



ROBINS  KAPLAN^{LLP}

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A LIFTING OF THE
VEIL OR ONLY A PEEK
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A man in a light blue striped shirt and grey trousers is kneeling on a dark floor, pulling back a heavy, dark curtain. A bright light shines through the opening, creating a strong contrast with the dark surroundings. The man is looking towards the light with a focused expression.

THE CHAUVIN CASE: A LIFTING OF THE VEIL OR ONLY A PEEK BEHIND THE CURTAIN?

Thanks to a 17-year-old's cellphone video, worldwide protests, and a televised criminal trial, the Derek Chauvin trial exposed misconduct and malfeasance of the Minneapolis Police Department (MPD). The world was shocked, but not the Robins Kaplan Civil Rights Group; they have seen this all before.¹

SIMILARITIES IN MPD MISCONDUCT CASES

Robins Kaplan attorneys Bob Bennett, Andy Noel, and Katie Bennett lead the firm's Civil Rights Group and have many years of experience handling civil rights and police misconduct cases on behalf of victims. They cite grim similarities in these cases:

- Inadequate or inappropriate officer selection and training, leading to distrustful and overly reactive officers
- The "blue wall of silence" from fellow officers
- Whitewashed official statements and police reports
- Leadership's failure to address historic systemic failures and consistently discipline officers

The group reflected recently on their experience and whether the Chauvin murder conviction would spur needed change.

POOR TRAINING LEADS TO AN ‘US V. THEM’ MENTALITY, NEEDLESSLY INJECTING DRAMA INTO CALLS AND CREATING TRAUMA WITHOUT CONSEQUENCES

In 2017, Bob, Andy, and Katie pursued a civil rights case against MPD Officer Mohamed Noor, who shot and killed Justine Ruszczyk, an unarmed, innocent 911 caller.² The trial painted a picture of an inadequately selected and trained officer, spooked by a noise while patrolling a low-crime area. The Robins Kaplan team recognizes this breed of MPD officers, those worried more for their own safety than public safety. These officers often have an “us v. them” mentality, even with non-suspects. Case in point: The group is currently pursuing recovery for two of the many people injured by Minneapolis police in the days following the George Floyd murder.

The Robins Kaplan attorneys point out that the problem isn’t just the training but also the trainer. In 2007, the group uncovered both issues while obtaining \$4.5 million for an undercover officer shot multiple times by his fellow officer.³ The undercover officer explained that, often, jaded MPD officers serve as field trainers indoctrinating rookie cops with bad habits and the sanctity of the “blue wall of silence.” The group also saw the blue wall at work in the Noor case. Officers at the scene turned off their body cameras, and 35 other MPD officers refused to cooperate with prosecutors.

LEADERSHIP’S LACK OF TRANSPARENCY AND ACTION

MPD leadership has not adequately addressed known issues. The very same restraint technique that killed George Floyd — kneeling on the neck and upper back of a subdued suspect — killed David Smith 10 years ago. In negotiating the Smith civil rights settlement, the Robins Kaplan team included a provision that the MPD would provide additional training on appropriate restraint. In an earlier incident, in 2017, Chauvin’s beating, choking and prolonged kneeling on another Civil Rights Group client, then 14-year-old John Pope, was done with impunity.

Chauvin had a long history of use-of-force complaints, several of which were likely well-founded. In fact, on May 6 of this year, Chauvin was indicted by a federal grand jury on two counts of federal criminal civil rights violations with regard to his 2017 conduct toward Pope. **(See United States of America v. Derek Michael Chauvin,**

File Number CR 21-109 WMW/HB). Yet, inexplicably, the MPD never removed Chauvin, and he remained on the force to murder George Floyd and ignite the city.

Although MPD leadership testified against Chauvin, their actions belied their words. Leadership failed to address known problems and be candid with the public when they recurred. After the Floyd murder, the MPD’s Director of Public Information issued a statement that “Officers ... noted he (Floyd) appeared to be suffering medical distress ... called for an ambulance. He was transported to Hennepin County Medical Center by ambulance where he died a short time later.”⁴ A gross understatement of what transpired.

The willingness of the city and police union to ignore problem officers only enables such activity and illuminates leadership’s shortcomings.

LOOKING AHEAD BY LOOKING BACK

Perhaps Chauvin’s murder conviction is evidence of progress. If so, that progress is painfully slow. Bob Bennett has handled MPD misconduct cases for 40 years. The team points to a case nearly 20 years ago, where a federal jury found “a custom of deliberate indifference to complaints about excessive force in the department.”⁵

A quarter century later, at the Noor sentencing, the judge underscored the jury’s primary concern: “Will there be changes? Change is needed.” Clearly the Noor jurors hoped their conviction would send the requisite message, as did the Robins team after obtaining a \$20 million award for the victim’s family. Yet, here we are two years later. This time, Minneapolis has agreed to pay \$27 million to the family of George Floyd. What will it take to change?

In June, Minneapolis promised improvement in field officer training, after a damning report revealed a culture of aggressive policing.⁶ Enough?

