal or watch an artisan demonstrating glass blowing. Then join us for dinner and fun at Spirit Mountain Recreation Area! The excellent programming will continue on Saturday morning, and my family and I often run into other attendees along the North Shore as we extend our stay to enjoy the scenery and nature.

Reflection on 2025-2026

As I complete my term as President and near the end of my leadership within MDLA, I have been reflecting back on my start with MDLA. It all started with a committee. I joined the Government Liability Committee as a new attorney. That introduction to other attorneys in my practice area helped build camaraderie, knowledge, and friendships that last today. If you are a new attorney or an attorney that is new to MDLA, I hope you get involved in a committee (or more than one). Connection with others helps improve our ability to provide excellent representation to our clients and helps make this a much more fun and rewarding profession to be in. I look forward to seeing you at future MDLA committee meetings and events!

DRI CORNER

By Tony Novak, Larson King
MDLA DRI State Representative

Greetings from DRI! I hope you've all been enjoying your summer, and some well-earned time off. I am taking a quick break from trial prep and looking at my end-of-summer plans. We are quickly approaching the State Fair and back-to-school. But before that, my family all looks forward to our annual trip to Duluth for the Trial Techniques Seminar. I'm excited to be part of the program this year, and the family events should be a blast. I hope you will all join us in Duluth.

On the DRI front, please be sure to mark your calendars for the DRI Annual Meeting in Washington D.C. The meeting will be October 21-23, 2026, at the stunning Grand Hyatt Washington, D.C.. The keynote speaker is Senator Joe Manchin, who will be speaking on "Bridging the Divide: The Rule of Law, Civility & the Path Forward." There will also be incredible networking opportunities (to reconnect with old friends and make some new ones).

As always, if you are considering becoming a DRI member (or you've taken a break and want to re-engage with your DRI membership), please reach out with any questions. Both MDLA and DRI provide a diverse range of professional development opportunities, I would love to share how membership with both groups can fit into any professional development plan.

THE ELUSIVE EXPLODING CIGAR: EIGHTH CIRCUIT REAFFIRMS MINNESOTA'S GENERAL ALTERNATIVE-DESIGN REQUIREMENT FOR DESIGN-DEFECT CLAIMS

By Jeff Markowitz and Beth Prouty

Generally, for a plaintiff bringing a design-defect claim to prevail, she must show that the product manufacturer should have used an alternative, feasible, safer design. Proving the existence of such an alternative design is an *objective* way to prove that the design that the manufacturer chose is unreasonably dangerous. Minnesota, like some other states, leaves open the possibility that a rare product might be judged unreasonably dangerous not because the manufacturer failed to adopt an alternative design but because it placed the product on the market at all. But Minnesota caselaw—and caselaw of the other states—has not identified a real-world example. The Reporters of the Restatement (Third) of Torts: Products Liability imagined a vivid hypothetical to illustrate what sort of product would be the rare product: a novelty cigar, designed to explode when lit. But no state's law has ever seen such a product.

That issue came to the forefront in the recent federal decisions in *McDougall: McDougall v. CRC Indus., Inc.,* No. CV 20-1499 (JRT/LIB), 2024 WL 4894656 (D. Minn. Nov. 26, 2024), *vacated and remanded, McDougall v. CRC Indus., Inc.,* 166 F.4th 734 (8th Cir. Feb. 10, 2026), rehearing denied, No. 24-3614, 2026 WL 936775 (8th Cir. Apr. 7, 2026). This article's authors served as lead appellate counsel for the manufacturer, which obtained a reversal of the $7.75 million jury verdict. The product was an aerosol duster, intended to remove dust from electronics and various surfaces. The plaintiff's wife died in a tragic motor-vehicle crash after the other driver deliberately misused the product by huffing it while driving, thereby intoxicating himself. The plaintiff conceded that he offered no evidence of an alternative, feasible, safer design. The jury found that the manufacturer adequately warned against foreseeable misuse. The jury also found that the product was unreasonably dangerous by design, and the district court denied the manufacturer's motion for judgment as a matter of law. But the Eighth Circuit reversed due to the plaintiff's failure to offer any "evidentiary basis for the jury to balance the dangerousness of the duster against either the burden of an alternative design or its removal from the market." *McDougall*, 166 F.4th at 736-37.

This article reviews Minnesota's design-defect law, explains where *McDougall* fits, and discusses the Products Liability Restatement's guidance on how a court might decide whether a product satisfies the never-before-satisfied rare-case exception to the general alternative-design rule.

I. To prove a design-defect claim, the plaintiff must prove that the defect made the product "unreasonably dangerous."

A. An "objective" reasonable-care standard governs whether a design defect makes the product unreasonably dangerous.

To prove a design-defect claim, a plaintiff must prove that the alleged defect made the product *"unreasonably dangerous." Kallio v. Ford Motor Co*., 407 N.W.2d 92, 96 (Minn. 1987). A "reasonable care balancing test" governs whether the alleged defect made the product unreasonably dangerous. *Id*. at 95-96. That balancing test is "an objective standard, . . . which focuses on the conduct of the manufacturer in evaluating whether its choice of design struck an acceptable balance among several competing factors." *Bilotta v. Kelley Co.*, 346 N.W.2d 616, 622 (Minn. 1984) (referencing *Holm v. Sponco Mfg., Inc.*, 324 N.W.2d 207, 212 (Minn. 1982)).

Jeff Markowitz clerked for the Minnesota Court of Appeals, frequently appears on appeal, and enjoys partnering with lawyers at trial and other pre-appeal stages. Wrestling with a tough issue? Drop him a line. Jeff served as lead appellate counsel on the McDougall case discussed in this article.

Beth Jenson Prouty is a partner at Arthur Chapman and serves as Co-Chair of Arthur Chapman's Insurance Coverage Group and Co-Chair of the MDLA Insurance Law Committee. Beth focuses her practice in litigation—primarily in the areas of insurance coverage, appeals, professional liability, and commercial and personal auto. Beth previously clerked for the Minnesota Supreme Court and served as appellate counsel on the McDougall case discussed in this article.

B. Satisfying that objective standard "normally" requires evidence that an alternative, feasible, safer design existed.

As *Kallio* explains, a plaintiff "normally" must prove that an alternative, feasible design would have made the product safer to prove that the manufacturer's chosen design made the product unreasonably dangerous. 407 N.W.2d at 96. *Kallio* makes clear that whether such an alternative design exists is "relevant to," "[o]bviously[] a factor bearing upon," and "certainly may be an important factor" when deciding whether an alleged design defect made the product unreasonably dangerous. *Id*. at 96-97.

That makes sense. At least ordinarily, "'one simply cannot talk meaningfully about a risk-benefit defect in a product design until and unless one has identified some design alternative . . . that can serve as the basis for a risk-benefit analysis.'" 1 Owen & Davis on Prod. Liab. § 8:10 (4th ed.) (quoting Schwartz, *Foreword: Understanding Products Liability*, 67 Cal. L. Rev. 435, 468 (1979)). The alternative design serves as an *objective* comparator by which to measure whether the chosen design made the product *unreasonably* dangerous. It is analogous to "the flawless product" in the manufacturing-defect context. *Cf. Bilotta*, 346 N.W.2d at 621-22. The flawless product is "an objective standard" to which a court can point and say *that* is how the product *should* have been manufactured, and the failure to make the product that way *objectively* made it *unreasonably* dangerous. See id. In the design-defect context, the alternative design is an *objective* alternative to which a court can point and say *that* is how the product *should* have been designed, and the failure to design it that way *objectively* made it *unreasonably* dangerous.

C. *Kallio* allows for "rare cases" that may be proved without alternative-design evidence. Minnesota has never seen one.

In *Kallio*, right after stating that alternative-design evidence "is not necessarily required in all cases," the Minnesota Supreme Court dropped Footnote 8, which explained: "Conceivably, rare cases may exist where the product may be judged unreasonably dangerous because it should be removed from the market rather than be redesigned." 407 N.W.2d at 97 & n.8.

As the Eighth Circuit explained in *Wagner*, "While the Minnesota Supreme Court [in *Kallio*] did not go so far as to require proof of an alternative feasible design in all defective-products cases, the Court noted that it could only conceive of 'rare cases' in which 'the product may be judged unreasonably dangerous because it should be removed from the market rather than be redesigned.'" *Wagner v. Hesston Corp*., 450 F.3d 756, 760 (8th Cir. 2006) (quoting Kallio, 407 N.W.2d at 97 & n.8). Judge Schiltz elaborated in *Kapps*:

Properly understood, . . . *Kallio* does not dispense with the requirement of an alternative design in design-defect cases. . . . [A] plaintiff cannot prevail in a design-defect case simply by arguing, in the abstract, that a product is defectively designed. Instead, the plaintiff must explain why, under the reasonable-care balancing test, the world would be a better place if the product were either designed differently or taken off the market.

Kapps v. Biosense Webster, Inc., 813 F. Supp. 2d 1128, 1161 (D. Minn. 2011) (Schiltz, J.), *followed in Am. Fam. Ins. Co., S.I. v. Pecron, LLC,* No. 21-CV-1749 (KMM/DJF), 2023 WL 8654202, at *4 & n.3 (D. Minn. Dec. 14, 2023) (Menendez, J.). Judge Schiltz granted summary judgment because the plaintiff offered "no evidence to show that, taking into account the costs and benefits of the Lasso catheter as currently designed, the catheter should have been designed differently or taken off of the market." *Id*. at 1161.

Based on our research, no court applying Minnesota law has ever found a product unreasonably dangerous due to a design defect without evidence of an alternative, feasible, safer design. In *Kallio*, the Minnesota Supreme Court said that successful design-defect plaintiffs had "*almost* without fail" introduced evidence of such an alternative design. 407 N.W.2d at 96 n.6 (emphasis added). The court's use of "almost" appears merely to reflect judicial caution, not a recognition of any design-defect plaintiff prevailing without alternative-design evidence. The court cited no case in which a design-defect plaintiff prevailed without alternative-design evidence.

