



Supreme Court Holds "Cat's Paw" Sufficient to Create Employer Liability for Discrimination

You may be asking: how is a cat's paw relevant to employment discrimination? In [Staub v. Proctor Hospital](#), the US Supreme Court answered that question by holding employers liable for employment discrimination under a theory derived from a 17th-century French fable made famous by poet Jean de La Fontaine. In the fable, a monkey convinces a cat to steal chestnuts roasting on a fire. After the cat has done so, burning its paws in the process, the monkey makes off with the chestnuts and leaves the cat with nothing. In the employment discrimination context, the "cat's paw" is a "tool" or "one used by another to accomplish his purposes."

The issue in *Staub* was under what circumstances an employer could be held liable for employment discrimination based on the discriminatory animus of an employee who influenced, but did not make, the ultimate employment decision.

The plaintiff in *Staub* was an Army reservist who sued his former employer under the Uniformed Services Employment and Reemployment Rights Act (USERRA) after he was discharged for what he alleged to be false accusations made by his supervisors. The plaintiff argued a cat's paw theory of liability at trial, i.e., that even though the human resources executive who fired him did not have a discriminatory motive, his direct supervisors, who had openly expressed an antimilitary sentiment, influenced the decision to such an extent that their unlawful motive should be imputed to the executive's

Founded in 1890, Squire, Sanders & Dempsey has lawyers in 37 offices and 17 countries around the world and now includes the nearly 500 lawyers from leading UK legal practice Hammonds. With one of the strongest integrated global platforms and our longstanding "one-firm firm" philosophy, Squire Sanders provides seamless [legal counsel worldwide](#).

Contacts:

[Tara A. Aschenbrand](#)
+1.614.365.2713

[Terry M. Billups](#)
+1.216.479.8505

[Alexandra A. Bodnar](#)
+1.213.689.5184

[D. Lewis Clark, Jr.](#)
+1.602.528.4065
+1.614.365.2703
+1.212.407.0124

[Susan M. DiMichele](#)
+1.614.365.2842

[Susan C. Hastings](#)
+1.216.479.8723

[Michael W. Kelly](#)
+1.415.954.0375

[Merrell B. Renaud](#)
+1.703.720.7845

actions, and thus the employer. The Supreme Court ultimately agreed, and held that if a supervisor performs an act motivated by discriminatory animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable for discrimination.

In reaching its decision, the Court explained that the mere "exercise of judgment by the decisionmaker does not [automatically] prevent the earlier agent's action (and hence the earlier agent's discriminatory animus) from being the proximate cause of the harm." Instead, "[p]roximate cause requires only 'some direct relation between the injury asserted and the injurious conduct alleged,' and excludes only those 'link[s] that are too remote, purely contingent, or indirect.'" Thus, a supervisor's biased report may remain a causal factor in the employment decision if the ultimate decision maker takes it into account during an independent investigation without first determining that the adverse action was, apart from the supervisor's recommendation, entirely justified. However, "if the employer's investigation results in an adverse action for reasons unrelated to the supervisor's original biased action . . . then the employer will not be liable."

Although the plaintiff in *Staub* sued under the USERRA, the Court pointed out that the statute was "very similar to Title VII." Thus, the cat's paw theory of liability should be equally applicable to discrimination claims under Title VII. The Court also clarified that it was "express[ing] no view as to whether the employer would be liable if a *co-worker*, rather than a supervisor, committed a discriminatory act that influenced the ultimate employment decision."

The practical implications of *Staub* are somewhat compelling, and should serve as a wake-up call for employers when determining whether to rely upon a supervisor's recommendation to take adverse action against an employee. In situations where the employee has alleged that a supervisor has a discriminatory motive in seeking the adverse action, the employer should be certain to conduct a thorough, independent investigation into the employee's allegations to determine whether discrimination underlies the supervisor's recommendation. Where the supervisor has displayed a discriminatory animus towards the employee in issuing discipline, the employer should ignore the supervisor's recommendation and the discrimination-based discipline when determining whether adverse action is still warranted.

If you have any questions about this decision or about how this decision may affect your employment policies,

Squire Sanders emphasizes quality, efficiency and alignment with client goals as core standards. Our [Partnering for Worldwide Value®](#) initiative is focused on continuously improving our service delivery to maximize the value of our services to clients. Squire Sanders wholeheartedly endorses the Association of Corporate Counsel's Value Challenge® and encourages and manages development and implementation of processes and tools to continually improve staffing and pricing models, training and resource optimization, knowledge management and more.

Squire Sanders publishes on a number of other topics. To see a list of options and to sign up for a mailing, visit our [subscription page](#).

Beijing • Berlin • Birmingham
Bratislava • Brussels • Budapest
Caracas • Cincinnati • Cleveland
Columbus • Frankfurt • Hong Kong
Houston • Kyiv • Leeds • London
Los Angeles • Madrid • Manchester
Miami • Moscow • New York
Northern Virginia • Palo Alto • Paris
Phoenix • Prague • Rio de Janeiro
San Francisco • Santo Domingo
São Paulo • Shanghai • Tampa
Tokyo • Warsaw • Washington DC
West Palm Beach |
Independent Network Firms:
Beirut • Bogotá • Bucharest
Buenos Aires • La Paz • Lima
Panamá • Riyadh • Santiago

please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.



The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

©Squire, Sanders & Dempsey
All Rights Reserved
2011

This email was sent by Squire, Sanders & Dempsey
4900 Key Tower, 127 Public Square, Cleveland, OH 44114, USA

We respect your right to privacy – [view our policy](#)

[Manage My Profile](#) | [One-Click Unsubscribe](#) | [Forward to a Friend](#)

Squire, Sanders & Dempsey (US) LLP is part of the international legal practice Squire, Sanders & Dempsey which operates worldwide through a number of separate legal entities. Please visit www.ssd.com for more information.