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Here is a glimpse at some recent cases decided by the Federal and State courts regarding the rights and obligations of employers and employees in Minnesota taken from Marshall Tanick's recent monthly columns on employment law in *Bench & Bar* magazine.

ERISA CLAIMS BY EMPLOYERS REJECTED

Federal Court of Appeals rulings deny benefits



Keeping an eye on
Developments in
Employment Law for
Employers and Employees

ERISA benefits; employee long term disability claim dismissed. A decision by a plan administrator of the Employees Retirement & Income Security Act (ERISA) to deny long term disability benefits to an employee claimant was upheld by the Eighth Circuit Court of Appeals. Reversing a decision by U.S. District Court Chief Justice John Tunheim of Minnesota, the Court vacated the ruling on grounds that the judge used the wrong legal standard, *de novo* review, rather than abuse of discretion, and overturned the administrative determination denying benefits. *McIntyre v. Reliance Standard Insurance Co.*, 2020 WL 4951028 (Minn. Ct. App. 8/25/2020) (unpublished).

ERISA benefits; breach of duty. Another ERISA claim was rejected for violation of fiduciary duty by failing to protect plan participants before the disclosure of a fraud scheme. The Eighth Circuit upheld the ruling of U.S. District Court Judge Patrick Schlitz in Minnesota holding that the claimants did not "plausibly" plead that a prudent fiduciary would have taken other action, which warranted dismissal on the breach of fiduciary duty claim and, along with a duty of loyalty claim that was insufficiently pled. *Allen v. Wells Fargo & Co.*, 967F.3d 767 (8th Cir. 7/27/2020).

Disability discrimination; reasonable accommodation claim denied. A claimant for disability discrimination under the Minnesota Human Rights Act lost his claim because he was unable to show that reasonable accommodation was appropriate for his disability and that such an accommodation would allow him to perform the essential portions of his job. The Eighth Circuit upheld the ruling by Judge Nancy Brasel of Minnesota dismissing the lawsuit. *Collins v. Abbott Laboratories, Inc.*, 2020 WL 5000076 (Minn. Ct. App. 8/25/2020) (unpublished).

Discrimination, harassment & retaliation rejected; women not treated differently. A woman who claimed sex discrimination, sex harassment and retaliation lost her claim because she did not show that she met her employer's legitimate job expectations, or that she was treated differently than similarly situated men. The Eighth Circuit, affirming summary judgment, also held that the sexual harassment claim failed because the claimant did not show that she subjectively perceived the alleged harassment as abusive, and there was insufficient evidence of retaliation. *Gibson v. Concrete Equipment Company, Inc.*, 960 F.3d 1057 (8th Cir. 6/3/2020).

Failure to promote; summary judgment upheld. An employer who failed in challenging summary judgment for the employer, in a failure to promote case based upon sex discrimination. The Eighth Circuit upheld ruling of U.S. District Court Judge Susan R. Nelson in Minnesota that there was insufficient evidence that the actions

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by the woman's supervisors were based, in part, on gender animus and her direct sex discrimination and "cat's paw" theories failed, too. *Pribyl v. County of Wright*, 964 F.3d 793 (8th Cir. 7/13/2020).

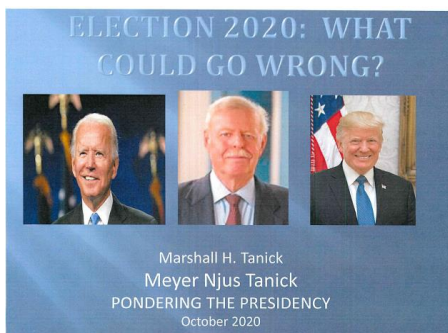
Train accident; derailment injury dismissed. A train employee who was injured during a derailment was unsuccessful in suing his employer under the Federal Employee's Liability Act (FELA). The Eighth Circuit, upholding a lower court's decision, ruled that the employee did not show that employer violated safety regulations, which may have been caused by a third party criminal act. *Miller v. Union Pacific Railroad Company*, 2020 WL 5032459 (Minn. Ct. App. 8/26/2020) (unpublished).

Age discrimination; Twins' scout prevails. A baseball scout for the Minnesota Twins, whose position was scouting ball players in Australia was eliminated, managed to overturn a dismissal of an age discrimination claim. The Minnesota Court of Appeals overruled, reversing a lower court decision by Hennepin County District Court. The lower court improperly granted a blanket protective order that prevented the claimant from deposing three club officers and also erred in other discovery rulings, which warranted remand. *Norsetter v. Minnesota Twins, LLC*, 2020 WL 4932350 (Minn. Ct. App. 8/24/2020) (unpublished).

Counselor's sexual abuse; university not liable. A claim against a university by a student who claimed that it was vicariously liable because of a counselor's sexual abuse and negligence under the doctrine of respondeat superior was unsuccessful. The Court of Appeals, affirming a decision of the Winona County District Court, refused to apply the doctrine of respondeat superior because none of the alleged sexual abuse occurred within the scope of the counselor's employment as a therapist or within work related limits of time and place. *Doe v. Kirby*, 2020 WL 4932784 (Minn. Ct. App. 8/24/2020) (unpublished).

Rent credits for caretaker; no statutory violation. The use by a property management company of rent credits as compensation for property caretaker was valid. Affirming a ruling of the Hennepin County District Court, the Court of Appeals held that the use of rent credits for compensation did not violate the Minnesota Fair Labor Standards Act (FLSA) or consequent a deduction from wages in violation of the Prompt Payment of Wages Act. *Hagen v. Steven Scott Management, Inc.*, 2020 WL 3956259 (Minn. Ct. App. 7/13/2020) (unpublished).

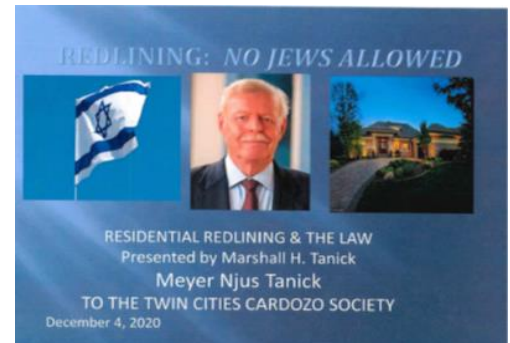
TANICK TALKS THREE TOPICS



*Pondering the Presidency
To Ham and Eggs and Seniors' Club*



*Supreme Court Review at Judicial
Center and Dakota County Bar*



Redlining at Cardoza Society

Marshall H. Tanick, of the law firm of **Meyer Njus Tanick**, discussed three topics in PowerPoint presentations this fall. He talked about legal issues effecting the recent elections to the *Ham & Eggs Club* in Edina and to the St. Louis Park Senior's Club (left). **Mr. Tanick**, also made a pair of Zoom presentations, along with Hamline University Professor David Schultz, at the Minnesota Judicial Center (Center) and Dakota County Bar Association, reviewing key decisions of the U.S. Supreme Court during its 2019-20 Term and previewing the current 2020-21 Term. He also participated in a panel discussion by the Cardozo Society about "Residential Redlining" racial and religious discrimination in housing. (Right).

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