Although *Kallio* left open the possibility of the rare exception, the Minnesota Supreme Court did not explain what such a product would look like. The issue on appeal was not whether the plaintiffs could prove a design-defect claim without alternative-design evidence. The plaintiffs "did present some evidence, albeit weak, that a practical safer design was feasible." *Id*. at 97. The dispute concerned the jury instructions. Ford argued that the jury should have been told that the plaintiffs had to prove "'a feasible practicable alternative design'" and that, without such evidence, "'they will be unable to prove that Ford's choice of design was unreasonable.'" *Id*. at 94 n.4. The Minnesota Supreme Court disagreed with Ford. The court's concern with Ford's proposed instruction was that it "tend[ed] to elevate proof of the existence of a feasible alternative safer design from a factor properly for jury consideration to an element." *Id*. at 97. The "tenor, if not the literal wording," of the instructions given already allowed the jury to "consider availability of, and failure to use, an alternative, safer design as a factor." *Id*. at 96.

II. *McDougall v. CRC Industries, Inc.*

A. The jury erroneously found that a product was unreasonably dangerous by design without alternative-design evidence.

McDougall placed a crisp spotlight on the rare-case exception. The plaintiff chose not to argue that an alternative, feasible design would have made the aerosol duster safer—and the evidence that no such alternative design existed was uncontradicted. Plaintiff's counsel conceded to the district court that he had "not presented evidence of alternative feasible design." *McDougall v. CRC Indus., Inc.*, No. 20-cv-01499-JRT-LIB, Dkt. 298, Vol. VII, Tr. 1410-1411 (U.S. Dist. Ct. Apr. 23, 2024). In closing argument, plaintiff's counsel told the jury that his "Number 1" point was that the plaintiff did not need to prove that an alternative, feasible, safer design existed. *Id*., Dkt. 299, Vol. VIII, Tr. 1764-65 (Apr. 24, 2024). The jury also heard uncontradicted testimony from the manufacturer's product-safety expert that "[t]here is no evidence that alternative safer designs exist or that they would prevent intentional abuse of the product or that they would prevent the accident." *Id*., Dkt. 298, Vol. VII, Tr. 1423. And the jury received uncontradicted evidence from a U.S. Consumer Product Safety Commission ("CPSC") report that "inhalant abusers will continue their behavior, even if aerosol duster products become unavailable." See U.S. Consumer Product Safety Commission, Memorandum and Staff Briefing Packet, July 20, 2022, PDF page 5, https://share.google/LDCoN5P5SuuFYyE3k. It was undisputed that, at the time of trial, the CPSC was actively studying and considering potential regulation of aerosol dusters.

The plaintiff argued that the duster was, nonetheless, unreasonably dangerous by design and that the manufacturer should be liable for not pulling it from the market. See *McDougall*, No. 20-cv-01499-JRT-LIB, Dkt. 299, Vol. VIII, Tr. 1762-63. The jury found for the plaintiff on this claim. See *McDougall*, 166 F.4th at 735.

B. The district court relied on a third-way reading of Kallio, which did not require the plaintiff to prove an alternative design or that the product was too dangerous for the market.

The manufacturer moved for and renewed its motion for judgment as a matter of law, arguing that the plaintiff introduced no evidence from which a jury could find the product unreasonably dangerous. In denying that motion, the district court expressly rejected Judge Schiltz's reading of *Kallio* in *Kapps*—and implicitly departed from the Eighth Circuit's reading in *Wagner. McDougall*, 2024 WL 4894656, at *7. In the *McDougall* district court judge's view, Minnesota law allowed a plaintiff to prevail without proving either that the manufacturer should have used an alternative design or that the product should have been removed from the market. *Id*.

C. The Eighth Circuit's reversal restored the status quo.

On appeal, the Eighth Circuit reaffirmed the *Wagner-Kapps* reading of *Kallio*. In reversing the verdict, the court noted that the plaintiff conceded he "'did not rely on the existence of an alternative design.'" *McDougall*, 166 F.4th at 736. "Nor did he present evidence [that the] duster is 'so dangerous that it should be removed from the market entirely.'" *Id*. (quoting *Wagner*, 450 F.3d at 736). Consequently, the court concluded, "there was no evidentiary basis for the jury to balance the dangerousness of the duster against either the burden of an alternative design or its removal from the market." *Id*. at 736-37 (citing *Kapps*, 813 F. Supp. 2d at 1161; *Am. Fam.*, 2023 WL 8654202, at *4). The court's either-or rationale necessarily rejected the district court's reading of *Kallio* that neither alternative-design evidence nor too-dangerous-for-market evidence is required to prove a design-defect claim. Contrast id. at 736-37, with *McDougall*, 2024 WL 4894656, at *7.

The Eighth Circuit noted that, in closing argument, the plaintiff's counsel "told the jury that if [the manufacturer] can't make their duster safe, 'then get rid of it or you pay the price.'" *Id*. at 737 n.1. But it further noted that "the jury was instructed that statements by lawyers are not evidence, and [the Eighth Circuit] presume[s] it followed those instructions." *Id*.

Therefore, the Eighth Circuit reversed and remanded for entry of judgment as a matter of law for the manufacturer. *Id*. at 737.

That reversal was foreshadowed by questions during oral argument, including one from Judge Lavenski Smith: "[W]hat's the limiting factor for the use of precedent like this for other manufacturers and the obligation to foresee criminal misuse of what they put on the market?" *McDougall v. CRC Industries,* No. 24-3614, Oral Argument at 21:18-21:31, https://media-oa.ca8.uscourts.gov/OAaudio/2025/12/243614.MP3. There was none.

III. The Products Liability Restatement provides guidance for deciding whether Kallio's rare-case exception is met.

A. Manifestly Unreasonable Standard

If a judge or a jury ever must decide whether a product satisfies *Kallio's* rare-case exception, the Products Liability Restatement offers a useful standard for objectively resolving that issue. Like the general alternative-design rule in *Kallio*, Section 2(b) generally requires a "reasonable alternative design" to prove a design-defect claim. Restatement (Third) of Torts: Products Liability § 2(b) (1998). Like *Kallio* Footnote 8, comment e in Section 2's **Comment** "leaves open the possibility that courts may conclude that a product is manifestly unreasonable because the extremely high degree of danger posed by its use or consumption outweighs its negligible social utility." *Id*., § 2, **Reporters' Note**, cmt. b. Comment e states that, to satisfy this exception, the design must be "manifestly unreasonable," meaning that "the extremely high degree of danger posed by [the product's] use or consumption so substantially outweighs its negligible social utility that no rational, reasonable person, fully aware of the relevant facts, would choose to use, or to allow children to use, the product." *Id*., **Comment**, cmt. e.

B. Exploding-Cigar Illustration

The Reporters adopted the manifestly unreasonable exception with understandable caution. They found only three caselaw examples suggesting that there could ever be design-defect liability without alternative-design proof: (1) above-ground swimming pools with slippery vinyl bottoms, (2) asbestos, and (3) cheap handguns. *See O'Brien v. Muskin Corp.*, 463 A.2d 298, 306 (N.J. 1983) (pool example); *Halphen v. Johns-Manville Sales Corp.*, 484 So. 2d 110, 112-113 (La. 1986) (asbestos example); *Kelley v. R.G. Indus., Inc.*, 497 A.2d 1143, 1154 n.8, 1158 (Md. 1985) (handgun example). Each example was later overturned or sharply limited by legislation. Restatement (Third) of Torts, § 2, **Reporters' Note**, cmt. *d*, § IV.D. That thin support is why the exception never made it into Section 2's text. See James A. Henderson, Jr. & Aaron D. Twerski, *Arriving at Reasonable Alternative Design: The Reporters' Travelogue*, 30 U. Mich. J.L. Reform 563, 586 (1997), ("We were reluctant to fashion a black letter rule on so slender a thread."). The Reporters understandably did not want to endorse broadly a theory that courts had largely rejected. At the same time, they did not want to foreclose the possibility that some nearly worthless and extremely dangerous product might justify liability without alternative-design evidence. So they crafted the manifestly unreasonable exception, but they placed the exception in "the more flexible medium of a comment," rather than in Section 2. *Id*. at 588.

The Reporters illustrated the exception with a vivid hypothetical: the exploding cigar. The imagined product is a gag gift—a novelty cigar designed to explode in the user's face when lit. Restatement (Third) of Torts § 2, **Comment**, cmt. *e*, illus. 5. Its social utility is negligible. Its danger, by contrast, is obvious and extreme because the product is meant to be placed in the mouth and ignited. That risk obviously substantially outweighs the utility. So a court could *objectively* find that the design is *manifestly* unreasonable and that the product is thus unreasonably dangerous.

The exploding-cigar illustration continues to be helpful guidance, given the absence of any real-world caselaw examples of alternative-design-less- unreasonably-dangerous-by-design products. *Parish v. Jumpking, Inc*., is a case in which the Iowa Supreme Court considered whether a trampoline's design was manifestly unreasonable under the Restatement; the court concluded that it was not. 719 N.W.2d 540, 545 (Iowa 2006). The court pointed to the trampoline's real recreational and therapeutic benefits and to injury statistics that did not show the kind of overwhelming risk required. Id. Of note, the risk of a trampoline-related injury "rated below such common activities as basketball, bicycle riding, football, soccer, and skating." *Id*.

C. Consistent with Minnesota Law

Minnesota courts would likely look to the manifestly unreasonable standard for guidance in deciding whether a product fits within *Kallio's* rare-case exception. Minnesota courts have previously consulted the Restatement in products-liability cases, *see, e.g., Great N. Ins. Co. v. Honeywell Int'l, Inc.*, 911 N.W.2d 510, 520 (Minn. 2018); *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 631 n.4 (Minn. 2017), including Section 2(b), *SECURA Ins. Co. v. Deere & Co*., 12 N.W.3d 103, 108 (Minn. App. 2024), *review denied* (Minn. Dec. 17, 2024). The Reporters also depict the manifestly unreasonable exception as "fully consistent" with Minnesota law, including *Kallio*. Restatement (Third) of Torts § 2, **Reporters' Note**, cmt. *d*, § II.A. That conclusion is sound. *Holm and Bilotta* established "an objective standard." *Bilotta*, 346 N.W.2d at 622. *Kallio* said that alternative-design evidence is "normally" necessary to meet that standard. 407 N.W.2d at 95-97. *Kallio* Footnote 8 left open a narrow door for rare cases in which such evidence is not required. *Id*. at 97 n.8. Minnesota law has not fleshed out what satisfies that exception. But the Restatement does, and in a way that fits with Minnesota's objective standard. As one scholar previously observed,

> The Minnesota Supreme Court has not yet had its exploding cigar case, but the court has structured design defect law in Minnesota to provide for it when the match is lit. That does not mean that the need for a reasonable alternative design is irrelevant in Minnesota. The court's decision in Kallio clearly notes the general need for that proof in a design case. While Minnesota differs in minor respects, Minnesota law in general seems consistent with the Restatement (Third) position on design defect cases.

