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Sixth Circuit Expands On "Cat's Paw" Discrimination

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Readers may remember the *Staub v Proctor Hospital* decision issued by the U.S. Supreme Court in March 2011, essentially holding under the “cat's paw” theory that employers may be liable for discrimination if the decision maker relies on input from subordinates with discriminatory intent, even if the decision maker did not have discriminatory motives. In addition to the question, “why is it called ‘cat's paw’ anyway” (more on that below), employers as with most Supreme Court decisions are waiting to see how the rule evolves as it is interpreted by the lower federal courts.

A new decision from the Sixth Circuit Court of Appeals (covering Ohio, Michigan, Kentucky, and Tennessee) provides a good example of how an employer might have cat's paw liability. *Chattman v Toho Tenax America, Inc*. was a race discrimination case brought by a black warehouse manager who was disciplined for what the employer deemed to be serious horseplay with a white employee, who reportedly suffered a workers compensation-eligible injury. Chattman was a 20-year employee in good standing and alleged that the discriminatory intent of the white human resources manager resulted in the decision by upper management to discipline him. Chattman reported three separate occasions of racially insensitive remarks by the HR manager as evidence of his discriminatory intent.

The court reversed the summary judgment that the trial court had granted to the employer and sent the case back to that court for further proceedings. As always, it is impossible to put ourselves in the shoes of the parties on the basis of a single court decision, but the case underscores the critical importance of airtight documentation of disciplinary action against employees in protective classes (the court found some of the employer's evidence about the investigation of the matter to be inconsistent), and particularly against long-term employees with an apparently good record. The ultimate decision makers need to understand that even if their motives are pure, it will be fair game in litigation to attack the motives of the subordinates on whose observations and recommendations the decision maker rely.

Now about that “cat's paw” label: The cat’s paw theory gets its name from a French fable about a monkey who persuaded a cat to pull chestnuts out of the fire, so the cat’s paw was burned though the monkey got the chestnuts. In other words in this context, the final decision-maker is the cat who in effect is being used to execute a decision based on the biased intent of the lower level supervisor, i.e. the monkey. Not sure who came up with that, but it seems like we are stuck with the label now.