

SMITH O'CALLAGHAN & WHITE

33 NORTH LA SALLE STREET

SUITE 3800

CHICAGO, ILLINOIS 60602

TELEPHONE
(312) 419-1000

FACSIMILE
(312) 419-1007

WEBSITE
WWW.SOCW.COM

Federal Court Cases Decided on Cat's Paw Theory After Staub v. Proctor Hospital

This Client Alert provides a list of cases showing how the Federal Courts have applied the U. S. Supreme Court's decision in Staub v. Proctor Hospital, 131 S. Ct. 1186 (2011), in determining whether an employer may be liable for biased actions of a non-decision maker under the so-called cat's paw theory, i.e., when a non-decision maker has sufficient influence on a personnel decision such that discriminatory animus or bias is imputed to an employer. The U. S. Supreme Court in Staub, decided in March, 2011, established a proximate cause analysis for determining employer liability in such circumstances.

For further information concerning the key facts and points of law in the Staub case, please see our Client Alert of December, 2009: U. S. Supreme Court Likely to Review Seventh Circuit's Position on Cat's Paw Theory in Employment Discrimination Cases.

In most instances, the lower courts have taken a narrow view of the U. S. Supreme Court's decision in Staub, holding that the employer is not liable under a cat's paw theory. As shown by several of the rulings below, for example, if an employer's investigation results in an adverse employment action for reasons unrelated to the original biased action of a co-worker, third party or even supervisor, then the biased action is no longer a proximate cause. However, if the investigation takes into account the original action, the employer may be liable under the cat's paw theory. The following case list is provided to show the immediate effect of Staub in the Federal Courts.

Federal Courts holding that employer not liable under a cat's paw theory

Second Circuit

Abdelhadi v. City of New York, No. 08-CV-380, 2011 U.S. Dist. LEXIS 85606 (E.D.N.Y. Aug. 3, 2011) (granting employer summary judgment on Title VII racial and religious discrimination claim where employee alleged he was terminated based on false report of alleged terrorist activity made to his supervisor by police officers that were acting based on racial and religious animus; the court rejected application of the cat's paw theory of liability because decision maker displayed no animus and third party police officers were not employee's supervisor and their animus could not be imputed to employer)

Fifth Circuit

Werner v. Dep't of Homeland Security, No. 10-31258, 2011 U.S. App. LEXIS 19089 (5th Cir. Sept. 15, 2011) (unpublished) (affirming summary judgment for employer in Title VII disparate treatment case where employee alleged co-workers' complaints about her stemmed from racial animus, but employee's supervisors did not display racial animus, independently decided to demote employee and conducted independent investigation of the co-worker complaints; cat's paw theory did not apply where decision makers had no improper motive)

Ordogne v. AAA Texas, LLC, No. H-09-1872, 2011 U.S. Dist. LEXIS 86724, *14 (S.D. Tex. Aug. 5, 2011) (granting employer summary judgment in §1981 race discrimination case where court rejected liability under cat's paw theory; although supervisor may have had retaliatory motive in reporting employee's alleged forgery, such a motive is not imputed to decision makers who "determined that firing [employee] was justified based on the results of their investigation, not on the report that caused it to occur")

Sixth Circuit

Grant v. Walgreen Co. d/b/a Walgreens, No. 10-11392, 2011 U.S. Dist. LEXIS 56123 (E.D. Mich. May 25, 2011) (granting employer summary judgment in age discrimination case where cat's paw theory could not be used to impute immediate supervisor's discriminatory animus to employer because immediate supervisor's report of employee's policy violations to upper management decision maker was not linked to age discrimination and immediate supervisor's ageist comments were not made with the intent to get employee fired)

Seventh Circuit

Wojtanek v. Dist. No. 8, Int'l Assoc. of Machinists and Aerospace Workers, No. 11-1790, 435 Fed. Appx. 545 (7th Cir. Aug. 8, 2011) (unpublished) (affirming summary judgment in favor of union where employee alleged that union violated the ADEA when it failed to adequately represent him because of his age; biased actions of union steward were not the "but for" cause of union official's subpar representation of employee at meeting with management regarding his abrupt termination)

Stratigos v. American Airlines, Inc., No. 09-cv-1923, 2011 U.S. Dist. LEXIS 50353 (N.D. Ill. May 11, 2011) (Lefkow, J.) (granting employer summary judgment on national origin discrimination claim where national origin animus of non-decision maker was not proximate cause of employee's termination; cat's paw theory did not apply to manager's decision to terminate employee because manager was not aware of non-decision maker's derogatory comments about employee's Greek heritage and there were no references to employee being Greek during any termination proceedings with manager)