Mike Steenson, *A Comparative Analysis of Minnesota Products Liability Law and the Restatement (Third) of Torts: Prods. Liab*., 24 Wm. Mitchell L. Rev. 1, 21 (1998) (footnotes omitted).

D. Response to Critics

Some argue that the manifestly unreasonable standard sets the bar too high. Gary Wilson, Vincent Moccio & Daniel O'Fallon, *The Future of Products Liability in America*, 27 Wm. Mitchell L. Rev. 85, 101 (2000). But the standard's demands serve an important function: they supply an *objective* benchmark for determining whether a design makes a product unreasonably dangerous. An objective benchmark is necessary to meet the "objective" reasonable-care balancing test. *See Bilotta*, 346 N.W.2d at 622. An alternative, feasible, safer design is one such benchmark. *See Kallio*, 407 N.W.2d at 96. A manifestly unreasonably design—marked by an extreme risk of danger that substantially outweighs negligible utility—is another. Without either, design-defect liability would risk turning on little more than subjective intuition and sympathy. "If the limits [on liability] cannot be consistently and meaningfully applied by courts and juries, then the imposition of liability would become arbitrary and capricious." *Stadler v. Cross*, 295 N.W.2d 552, 554 (Minn. 1980). The rare-case exception—if untethered to the manifestly unreasonable standard—could not be consistently and meaningfully applied. Verdicts would become unpredictable, as the rare-case exception increasingly swallowed the general alternative-design rule.

The manifestly unreasonable standard cannot be fairly dismissed as some pro-defendant addition to the Restatement. The written works of the Reporters, Professors

James Henderson and Aaron Twerski, showed that "neither scholar could be pigeonholed as 'pro-plaintiff' or 'pro-defendant.'" Victor E. Schwartz, *The Restatement (Third) of Torts: Products Liability-the American Law Institute's Process of Democracy and Deliberation*, 26 Hofstra L. Rev. 743, 752 (1998). The manifestly unreasonable exception was not in their first draft of the Restatement. Aaron D. Twerski, *Inside the Restatement*, 24 Pepp. L. Rev. 839, 846 (1997). The exception was proposed by Robert Habush, "a highly respected plaintiff's lawyer," Henderson, Twerski, *Arriving at Reasonable Alternative Design*, 30 U. Mich. J.L. Reform at 587, and former president of the plaintiffs' attorney association, the Association of Trial Lawyers of America, Schwartz, *The Restatement (Third) of Torts*, 26 Hofstra L. Rev. at 753, now called the American Association for Justice, https://www.justice.org/about-us/aaj-history. Some critics decried the Habush Amendment as "an unholy compromise." See Henderson, Twerski, *Arriving at Reasonable Alternative Design*, 30 U. Mich. J.L. Reform at 588 & n.54 (citing Harvey M. Grossman, *Categorical Liability: Why the Gates Should Be Kept Closed*, 36 S. Tex. L. Rev. 385, 398-99 n.62 (1995)). One critic urged that including the exception would "invite[] plaintiffs' lawyers to challenge a variety of necessarily dangerous products, including such common and popular products as cigarettes, alcohol, handguns, three-wheel all-terrain vehicles, trampolines, and above-ground pools." Michael J. Tdoke, *Categorical Liability for Manifestly Unreasonable Designs: Why the Comment D Caveat Should Be Removed from the Restatement (Third)*, 81 Cornell L. Rev. 1181, 1184 (1996). The Reporters found merit with such concerns. They did not want to craft an exception that would be "so broad so as to include products such as motorcycles, adult lawn darts, or water skis." Henderson, Twerski, *Arriving at Reasonable Alternative Design*, 30 U. Mich. J.L. Reform at 585. "On the other hand," as they have explained, they "did not want to reject summarily the possibility that liability might be established in some instances based on the unusually high risk and almost worthlessness of the product." *Id*. at 586-87. They reasonably threaded that needle by adopting the manifestly unreasonable exception, even though the exception's caselaw support was (and remains) "so slender a thread." *Id*.

The manifestly unreasonable standard is a principled way to maintain the line between courts and regulators. Courts recognize that legislatures and administrative agencies are better positioned to decide whether "widely used and consumed" but dangerous products should remain on the market. Restatement (Third) of Torts § 2, Comment, cmt. d. The utility and basic safety that leads to a product becoming widely used and consumed is irreconcilable with the standard's requirement that the product's utility be "negligible," especially when paired with the requirements that the risk of danger be extremely high and substantially outweigh the product's utility. The standard is thus a principled way to prevent ad-hoc product regulation through tort verdicts, which follow a few weeks of trial, and which would bypass regulatory processes and potentially override regulatory decisions.

The standard also makes sense from an ex-ante safety perspective. If design-defect liability may be imposed for designs that are neither manifestly unreasonable nor chosen instead of an alternative, feasible, safer design, manufacturers are left to guess whether a jury might deem their design choices to be unreasonable. That uncertainty does little to improve safety and much to increase unpredictable liability exposure.

VI. Conclusion

The Eighth Circuit's opinion in *McDougall* reaffirms established Minnesota design-defect law. Generally, a plaintiff must prove that an alternative, feasible, safer design existed. Only in a still-theoretical rare case might a plaintiff prevail without that proof. If courts are called on to flesh out what *Kallio's* rare-case exception requires, the Restatement's manifestly unreasonable standard provides a sensible guide. For now, real-world examples of the rare case remain as elusive as the exploding cigar.

* * *

As *McDougall* shows, winning on appeal begins at trial. Jeff Markowitz worked as appellate counsel at trial. He played an active role, advising the manufacturer's trial counsel and drafting motion papers, to ensure that issues were preserved for appeal. Jeff then was lead appellate counsel on appeal. He, with colleague Beth Prouty, proudly teamed up with trial counsel: Bob Gilbertson, Virginia McCalmont, and David Wallace-Jackson.

AUTOMATIC EXPUNGEMENTS AND THEIR INTERSECTION WITH MUNICIPAL CIVIL LITIGATION

By Julia Kelly and Ashley Casper

What kind of expungements are available in Minnesota?

In Minnesota, there are two processes by which a person can obtain an expungement of his or her criminal record. The first involves a petition to the appropriate district court for an order. The second process is Minnesota's new automatic expungement pursuant to the Clean Slate Act. Both processes, codified under Minnesota Statutes Chapter 609A, result in sealing an individual's criminal history from public view.

Court-ordered expungements are rare. Few eligible individuals pursue expungement because the petition-based procedure can be intimidating for non-lawyers and costly, and the outcome, whether the records are sealed, is not a guarantee. Indeed, the statute gives judges a fair amount of discretion. As a result, because records subject to an expungement order are themselves rare, the issue of seeing expunged criminal records in subsequent civil litigation is unlikely. However, in the wake of Minnesota's Clean Slate Act, effective January 2025, litigators are seeing more expunged records pop up in civil litigation, particularly those who practice in municipal law and government liability.

Whose records are we talking about?

Expungements can affect a variety of data held by different entities. It is worth considering who maintains the data subject to expungement because not every entity is bound by the same rules, nor do they share the same interests or goals regarding the maintenance of those sealed records. Generally, the data subject to expungement can be found in: (1) files maintained by the Minnesota Judicial Branch in the form of criminal court records, and (2) criminal prosecution and investigation files maintained by the executive branch, including but not limited to county and city prosecutors, sheriff departments, city police departments, state patrol and the department of corrections, the Minnesota Bureau of Criminal Apprehension (BCA), etc. Each entity possesses different data, and the data can be governed by different statutory and/or court rules. For example, law enforcement data is subject to the Minnesota Government Data Practices Act (MGDPA), but judicial branch data is not. Certain internal prosecution records, though part of a sealed file, could also be subject to rules regarding privilege and the work-product doctrine. By way of further example, Minnesota Chapter 609A states nothing therein authorizes the destruction of expunged records or their return to the subject of the data. That is, the statute requires expunged records be sealed, and unavailable for public view. This then does not prevent entities from reviewing their own records, and police, law enforcement agencies, FBI, immigration authorities, and other public officials may still see records from an expunged sealed court case for certain statutory purposes. This is all to say records subject to expungement should not be presumed to be equal across the various government entities, even when they are in regards to the same case. It can get messy.

What are court-ordered expungements?

Minn. Stat. § 609A.02 provides the procedures for individuals seeking expungement through court order. Those who may qualify under the statute include cases where:

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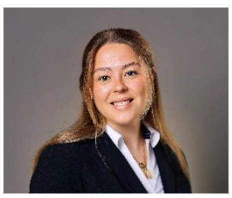

Ashley Casper. Ashley is a 2L law student at Mitchell Hamline University in St. Paul. She is currently a litigation law clerk for the League of Minnesota Cities

- the charges were dismissed, found not guilty, or the case did not otherwise result in a guilty plea or finding, or a conviction.

- the subject successfully completed the terms of a diversion or stay of adjudication, or the conviction qualifies for expungement under a list provided in Minn. Stat. § 609A.02, subd. 3, and the required amount of time (typically four years) has passed with no new crime.

- the subject was charged with a controlled substance offense, and the proceedings have been dismissed and discharged.

- the subject was a juvenile prosecuted as an adult.

A standard form petition is available on the Minnesota Judicial Branch forms website. A petitioner needs to serve notice upon each agency that potentially possesses records concerning the case a person wants expunged. Each respective agency is given the opportunity to object to the petition, and many simply take no position. Once the petition is properly served and filed with the district court, the district court is given broad discretion under the statute to seal eligible criminal records. The statute contains a laundry list of convictions eligible for expungement, including common offenses like possession of a controlled substance. Some records, however, are explicitly excluded from the district court's discretion, such as convictions for certain criminal sex offenses. Where the petitioner was convicted, he must present clear and convincing evidence that expunging the record would yield a benefit to him commensurate with the disadvantages to the public and public safety of sealing the record and burdening the court and public authorities to issue, enforce, and monitor an expungement order as required by Minn. Stat. § 609A.03, subd. 5(a). Similarly, when the criminal proceeding was resolved in the petitioner's favor, the court must weigh the interests of the public and public safety against the disadvantages to the petitioner of not sealing the record. Minn. Stat. § 609A.03, subd. 5(b). If the court grants a petitioner's request for expungement, a copy of the order is sent by the court administrator to each law enforcement agency and a copy is given to the petitioner notifying him which agencies are affected by the expungement order.

What are automatic expungements under Minnesota's Clean Slate Act?

In January 2025, Minnesota's Clean Slate Act took effect. Like 12 other states with similar legislation, the purpose of the Clean Slate Act is to provide automatic expungements of certain eligible criminal records. This legislation's purpose is to give Minnesotans a jump start at successful reintegration into society. It is intended to promote opportunities and remove potential barriers to employment, housing, and education that criminal records would otherwise create. Codified in Minn. Stat. § 609A.015, the Clean Slate Act mandates government agencies to automatically seal certain eligible records from a person's criminal history that previously could only be done by a petition to the court. The BCA bears the responsibility to proactively review and determine which cases are eligible for automatic expungement. After notifying the court, and after waiting a statutory 60-day review period for any objections, the BCA must seal their own records. The BCA then notifies the Minnesota Judicial Branch and executive branch agencies that their records may be affected by the automatic expungement as well. In practice, law enforcement agencies with potential records on the matter are often provided with a short, one-page notice that tells them the case records are automatically expunged pursuant to the statute; it contains no details regarding why the record was sealed or any further content on the matter. The law enforcement agency seals its correlated records rendering them nonpublic.

The records were expunged, now what?

According to Minn. Stat. § 609A.01, the remedy available is limited to a court order or grant of expungement under section 609A.015 sealing the records and prohibiting the disclosure of their existence or their opening *except under court order or statutory authority*. A defendant in civil litigation cannot simply just decide expunged records are fair game without careful consideration. Consent to the release of the records from the subject of the expunged data is often a key.

Judicial branch data:

There is a strong presumption that court files remain publicly available. This openness is essential to trust in the legal system. Courts also have inherent authority to control the court records and agents of the court. Indeed, judicial branch records are not even subject to the MGDPA. However, court files can be rendered inaccessible through the expungement processes.

Parties seeking relief from an order for expungement must go back to the jurisdiction where the order was issued. A sealed court file may be reopened by court order upon a showing of good cause. Good cause from a discovery perspective is a relatively low hurdle. It requires a showing that the information is relevant to the subject matter of the suit.

Executive branch data:

Law enforcement data that has been expunged is classified as private data under the MGDPA, in Minn. Stat. § 13.02, subd. 12. The statute defines "private data" on individuals as data made by statute or federal law that is (a) not public, and (b) accessible to the individual subject of those data. The second part implies the individual could request access to his or her own expunged records. But what happens when the subject resists its release? The first step in the MGDPA process is to request access from the law enforcement agency maintaining the data needed. This step can seem wasteful knowing the agency, concerned with a potential claim for improper disclosure under the MGDPA, will likely deny the request. Where a request for the data is denied, the MGDPA provisions under Minn. Stat. § 13.03, subd. 6, would then apply. This means a judge may compel production of those records. Courts have developed a two-prong balancing test to apply § 13.03, subd. 6. The first prong asks whether the data are discoverable under applicable court rules, i.e., Rule 26 regarding the scope of discovery. Next, like the balancing test courts apply to decide whether to grant a petition for court-ordered expungements, the second prong weighs the benefit to the party seeking access to the data to determine whether that benefit outweighs the confidentiality interests of the entity maintaining the data or a third party.

Practical implications:

Now, more than a year later, the automatic expungement process appears laudable for its ethical and practical benefits. However, in narrower circumstances, automatic expungement can create unique hurdles in subsequent related civil litigation. It is particularly vexing for attorneys advising and defending municipalities in civil suits arising from cases whose underlying records were automatically expunged.

This would likely lead to an expungement of the arrest record. Pro se litigants commonly reference or attach expunged records to their later civil filings. This likely stems from the fact that the Clean Slate Act's procedures lack a mechanism for notification to the subject of the data.

Minnesota Statutes Section 609A.03 establishes specific circumstances under which expunged records may be accessed notwithstanding an expungement order. The statute permits expunged records to be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order. However, the expungement statutes do not contain any provision specifically permitting access to expunged records for civil tort claims or other civil litigation purposes.

The situation becomes irksome where a plaintiff resists access to expunged records directly at issue in a case. It can feel like a reverse spoliation situation. The intent of automatic expungement is to shield individuals from collateral consequences of having certain criminal records, but that interest feels misplaced where a plaintiff voluntarily puts those expunged records directly at issue in a subsequent civil suit. Indeed, the rule of thumb is court records are publicly available to promote transparency and accountability of the judicial system and legal proceedings. By comparison, where a plaintiff puts his or her medical condition at issue, otherwise confidential medical records become relevant and often broadly discoverable. But sealed criminal investigation records maintained by law enforcement agencies are obviously not the same as medical records.

Imagine a person who was subjected to a traffic stop and then arrested for drug possession and the vehicle towed. The entire encounter with the arresting officers was captured on body worn camera. The officers' video, reports, and other criminal investigation records (i.e., chain of custody documents, tow report) were forwarded to the county attorney for prosecution. Assume the charges were later dismissed, for whatever reason, say he pleaded guilty in another matter in exchange for this dismissal. A year later, the police department received threadbare notice that the statutory automatic expungement took effect and the department's records concerning that specific case must now be sealed. This occurred years likely before the statute of limitations on most personal injury cases in Minnesota. What happens then when this person later brings civil claims against the arresting officers or the municipality for conduct occurring during the arrest or criminal investigation? Naturally, the first step would be to review the underlying law enforcement data concerning the traffic stop, arrest, and prosecution to evaluate the claim or prepare an answer to the complaint. But this data is sealed because of an automatic expungement. As counsel for the defendant entity maintaining the sealed data you should arguably be able to review it because this review is internal and could be covered by attorney-client privilege and/or the work product doctrine. The MGDPA would not be implicated where there was no release of the data. But what happens when those records need to be produced for the defense of the case? What happens when another third-party law enforcement agency has data you need? To pave the way for access to relevant expunged records, it may be prudent to emplace a protective order early in the case. While the defendant municipality may have access to an expunged record, a protective order could also be leveraged to ensure protection of a third- party's concern of an unauthorized disclosure. It allows the plaintiff's/subject's privacy concerns over public dissemination of the records while allowing necessary access by the defense. Counsel should consider requesting the plaintiff provide properly executed authorizations directed to all government agencies allowing them to release of the private data. Again, consistent with Minn. Stat. § 13.02, subd. 12, individuals can access their own private data under the MGDPA. Finally, it may also be prudent to consider seeking a stay of civil proceedings or discovery until the expunged records necessary to the defense can be secured. Keep in mind too, it may be difficult to find out which agencies even have the data because the whole point of the expungement process is to hide the records from public view and to leave no breadcrumbs.

In civil litigation, attorneys should anticipate potential complications arising from sealed or inaccessible records. Strategic use of protective orders, early communication with law enforcement agencies, and proactive requests for authorizations can streamline the discovery process and mitigate delays caused by expunged data. Expungement laws in Minnesota continue to evolve, and practitioners must stay informed about statutory updates, administrative procedures, and judicial interpretations. As automatic expungement becomes more common, understanding its nuances is essential for litigators advising government clients, private individuals, or other entities.


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LIABILITY FOR NEGLIGENT SELECTION OF AN INDEPENDENT CONTRACTOR IN MINNESOTA

By Lucy Gibbons

Introduction

In 2024, the Minnesota Supreme Court decided the case of *Alonzo v. Menholt* in which negligent selection of an independent contractor was officially recognized as an available tort claim. In order to prevail, a claimant must demonstrate that the principal failed to exercise reasonable care in selecting an independent contractor and that this failure caused the resulting harm. To determine the reasonable care required in selecting an independent contractor, the principal must consider the risk exposure to others if the work is not done correctly and whether any special skill or training is required to do the work. The Court did not anticipate an increase in litigation following *Alonzo* because it reasoned that most principals are sophisticated entities with the resources to adequately vet their independent contractors and protect themselves from liability for negligent selection of an independent contractor.

As expected, there have not been many subsequent cases involving claims for negligent selection of an independent contractor. However, the few cases involving negligent selection of an independent contractor have provided important insights. One such case helped define the parameters of what kind of work is considered to require special skill or training. Another provided that a *Pierringer* release between the claimant and the independent contractor will not absolve the principal of liability for negligent selection of an independent contractor. These cases establish how claims for negligent selection of an independent contractor may be handled in the future.

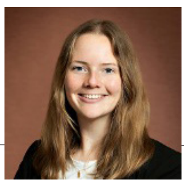
In addition, the *Alonzo* decision may impact liability exposure for freight brokers in Minnesota, as freight brokers are often the party selecting the independent contractor for the principal. There is presently a case before the U.S. Supreme Court regarding whether state or federal law governs cases regarding freight broker liability for negligent selection of an independent contractor. That case will be determinative for freight broker liability exposure in Minnesota.

Alonzo v. Menholt **Overview**

The case of *Alonzo v. Menholt* involved a motor vehicle accident between two semi-trucks hauling sugar beets. *Alonzo v. Menholt*, 9 N.W.3d 148, 150 (Minn. 2024). One of the semi-truck drivers had been hired by an independent contractor, Braaten Farms, to haul sugar beets for Menholt Farms. *Id*. at 151. The independent contractor did no investigation into the driver's qualifications and Menholt Farms never inquired into the independent contractor's hiring process. *Id*. The other semi-truck driver subsequently sued Menholt Farms pursuant to a claim for negligent selection of an independent contractor. *Id*.