Palermo v. Clinton, No. 08-cv-4623, 2011 U.S. Dist. LEXIS 35238 (N.D. Ill. Mar. 31, 2011) (Gottschall, J.) (granting employer summary judgment on Title VII retaliation claim where employee could not show that non-decision makers' race and sex based animus affected decision maker's discretion; in order for cat's paw theory to apply employee needed to provide evidence that biased supervisors' input influenced the decision maker and was the proximate cause of the adverse employment action)

Eighth Circuit

Diaz v. Tyson Fresh Meats, Inc., 643 F.3d 1149 (8th Cir. 2011) (affirming summary judgment for employer in ADA case where employee alleged he was retaliated against for trying to accommodate one of his subordinates; employee alleged that non-decision maker instructed him to ignore the subordinate's work restriction when creating the schedule and stood by when a decision maker terminated employee for not honoring the subordinate's accommodation; cat's paw theory did not apply where non-decision maker's motivation was to protect himself rather than to retaliate against employee and where employer conducted independent investigation that would have resulted in employee's termination regardless of non-decision maker's motive)

Tenth Circuit

Simmons v. Sykes Enterprises, Inc., 647 F.3d 943 (10th Cir. 2011) (affirming summary judgment for employer in ADEA case challenging employee's termination where biased comments by non-decision maker regarding employee's age were not the "but for" cause of employee's termination; decision maker terminated employee for mishandling confidential information and would have terminated employee regardless of non-decision maker's animus towards employee's age)

Eleventh Circuit

Brooks v. Hyundai Motor Mfg. Alabama, LLC, No. 10-14700, 2011 U.S. App. LEXIS 21407 (11th Cir. Oct. 20, 2011) (unpublished) (affirming district court's dismissal of Title VII claim and rejecting application of cat's paw theory because non-decision maker's racially derogatory comments were not a causal factor in human resources' decision to terminate employee)

D.C. Circuit

Hampton v. Vilsack, No. 07-2221, 2011 U.S. Dist. LEXIS 62898, *6 (D.D.C. June 14, 2011) (denying employee's motion for reconsideration in view of Staub and re-affirming summary judgment in favor of employer; decision makers terminated employee for altering reimbursement receipts and non-decision maker's stray racial comments occurring more than a year prior were "too remote, purely contingent, or indirect to constitute the proximate cause" of employee's termination) (internal quotations omitted)

Federal Courts holding that an employer may be liable under cat's paw theory

Third Circuit

McKenna v. City of Philadelphia, 649 F.3d 171, 179 (3d Cir. 2011) (affirming district court's denial of employer's post-trial motion challenging employee's wrongful termination claims; employer held liable under cat's paw theory where non-decision maker brought insubordination charges against employee in retaliation for employee's protected activity under Title VII and charges "formed the grounds" of an internal adjudicatory board's review that ultimately ended in employee's termination; internal adjudicatory process was not a superseding cause to the termination and non-decision maker's charges were the proximate cause of the board's decision to terminate)

Seventh Circuit

Diaz v. Elgin School District # U-46, No. 09-cv-1649, 2011 U.S. Dist. LEXIS 108463 (N.D. Ill. Sept. 22, 2011) (Chang, J.) (allowing non-decision maker's derogatory remark into evidence under Staub because biased comments or actions by non-decision maker done with the intention to get employee fired, demoted or otherwise penalized can be imputed to the employer's decision maker if they proximately caused the challenged employment action)

Ley v. Wisconsin Bell, Inc., No. 09-C-1108, 2011 U.S. Dist. LEXIS 73415 (E.D. Wis. July 7, 2011) (denying motion for reconsideration of the denial of employer's motion for summary judgment in ADA employment discrimination case where there was a material issue of fact surrounding whether the decision maker relied on a non-decision maker's recommendation to terminate employee following her multiple sclerosis diagnosis)

Ninth Circuit

Day v. United Parcel Service, Inc., No. 2:09-CV-1261-SU, 2011 U.S. Dist. LEXIS 126939 (D. Or. Nov. 1, 2011) (adopting Magistrate Judge's recommendation to deny employer's motion for summary judgment on Title VII retaliation claim; employee provided sufficient evidence to show that non-decision maker's retaliatory motive may have proximately caused decision maker to suspend employee and require that she receive new certification)

Smith O'Callaghan & White

Terry J. Smith	terry.smith@socw.com
Robert R. Duda Jr.	robert.duda@socw.com
Allison P. Sues	allison.sues@socw.com

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