The Minnesota courts had not previously recognized the tort of negligent selection of an independent contractor. *Id*. at 152. However, the Court decided to establish the cause of action in Minnesota for several reasons. *Id*. First, the Court concluded that negligent selection of an independent contractor was a natural extension of the already recognized torts of negligent credentialing and negligent hiring of an employee. *Id*. at 154-55. Then, the Court acknowledged that negligent selection of an independent contractor had been recognized as a tort in the majority of common law states. *Id*. at 155. Next, the Court concluded that establishing negligent selection of an independent contractor as a tort would not create tension with other applicable laws because the tort holds a principal liable for its *own* negligent selection rather than for the negligent actions of the independent contractor. *Id*. at 156. Lastly, the Court determined that there was no need to address whether the tension between the new tort claim and existing law outweighed the protections provided by the newly recognized tort because negligent selection of an independent contractor did not conflict with any other applicable laws. *Id*. at 156-57.

In recognizing the tort claim for negligent selection of an independent contractor, the Court provided that, in order to prevail, "a claimant must establish that the principal (1) breached their duty to exercise reasonable care in selecting a competent and careful contractor, and (2) that this breach of duty caused the claimant's physical harm." *Id*. at 157-58. The principal's liability is limited to the "physical harm



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caused by their failure to exercise reasonable care to select a competent and careful contractor, but only for such physical harm as is so caused." *Id*. at 157.

The first element of a claim for negligent selection of an independent contractor pertains to the level of reasonable care required of a principal in selecting an independent contractor and is circumstantial. *Id*. at 158. Factors that are used to determine the degree of care required include: (1) the potential risk exposure to others if the independent contractor's work is not done correctly, and (2) whether the work to be done is within the competence of the average person or if it requires special skills or training. *Id*. The amount of care required in selecting an independent contractor must be proportionate to the danger of not using such care – more dangerous work requires greater care in selecting an independent contractor and ensuring that the independent contractor has the requisite skills and training. *Id*. The Court concluded that the work at issue in Alonzo did not require special skill or training and that *Menholt* Farms had no reason to believe that Braaten Farms was not competent to select independent contractors. Id. at 153. Therefore, Menholt Farms had no duty to inquire about the independent contractor's selection of workers. *Id*.

The second element of a claim for negligent selection of an independent contractor requires the negligent selection was the proximate cause of the harm. *Id*. at 159. Proximate cause is only established when the principal could have reasonably anticipated the harm because of some quality in the independent contractor which made it negligent for the principal to entrust the work to the independent contractor. *Id*. "In other words, had the principal exercised reasonable care, the principal would have known of that quality and not hired the contractor, and the harm would not have occurred." *Id*.

In summary, *Alonzo* established negligent selection of an independent contractor as a recognized tort in the state of Minnesota. To prevail on such claim, a claimant must demonstrate that the principal failed to exercise reasonable care in selecting an independent contractor based on the potential risk associated with the work and requisite skills or training needed to do the work. A claimant must also show that the negligent selection of the independent contractor was the proximate cause of the harm suffered.

Post-*Alonzo* Developments

The Court in *Alonzo* recognized that the tort of negligent selection of an independent contractor may impose additional responsibility on entities that utilize independent contractor services. *Alonzo*, 9 N.W.3d at 158. However, the Court stated that principals who regularly employ independent contractors are often professional entities with greater capacity to understand the work at issue, the associated risks, and to ensure that the independent contractors are competent and careful. *Id*. Therefore, the Court suspected that the new tort would impose few, if any, burdens on principals. *Id*. at 159.

While the *Alonzo* Court did not anticipate a significant change for principals based on its recognition of the negligent selection of an independent contractor tort claim, there have been several post-*Alonzo* decisions that have implications for principals' liability exposure. The following provides insight into the post-*Alonzo* cases and the potential scope of liability for principals, particularly as it pertains to those in the auto or transit industry.

Smith v. Piechowski

In *Smith v. Piechowski, LLC*, Plaintiff, Smith was a passenger in a vehicle stopped at a red light when a semi-truck rear-ended the vehicle, injuring Smith and killing her husband. *Smith v. Piechowski*, No. A23-0481, 2025 WL 517768 at *1 (Minn. Ct. App. 2025). The semi-truck was driven by the sole owner and operator of a commercial carrier business called SP Trucking, LLC. *Id*. SP Trucking was driving a load of hot asphalt on behalf of Northstar Materials Inc., d/b/a Knife River, pursuant to an independent-truck-operator (ITO) agreement. *Id*. Under the ITO, SP Trucking agreed to transport property for Knife River provided that SP Trucking was an independent contractor who would defend and indemnify Knife River for any liability caused by SP Trucking's performance. *Id*. Smith sued SP Trucking, its owner, and Knife River. *Id*. Smith asserted claims for negligence and negligent infliction of emotional distress against all defendants and a claim for negligent hiring/retention against Knife River. *Id*.

Subsequently, Smith entered into a *Pierringer* release with SP Trucking and its owner in which Smith agreed to indemnify and hold harmless SP Trucking and its owner from all claims without releasing Knife River for the negligent hiring, retention or any other legal liability. *Id*. at *2. Knife River subsequently moved for summary judgment, arguing that Smith's release of SP Trucking and its owner also released Knife River because the release of an agent also releases the agent's principal and the negligent hiring/retention claim was a "derivative claim" barred by the release. *Id*.

Smith opposed Knife River's motion, arguing that the *Pierringer* release did not bar her claim for direct liability against Knife River for negligent selection of SP Trucking based on Knife River's own negligence. *Id*. The District Court agreed with Knife River, finding that Smith could not prove SP Trucking's negligence resulted in an injury to Smith because of the release, preventing her from proving an essential element of the tort claim against Knife River. *Id*.

Smith appealed the district court's decision. Id. at *3. The Court of Appeals affirmed on the ground that Minnesota had not yet recognized the tort of negligent selection of an independent contractor, as Smith's claim was made before the *Alonzo* decision. *Id*. Smith appealed again, this time after the Alonzo decision. Id. In light of *Alonzo*, the Supreme Court vacated the lower courts' decision and remanded the case for review. *Id*.

On remand, the Court of Appeals held that the *Pierringer* release did not release Knife River from all claims. *Id*. at *4. While a release of the actively negligent party also releases the vicariously liable party, a principal may remain independently liable for its own negligence. *Id*. Thus, a *Pierringer* release would only release a principal if its liability was *solely* vicarious. *Id*. The *Pierringer* release only relinquished the claims against Knife River to the extent they were based on Knife River's vicarious liability for SP Trucking's negligence. *Id*. It did not release claims based on Knife River's direct liability. *Id*. Minnesota Courts have typically treated claims similar to negligent selection as direct liability claims. *Id*. at *5. Thus, the Court of Appeals concluded that negligent selection of an independent contractor was a direct liability claim. *Id*. Therefore, Knife River's liability for negligent selection of an independent contractor was not released by the *Pierringer* release. *Id*.

Knife River argued that Smith could not prove an unsafe quality of SP Trucking that caused Smith's injury because the *Pierringer* release required Smith to indemnify and hold harmless SP Trucking. *Id*. at *6. The Court rejected this argument, reasoning that the *Pierringer* release still required the jury determine the comparative fault of the settling defendant. *Id*.

Although *Smith* is an unpublished opinion, it provides important insight to the effects of the *Alonzo* holding in the area of auto defense work. It demonstrates that a *Pierringer* release between an independent contractor and a plaintiff will not provide protection for the principal who selected the independent contractor. This suggests that principals may be assessed greater liability by a jury when conducting a comparative fault evaluation because negligent selection of an independent contractor tort claim provides another route for liability against the principal.

Seelig v. Ramsey County

In 2018, Ramsey County sought to contract with a prison-transport provider. *Seelig v. Ramsey Cnty.*, Minnesota, No. 24-CV-01732 (JMB/ECW), 2025 WL 835761 at *1 (D. Minn., 2025). At the time, Ramsey County's policy required that it approve service contracts to the lowest bidder that met its specifications. *Id*. One bidder, Inmate Services Corporation ("ISC"), had a highly publicized bad reputation relating to its employees violating detainees' rights. *Id*. Ramsey County had knowledge of ISC's reputation, but since ISC provided the lowest bid for the contract they were awarded the contract. *Id*. During the contract term, Ramsey County did not inquire into ISC's compliance with precautionary measures, such as running employee background checks or confirming employee completion of safety training. *Id*.

In March 2020, *Seelig* was being transported from Washington to Ramsey County by ISC and was sexually assaulted by an ISC employee during the trip. *Id*. at *2. In 2024, *Seelig* brought constitutional and tort claims against Ramsey County, asserting that Ramsey County entered into a services contract with ISC despite having knowledge of ISC's history of abuse allegations. *Id*. One of *Seelig's* claims against Ramsey County was for negligent selection of an independent contractor. *Id*.

Seelig argued that Ramsey County did not use reasonable care when selecting ISC because Ramsey County either failed to investigate or blatantly ignored ISC's history of bad practices. *Id*. at *6. Ramsey County asserted that it was immune from liability pursuant to Minn. Stat. § 466.03, subd. 6, which provides municipalities with immunity for any claim based upon the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused. *Id*. The Court rejected Ramsey County's argument, finding that hiring decisions were not a protected action under Minn. Stat. § 466.03. *Id*. at *8.

The Court evaluated Seelig's allegations pursuant to the *Alonzo* factors, assessing whether Seelig adequately demonstrated that Ramsey County did not exercise reasonable care when selecting ISC and this failure was the proximate cause of Seelig's harm. *Id*. at *9. The Court discussed that the harm must ultimately result from a quality in the contractor which made it negligent for the employer to entrust the work to the contractor. *Id*. A principal may only be held liable if they could have reasonably anticipated the harm that resulted. *Id*.

The Court held that Ramsey County was subject to a heightened standard of care given the inherently high risk of danger in transporting and caring for detainees. *Id*. As such, Ramsey County was found liable for negligent selection of an independent contractor when it failed to inquire into ISC's procedural compliance despite well-publicized accounts of the company violating detainees' rights in transit. *Id*.

Seelig provides two important takeaways. First, it establishes that hiring decisions, such as for independent contractor transit services, are not considered a discretionary function or duty of a municipality protected by Minn. Stat. § 466.03. This indicates the breadth of applicability of the tort of negligent selection of an independent contractor.

Second, it provides an example of what kind of work is considered to require heightened skills or training. The *Alonzo* Court held that the work at issue – the transportation of produce via semitrucks – did not require special skill or training and, thus, did not impose a more stringent duty of care on the principal when selecting an independent contractor. *Alonzo*, 9 N.W.3d at 153. On the other hand, the *Seelig* Court held that the transportation of detainees required heightened skill or training, thus holding Ramsey County to a higher standard when selecting its independent contractors. *Seelig*, 2025 WL 835761 at *9. This suggests that the ordinary risks associated with driving are less of a consideration, while the function or purpose of the driving is weighed more heavily.

Implications for Freight Broker Liability

The *Alonzo* decision and subsequent cases may have important implications for freight brokers. Freight brokers function as intermediaries, connecting hiring entities to independent contractors for the purpose of conducting transportation operations. To the extent the broker selects the independent contractor, the broker is likely obligated to comply with the obligations as set forth in *Alonzo*. As such, the broker would need to determine the potential risk exposure to others if the independent contractor's work was not done correctly and whether any special skills or training is required for the work.

If the broker selected an independent contractor on behalf of the principal without adequately evaluating the risk exposure or assessing the special skills or training needed and the independent contractor subsequently caused damage to a third-party, the broker would likely be liable for the negligent selection of the independent contractor. The broker is the one who identifies, vets, and selects the carrier for the principal.

The onus may still be on the principal to inform the broker of the risk exposure if the job is not done correctly or the special skills or training required to perform the job, as the principal likely has the best understanding of the intricacies of what the work to be done. However, after the principal provides this information to the broker, it is the broker's responsibility to provide an independent contractor that satisfies those requirements. Therefore, both the broker and the principal may realistically be held liable for the negligent selection of an independent contractor, although the underlying circumstances of each specific case are likely to be determinative.

There is presently a case before the United States Supreme Court regarding freight broker liability for negligent selection of an independent contractor. In *Montgomery v. Caribe Transport II, LLC*, the question is whether the Federal Aviation Administration Authorization Act preempts state regulation of motor carrier safety as it pertains to a broker's negligent hiring of a motor carrier. Essentially, the Court is to determine whether a claim against a freight broker for negligent hiring of a motor carrier is subject to state or federal law. The Court's decision regarding this case will have implications for principals and freight brokers in Minnesota and across the nation, as it will determine whether principals and freight brokers are subject to federal law or, for those in Minnesota, if they will be subject to the standards as set forth in *Alonzo*. Oral arguments were heard for *Montgomery* on March 4, 2026. As of the writing of this article, no decision has been issued.

In *Montgomery*, defendant C.H. Robinson took the position that federal law is controlling because it ensures uniformity in interstate commerce. Federal law does not impose liability on brokers for their selection of licensed motor carriers whose drivers are alleged to cause traffic accidents. C.H. Robinson argues that, because brokers do not own or operate the motor vehicle or select the driver, they are not the proper party to bear the responsibility for the motor vehicle accident.

If the Supreme Court finds in favor of C.H. Robinson, federal law would govern and freight brokers (and likely principals) are not liable for the negligent selection of an independent contractor because they are not selecting the specific driver whose conduct causes the harm. If the Court finds against C.H. Robinson, state law would govern claims against freight brokers for negligent selection of an independent contractor. Therefore, freight brokers (and principals) in Minnesota would be at an increased risk of exposure to and liability for claims of negligent selection of an independent contractor pursuant to Alonzo.

Conclusions

The 2024 case of *Alonzo v. Menholt* established a cause of action for negligent selection of an independent contractor in Minnesota. While this decision has not substantially changed the landscape of liability exposure for principals, it has set forth the standard of care with which principals must proceed when selecting independent contractors. A principal must evaluate the risk exposure to others if the work is not done correctly and what sort of special skills or training may be necessary to complete the work. If the principal fails to adequately evaluate these factors, they risk significant liability exposure for negligent selection of an independent contractor.

As the Minnesota Supreme Court predicted, there has not been a large influx of cases regarding negligent selection of an independent contractor since it recognized such tort claim. However, the subsequent cases involving negligent selection of an independent contractor have provided valuable insights. *Smith v. Piechowski* provided that a principal will not be released from liability for negligent selection of an independent contractor even when the independent contractor enters into a *Pierringer* release with the claimant. *Seelig v. Ramsey County* helped better define what type of work requires special skills or training and will hold the principal to a higher standard of care when selecting its independent contractor.

The *Alonzo* framework may also affect liability for freight brokers who are often in the position of selecting the independent contractor for the principal. Under Minnesota law, the freight broker would likely be held to the same standards as the principal, requiring consideration of the risk exposure and skills and training required to adequately perform the task. However, the *Montgomery v. Caribe Transport II* case presently before the U.S. Supreme Court will determine whether freight brokers are subject to state or federal law for claims of negligent selection of independent contractors. The outcome of that case will affect liability exposure for negligent selection of an independent contractor claims for freight brokers in Minnesota.

A CONVERSATION WITH PAST MDLA PRESIDENT TAMMY RENO

By McKaylee E. Berg

I recently had the opportunity to sit down with Tammy Reno, senior counsel at Nilan Johnson Lewis, P.A., specializing in product liability defense and commercial litigation. Her involvement with MDLA spans well over a decade: she co-chaired the Motor Vehicle Accident Committee from 2009 to 2014, served as Vice President in 2021-2022, led the organization as President in 2022-2023, and continued on as Past President in 2024. She has mentored, and continues to mentor, a generation of attorneys coming up behind her. Throughout our conversation, two themes surfaced repeatedly: the value of getting genuinely involved in the profession and in organizations such as MDLA, and the importance of developing real confidence within it.

<u>On the Path to Law</u>

Q: What drew you to the law in the first place?

Ms. Reno knew she wanted to be a lawyer from early childhood. With a love of debate and argument cemented early on, she pursued those interests. As a first-generation college student, with no other lawyers in her family, she entered the legal profession without a roadmap.

Q: What did your education look like before law school?

She studied sociology at the University of Wisconsin-Madison. She didn't choose sociology as a pre-law strategy but because how people and systems behave genuinely interested her, and she knew she was headed to law school regardless of her major. So, she chose to study something that intrigued her.

Q: How did you become a civil litigator?

During law school, Ms. Reno clerked at firms practicing bankruptcy and family law. She initially had an interest in criminal law, and in her last semester of law school she externed for a Ramsey County judge. The reality, however, gave her pause. The day-to-day struck her as more mundane than she expected and realized that criminal law was not one that interested her as much as she initially thought. What she did know was that she wanted to be a litigator, and a judge helped her find her first civil litigation position after law school.

Q: How has your practice evolved over the years?

Ms. Reno started out defending individuals in auto and homeowners' cases, and it progressed from there. Today, the bulk of her practice is product liability defense, and she has been building a real estate and commercial litigation practice.

<u>On Getting Involved with MDLA</u>

Q: How did your involvement with MDLA begin and grow into the presidency?

It started early in her career and deepened when a senior attorney encouraged her – not merely permitted it but actively encouraged her – to attend MDLA events and conferences and get involved in committees. As a result, she co-chaired the Motor Vehicle Committee, joined the board, and worked her way up. The presidency, she said, wasn't something she set out to win; it grew out of staying involved most of the attorneys who have led this organization have arrived where they are. She was proud to lead an organization she genuinely cared about.

Q: What is the difference between leading a bar association versus being part of a law firm's leadership?

Ms. Reno emphasized how similar the two are. Whether guiding associates at a firm or volunteers across an organization, the work is the largely same: managing different personalities, helping people grow, and aligning a range of approaches toward a shared goal, including growth – both personally and from the business aspect.

Q: What did you most want members to take from your time as president – and throughout your years of involvement with MDLA?

Ms. Reno comments that you get out of MDLA what you put into it. The network built through involvement pays dividends across a whole career – in referrals, in resources, in support – even among attorneys who never share a client. A firm gives an attorney exposure to the senior lawyers at that firm; a bar association like MDLA, through its various committees, gives exposure to attorneys across the profession, and those relationships survive firm changes and practice shifts. What you gain, she said, can be deeply rewarding.

Q: Some attorneys measure the value of involvement in organizations by whether it generates business. Do you see it that way?

No, she said: and she worries that some attorneys, and some firms, think otherwise. Business development helps justify the time away from billable work, and bringing in clients is certainly valuable. But the CLEs, the relationships built across the local bar, and simply being an active member carry their own return, and at a fraction of the cost of many other options. Success in this profession, in her view, is not measured by the billable hour alone. The attorneys who treat involvement as worthwhile only when it produces a client, she suggested, tend to miss most of what makes it valuable in the first place.

<u>On Mentorship and Culture</u>

Q: You have emphasized the importance of mentorship. What does that look like in your practice now?

Mentorship shaped her own career, she said, and she sees passing it on as one of the most important things a senior attorney can do. She tries to be approachable and available to associates informally, anytime, and her firm also pairs each associate with mentors in a more formal arrangement. She checks in with her mentees regularly over coffee or lunch, offers honest feedback, and keeps the door open for questions, whether about a case or about navigating the firm.

The weight Ms. Reno places on mentorship lands against a sobering backdrop. According to NALP Foundation research, roughly 82% of associates now leave their firms within five years, with the fourth year the most critical, even as year-to-year attrition has moderated from a 2021 high of 26% to about 20% in 2024. NALP Foundation, The NALP Foundation Releases Latest Update on Associate Attrition and Hiring (CY 24) (2025), https://www.nalpfoundation.org/news; see also Five Talent Trends Law Firms Need to Know for 2025, The Tilt Institute (Nov. 19, 2025), https://www.thetiltinstitute.com. Firm leaders increasingly point to stronger mentorship, clearer promotion pathways, and greater flexibility, rather than compensation alone, as the levers that keep attorneys in place. Latest BigLaw Recruiting and Associate Attrition Statistics, JD Journal (Feb. 3, 2026), https://www.jdjournal.com. The kind of investment Ms. Reno received early, and now passes along, is exactly what the data identifies as decisive.

Q: How much does that emphasis on mentorship connect to firm culture?

A great deal, in her view. A workplace that genuinely supports its people invests in belonging, and the mentorship pairings reinforce the same message. That, she said, is what retains talent, and it's the kind of thing that can't be captured in a mission statement; it shows up in how the place actually feels.

Culture of that kind is no longer a luxury. In Bloomberg Law's 2024 workload survey of more than 1,000 legal professionals, attorneys reported feeling burned out an average of 42% of the time, with mid- and senior-level associates reaching 51%, and 97% reported working while out of the office. Bloomberg Law, 2024 Attorney Workload and Hours Survey (2025), summarized in Bloomberg Law Releases Attorney Workload Survey Insights (Apr. 15, 2025), https://pro.bloomberglaw.com. The small, deliberate gestures Ms. Reno describes are aimed squarely at the conditions those numbers reflect.

Q: What's the single most undervalued or undertaught skill in this profession?

The business of law. Law school teaches research and drafting, she explained, but not how a firm actually operates: how to be profitable, how to build and keep a client base, and how to market effectively. Most attorneys, she observed, only learn it if their firm makes a point of teaching it. She was fortunate that the first firm she worked at did. An early mentor taught her firsthand: he gave her cases to run from intake through resolution, brought her into client relationships, and modeled how marketing is really done. That foundation made her comfortable building relationships with clients and referral sources for the rest of her career, and she credited him directly with her ability to market.

<u>On Confidence and Professional Growth</u>

Q: What's the biggest misconception you've encountered about being a woman in the legal industry?

That a strong, confident woman is read as aggressive, while a man showing the same traits is simply read as confident. That double standard, she said, is real. But her response was never to manage how she comes across in every interaction. You are who you are, as she put it, and a certain amount of criticism comes either way; the work is to stay steady and let the practice speak for itself.

Q: Have you ever felt pressure to downplay who you are to fit a professional mold, as it pertains to gender?

Not in terms of gender, she said: she has always been comfortable being herself. The more persistent challenge, she noted, has been navigating more difficult clients who may hold viewpoints different from her own. That, in her experience, has taken more deliberate effort than anything related to being a woman.

Q: Did you experience that kind of differential treatment in your career?

She did, to a degree. Early on there were assumptions: people occasionally took her for the court reporter or the client rather than the attorney, and she met some chauvinism along the way. But she was clear that she never felt the law firms she worked at made advancement harder for her because she was a woman, and the friction she did encounter never set the shape of her career. She similarly stated she never felt the differential treatment in the courtroom.

Q: Is there a broader lesson you've drawn from those experiences of differential treatment?

Ms. Reno stated that it is
important to remember that not every difficult interaction is a personal slight. Litigation is tense and competitive by nature, and some people are simply difficult. Treating every bit of friction as something to absorb burns energy better spent on the practice itself. The attorneys who last, she observed, make that distinction quickly and move on.

<u>Advice for the Next Generation</u>

Q: What's your practical advice for someone earlier in her career who isn't yet thinking strategically about building a practice or pursuing leadership?

Don't be afraid to ask questions and learn when to ask them. The attorney who never asks comes across as unapproachable; the one who, over time, becomes a go-to person. Take each opportunity as it comes. It was simple advice, she admitted, but it compounds.

Q: Looking at the attorneys coming up today, what worries you, and what gives you hope?

Her chief worry was that younger attorneys won't get the trial experience earlier generations did. That concern is well founded. Administrative Office of the U.S. Courts data show that federal district courts completed 2,411 civil jury trials in 2004, 1,922 in 2014, and just 1,162 in 2024. The Decline of the Civil Jury Trial and the Rise of ADR, ADR Systems (July 23, 2025), https://www.adrsystems.com (citing Administrative Office of the U.S. Courts data). In 1962, juries decided roughly 6% of federal civil cases; today that share is

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AMES V. OHIO DEPARTMENT OF YOUTH SERVICES: THE END OF THE "BACKGROUND CIRCUMSTANCES" RULE

By Chasse Thomas

I. Introduction

Title VII of the 1964 Civil Rights Act has been a pillar of employment protection for decades. Title VII seeks to protect all employees from, among other things, discrimination. While clear in its text, certain precedent demanded the legal theory that required certain groups of individuals to provide more than what was required of others—arguably contradicting the language of Title VII itself.

After six decades, this additional requirement was set aside. In 2025, the United States Supreme Court ("SCOTUS") ruled that employees who belong to a majority group do not need to prove discrimination beyond what people in minority groups must demonstrate. SCOTUS reversed the Sixth Circuit's legal standard of "Background Circumstances," previously followed by the Eighth Circuit, for majority groups in *Ames v. Ohio Department of Youth Services*. While the holding seems narrow, the unanimous decision in Ames reinforces the equal application of Title VII for claims of employment discrimination.

For all employers, it is critical that this deeper meaning is followed. The case expands potential exposure for companies, government entities, and other organizations, and reshapes certain programs and initiatives aimed at increasing full participation of majority and minority group employees. As detailed below, we take a deep dive into what led to Title VII, its application, the test applied for majority group employees, SCOTUS' decision in *Ames*, and practical implications employers need to be aware of moving forward.

II. Early History of Title VII

Protections for employees, including discrimination, have come a long way in the United States. Workers' rights and employment protections, for all types of jobs, are a relatively new idea. Indeed, in the early 1900s, the law heavily favored employers and struck down worker protection laws. For instance, in 1905, SCOTUS struck down a state law limiting the number of hours per week bakers could work. *Lochner v. New York*, 198 U.S. 45, 58 (1905) (holding that the limitation of employment in bakeries to 60 hours a week and 10 hours a day, violated the Fourteenth Amendment). While previous protections were available for people working in dangerous conditions (i.e. coal mines), there was no protection afforded for employees in a 'non-dangerous' positions. *Id*. At this point, the law heavily favored employers as SCOTUS cited liberty to contract granted by the Due Process Clause. *Id*. ("We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health, or the health of the individuals who are following the trade of a baker.").

But by the time of the Great Depression in 1933, Congress passed the Unemployment Relief Act that provided "in employing citizens for the purpose of this Act, no discrimination shall be made on account of race, color, or creed." Unemployment Relief Act, Pub. L. No. 73-5, 48 Stat. 22 (1933). While important for the transformation of employment discrimination, there was no enforcement mechanisms created to carry out the mission of the statute.

Franklin D. Roosevelt eventually issued an executive order, making it unlawful for government contractors to discriminate against employees based on race, color, or national origin. U.S. Equal Employment Opportunity Commission, *Executive Order 8802*, https://www.eeoc.gov/history/executive-order-8802 (last visited May 27, 2026). FDR's bold step was the first of any American President in history to outlaw employment discrimination by private parties. While the Order was bold, there was also no enforcement mechanism; rather, the Order's main purpose was to prevent strikes or protests from slowing down the potential need for military supplies.

In 1961, John F. Kennedy issued an executive order making it illegal for any government contractor to discriminate based on "race, creed, color, or national origin." U.S.

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Equal Employment Opportunity Commission, *Executive Order 10925*, https://www.eeoc.gov/history/executive-order-10925 (last visited May 27, 2026). Notably, his Order created the "President's Committee on Equal Employment Opportunity," that allowed the executive branch to issue penalties for contradicting the Order. The Order also required "studies of current government employment practices . . . and shall include statistics on current employment patterns, a review of current procedures, and the recommendation of positive measures for the elimination of any discrimination, direct or indirect, which now exists." *Id*.

Later in the 1960s, the Civil Rights Movement fundamentally transformed the American workforce by legislating protections that continue to shield workers from discrimination. Notably, Congress passed Title VII of the Civil Rights Act in 1964. To this day, Title VII is a monumental piece of legislation. It is one of the first in its history to prohibit discrimination based a variety of conduct and industries, like public accommodations, governmental services, and education. Notably, Title VII made it illegal to:

> [F]ail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any Individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2. Further, Title VII created the Equal Employment Opportunity Commission ("EEOC"), a bipartisan commission set up to eliminate, among other things, employment discrimination. The EEOC "investigate[s] charges of discrimination against employers who are covered by the law . . . [and must] fairly and accurately assess the allegations in the charge and then make a finding." U.S. Equal Employment Opportunity Commission, *Overview*, https://www.eeoc.gov/overview (last visited May 27, 2026). The EEOC also "assures federal agency and department compliance with EEOC regulations, provides technical assistance to federal agencies concerning EEO complaint adjudication, monitors and evaluates federal agencies' affirmative employment programs, develops and distributes federal sector educational materials and conducts training for stakeholders, provides guidance and assistance to our Administrative Judges who conduct hearings on EEO complaints, and adjudicates appeals from administrative decisions made by federal agencies on EEO complaints." *Id*.

III. Application of Title VII

Title VII's application varied in different jurisdictions. By 1973, SCOTUS issued its arguably most famous decision in employment law regarding the test of employment discrimination in *McDonnell Douglas v. Green*. In that case, a former employee of McDonnell Douglas was terminated with other employees because of, as argued by McDonnell Douglas, a reduction in work force in the mid-1960s. 411 U.S. 792, 794 (1973). The former employee was a part of a protest arguing that his termination was racially motivated. *Id*. at 795. The former employee later re-applied and worked with McDonnell Douglas and the company denied his application for alleged participation in a separate protest, which the former employee's involvement was unclear. *Id*. at 795-96. The employee then filed a charge of discrimination with the EEOC alleging race discrimination. *Id*. at 796.

The case eventually went through the district court and to the Eighth Circuit, where the appellant court held that the case was to be remanded to trial relating to the employee's race discrimination claim. *Id*. at 797-78. But when the Eighth Circuit remanded the case, the court noted that: (1) the employee established a prima facie case of racial discrimination; (2) the company's refusal to rehire the employee was a subjective decision; and (3) the employee should be given the opportunity to demonstrate the company's reasons for refusing to rehire him were mere pretext. *Id*. at 798. SCOTUS took the case to clarify the standard for racial discrimination. *Id*.

In clarifying the test, SCOTUS stated that an employee must first establish a *prima facie* claim for racial discrimination when there is no direct evidence of discrimination. *Id*. at 802. This required the employee to establish: "(i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications." *Id*. In response, the Court stated that the employer can rebut the *prima facie* case by demonstrating that the company's reason for an adverse action was a "legitimate, nondiscriminatory reason[.]" *Id*. The Court then concluded that the employee may show that this alleged reason was mere pretext for discrimination (i.e. the reason was false). *Id*. at 804. The Court also articulated reasons or evidence for pretext, including "facts as to the [company]'s treatment of [the employee] during his prior term of employment; [the company]'s reaction, if any, to [employee]'s legitimate civil rights activities; and [the company]'s general policy and practice with respect to minority employment." *Id*. at 804-05.

SCOTUS' holding enshrined the infamous *McDonnell Douglas* standard, creating a three-part shifting framework for employment discrimination claims. The test is so popular that more than 249,000 cases reference it and several states adopted the standard for their employment discrimination statute–including Minnesota. Thomson Reuters, *Citing references to McDonnell Douglas v. Green, 411 U.S. 792, 794 (1973)*, https://1.next.westlaw.com/RelatedInformation/Idf0ccea49c9c11d993e6d35cc61aab

4a/kcCitingReferences.html?originationContext=documentTab&transitionType=CitingReferences&contextData=(sc.Search)&docSource=571f89e9aee24fe598b5e8fd05b42e2b&rank=2&rulebookMode=false&ppcid=6e9c1a23cef8454b9a6fde29dad8c9d1 (last visited May 27, 2026) (showing 249,027 cases cited to *McDonnell Douglas); e.g., Guimaraes v. SuperValu, Inc.*, 674 F.3d 962, 977 (8th Cir. 2012) (noting that claims under the Minnesota Human Rights Act, a Title VII equivalent, "are governed by the same standards" as a Title VII claim). This standard continues to be used more than 50 years after the case was decided and applies to all types of discrimination, including sexual orientation. This test was applied to minority groups and, after time, discrimination for majority groups faced a different approach.

IV. The Background Circumstances Rule

In cases where an employee alleged discrimination based on a majority status, the analysis was similar but required a majority employee to plead additional circumstances. *Hammer v. Ashcroft*, 383 F.3d 722, 724 (8th Cir. 2004). Specifically, "[i]n reverse race-discrimination cases, [courts require] the *prima facie* case include a showing that background circumstances support the suspicion that the defendant is that unusual employer who discriminates against the majority." *Id*. (quotation omitted and emphasis added). One example of background circumstances includes that a company is inclined to discriminate against a majority class or that there is something 'fishy' about the facts at hand. *Id*. Known as the background circumstances rule, several courts applied this test, including the Eighth Circuit and Minnesota federal courts. *Id*. The standard is imprecise and unclear in its application, given that most discrimination claims involve the minority.

To understand its application, the Eighth Circuit applied such test when an employee provided facts by showing: "(1) that [other candidate] was substantially less qualified than [the employee]"; (2) there was active interest in trying to hire a minority employee; and (3) that "two members of the [hiring committee] usually hired" minority employees. *Duffy v. Wolle*, 123 F.3d 1026, 1037 (8th Cir. 1997). This created a distinction between majority and minority cases, such that the test for a majority class required a gathering of evidence and proof of discrimination from the jump, distinct from minority class plaintiffs. See, e.g., id. This added burden made the likelihood of surviving summary judgment more difficult in proving a prima facie case.

V. The Ames Ruling

The Background Circumstances test came to a critical impasse to SCOTUS in *Ames v. Ohio Dep't of Youth Services*. In that matter, the plaintiff was a heterosexual woman who sued her employer, Ohio's juvenile correctional system, based on sexual orientation discrimination under Title VII. 605 U.S. 303, 306 (2025). A longtime employee since 2004, the plaintiff applied for a new position in the agency's office. *Id*. While she was eventually interviewed, the State went with a different candidate, a person who identified as a homosexual woman, for the job. *Id*. The plaintiff was later removed from her job as a program administrator and was demoted to the same job she had when she first started at the company and received a pay cut. *Id*. Her previous job was then filled by another employee who identified as a homosexual man. *Id*. The plaintiff eventually sued the company alleging she was denied the promotion and demoted because of her sexual orientation as a violation of Title VII. *Id*.

The case was brought in federal district court, in Ohio, where the district court granted summary judgment for the State. While the court applied the *McDonnell Douglas* standard to the plaintiff's claims, because the plaintiff did not have direct evidence of discrimination, the court dismissed her claims because she "failed to make [a *prima facie*] showing because she had not presented evidence of 'background circumstances' suggesting that the agency was the rare employer who discriminates against members of a majority group. Without that evidence, the court held, plaintiffs who are members of majority groups—including heterosexual plaintiffs, like Ames—could not discharge their evidentiary burden at the first step of the *McDonnell Douglas* inquiry." *Id*. at 306-07 (citing *Ames v. Dep't of Youth Servs*., No. 2:20-CV-05935, 2023 WL 2539214, at *7-9 (S.D. Ohio Mar. 16, 2023) (emphasis added)).

On appeal, the Sixth Circuit agreed and affirmed the lower court's ruling. *Ames*, 605 U.S. at 307. "The court reasoned that [the plaintiff], as a straight woman, was required to make this showing in addition to the usual ones for establishing a prima-facie case." *Id*. Ultimately, the Sixth Circuit rejected plaintiff's claims since she failed to present either: (1) "evidence that a member of the relevant minority group . . . made the employment decision at issue"; or (2) provided "a pattern of discrimination against members of the majority group" evidenced with statistics. *Id*. (quotations omitted and cleaned up). SCOTUS granted certiorari and was tasked to decide "whether, to satisfy that prima facie burden, a plaintiff who is a member of a majority group must also show 'background circumstances' to support the suspicion that the defendant is that unusual employer who discriminates against the majority." *Id*. at 305 (quotation omitted).

SCOTUS disagreed and reversed the Sixth Circuit's decision. In a unanimous opinion, SCOTUS noted that the standard for prohibiting discrimination does not change in the case of reverse discrimination. *Id*. at 310. Justice Jackson delivered the opinion for the Court and, in her analysis, relied upon the statutory interpretation of Title VII and concluded that there is no distinction between majority and minority plaintiffs:

> [Title VII] makes it unlawful 'to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.' The 'law's

> focus on individuals rather than groups [is] anything but academic.' By establishing the same protections for every 'individual'—without regard to that individual's membership in a minority or majority group—Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.

Id. at 309-10 (citations omitted). Justice Jackson concluded that this also fell squarely into SCOTUS' precedent, citing cases discussing race and noting "preference for any group, minority or majority, is precisely and only what Congress has proscribed in Title VII . . . [o]ur case law thus makes clear that the standard for proving disparate treatment under Title VII does not vary based on whether or not the plaintiff is a member of a majority group . . . [t]he 'background circumstances' rule flouts that basic principle." *Id*. at 310 (citations omitted).

In sum, nothing in Title VII distinguishes between majority and minority groups, and that any disparate treatment upon "any individual" affecting the terms, conditions, or privileges of their employment is discrimination. *Id*. at 313. Accordingly, SCOTUS held that majority-member employees alleging discrimination bear the same standard to prove their claim, and remanded the case for further proceeding under the corrected standard. *Id*.

VI. What Does This All Mean?

SCOTUS' unanimous decision unifies Title VII analyses across claims, aligns them with the *McDonnell Douglas* framework, and clearly indicates that Title VII addresses all types of employment discrimination. Courts cannot require majority-group plaintiffs to satisfy additional evidentiary hurdles.

This approach also follows guidance and warnings issued by the EEOC related to certain Diversity, Equity, and Inclusion ("DEI") programs. The EEOC issued a warning against "unlawful DEI-Related Discrimination." In this warning, the EEOC—without binding authority or through the rule-making process—released two documents related to "DEI in the workplace" and "DEI-Related Work Discrimination." In sum, the EEOC cautioned employers not to rely on DEI programs for employment decisions or employment opportunities and emphasized that employers are not allowed to retaliate or harass employees who oppose "unlawful DEI practices." While this is not a change of the law, the EEOC's warning demonstrates a shift in enforcement based on the current administration's objectives.

With the ever-changing legal landscape for employers, and SCOTUS' unanimous opinion in *Ames*, here are things organizations should keep in mind:

(1) Review and assess policies and programs, including but not limited to any DEI practices, to ensure they are inclusive;
(2) Ensure that employment practices do not create a hostile-work environment and do not subject employees to potential discrimination or retaliation; and
(3) Provide guidance to supervisors, executives, and employees of their rights and obligations under Title VII and other applicable laws, statutes, and/or ordinances. This can be done with training on the subject along with standardizing decision making.

VII. Conclusion

SCOTUS' decision in Ames v. Ohio Department of Youth Services is clear: Title VII protects both majority and the minority workers from discrimination. In its unanimous opinion rejecting the "background circumstances rule," SCOTUS held that the application of the McDonnell Douglas framework applies equally. The reinforced protection of Title VII demonstrates SCOTUS' willingness to ensure that employees may seek redress for discrimination in the workplace.

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under 1%, and in most state courts juries decide only 1% to 2% of cases. Jury Trials, a Critical Part of Democracy, Are Disappearing, The Conversation (Apr. 9, 2026), https://theconversation.com. An attorney building a career now simply has fewer chances to stand up in front of a jury than her predecessors did.

But she was optimistic about the rest. The younger generation expects a real work-life balance rather than weekends billed away, and firms are recognizing they have to provide it or lose talented people. That isn't laziness, in her reading: it's changing times, and the demand is being heard. Roughly 72% of attorneys say flexible work arrangements could keep them from leaving their current firm: a signal Ms. Reno stated, firms increasingly cannot ignore. Lawyer Burnout: Data Reports 2026, WifiTalents (Feb. 12, 2026), https://wifitalents.com/lawyer-burnout-statistic. She is hopeful, too, about the broader trajectory for women in the profession. Women now make up more than 40% of U.S. attorneys, up from 36% a decade earlier, and in 2023 became the majority of law firm associates for the first time; American Bar Association, 2024 ABA Profile of the Legal Profession (Nov. 2024), https://www.americanbar.org/news/profile-legal-profession; see also National Association for Law Placement, Women Now Majority of Law Firm Associates (2024) the ABA has dubbed 2016 through 2026 the "Decade of the Female Lawyer." Id. (ABA). The pipeline she came up through, in other words, is steadily filling.

Conclusion

What stands out from the conversation is how consistently Ms. Reno's two themes reinforced each other. She learned the business of law because a mentor took the time to teach her, and she took it from there. Her advice to the attorneys coming up behind her follows directly from her own path: get genuinely involved, ask questions and learn when to ask them, take the opportunities in front of you, and don't burn energy managing perceptions you can't control. With trial work growing scarcer and the profession still wrestling with burnout and attrition, the relationships, and the confidence she describes may matter more than ever. And, in her experience, both compound over the length of a career rather than the length of a case. You get out of it, as she likes to say, what you put into it.


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