After the Chauvin verdict the U.S. Department of Justice announced an investigation into the MPD’s use of force. Will that bring change?

Those in a position to make lasting change — MPD leadership and politicians — have engaged in debate, but talk is cheap. Without action from both, the lifting of the veil at the MPD will be reduced to a mere peek behind the curtain.

1. <https://minnesota.cbslocal.com/2021/06/14/the-costs-of-alleged-police-misconduct-in-minneapolis/>

2. <https://www.mprnews.org/story/2019/05/03/police-trial-shooting-justine-damond-ruszczyk-australia-family-settle>

3. <https://www.startribune.com/five-years-after-shooting-cop-he-still-feels-in-the-line-of-fire/16436361/>; <https://www.mprnews.org/story/2010/06/07/ngo-suicide>

4. <https://www.businessinsider.com/police-initially-said-george-floyd-death-was-a-medical-incident-2021-4>

5. <https://minnesotareformer.com/2020/12/15/the-bad-cops-how-minneapolis-protects-its-worst-police-officers-until-its-too-late/>

6. <https://www.startribune.com/minneapolis-promises-greater-accountability-in-police-training-program/600072926/>



ROBINS KAPLAN BLOCKS EFFORT BY JUUL AND ALTRIA TO SIDESTEP BLAME FOR MINNESOTA'S YOUTH VAPING EPIDEMIC

BY ERIC LINDENFELD



**ERIC
LINDENFELD**

Robins Kaplan LLP and its co-counsel continue to rack up victories against JUUL Labs, Inc. and Altria Group Inc. (and four of Altria's subsidiaries) in the lawsuit brought by the Minnesota Attorney General addressing the state's youth vaping epidemic. On June 21, 2021, Judge Laurie Miller of the Hennepin County District Court denied motions brought by JUUL and Altria to dismiss the state's claims. The motions were argued by partners Tara Sutton and Munir Meghjee in the firm's Mass Tort Group.

The Minnesota Attorney General initially brought claims against JUUL alone but later amended its complaint to add tobacco conglomerate Altria, alleging that it extended JUUL's reach in Minnesota through sales, distribution, marketing, and promotion services provided to JUUL. (In December 2018, tobacco giant Altria—the owner of Philip Morris and other major cigarette brands—bought a 35% stake in JUUL for nearly \$13 billion). Under the parties' various agreements, Altria agreed to provide JUUL access to its prime retail "shelf space," its vast sales force, and its enormous distribution network. Altria also included JUUL advertisements on Altria cigarette packs known to be most popular among youth and leveraged its vast tobacco database to send direct e-mail and mail advertisements to Minnesota consumers.

In February 2020, JUUL and Altria brought separate motions to dismiss, both challenging the Attorney General's authority and alleging defects in each of the state's eight causes of action. In rejecting the defendants' motions, Judge Miller confirmed the Attorney General's statutory authority to bring public nuisance claims for abatement and the pleading standard applicable to consumer protection claims brought by the Minnesota Attorney General. The court also found that all of the state's claims had been adequately pled, including the state's negligence, unjust enrichment, and civil conspiracy claims, and that none of the state's claims were preempted by federal law. And while the court deferred ruling on Altria's personal jurisdiction arguments until the completion of jurisdictional discovery, Altria later withdrew its personal jurisdiction arguments. The case currently has a trial date set for July 2022.

You can find more about the state's lawsuit here: https://www.ag.state.mn.us/Office/Communications/2019/12/04_JUUL.asp and here: https://www.ag.state.mn.us/Office/Communications/2020/12/10_JUUL.asp

MASS TORT INVESTIGATIONS

Robins Kaplan LLP is currently investigating many new potential cases. Please contact our Mass Tort Group if you have any questions or know of any individuals whose case should be evaluated.

ELMIRON: The painful bladder syndrome drug Elmiron updated its labeling to warn that pigmentary changes in the retina have been identified with long-term use of the drug,¹ nearly two years after the journal of the American Academy of Ophthalmology published an article linking Elmiron to pigmentary maculopathy² (which may cause permanent vision changes, such as difficulty reading, slow adjustment to changes in lighting, and blurred vision).

INJECTAFER: This intravenous iron supplement prescribed to patients with iron deficiency anemia has been linked to severe hypophosphatemia — a dangerously low level of phosphorus in the blood that can cause life-threatening complications.

KEYBOARD DUSTING SPRAYS: After huffing keyboard dusting spray, drivers have lost control of their vehicle, resulting in deaths and injuries to innocent bystanders.

PREMATURE HIP IMPLANT FAILURES: Stryker Rejuvenate and Stryker LFIT COCR V40 implants, among others, have been involved in premature hip failure cases the Mass Tort attorneys may litigate.³

TRIBAL OPIOID CLAIMS: The firm is litigating claims on behalf of Native American tribes against the manufacturers and distributors of prescription opioids for their alleged role in creating the opioid epidemic.

ZOFRAN: This anti-nausea drug prescribed “off label” for morning sickness is associated with increased risk of cleft palate and congenital heart defects.⁴

JOHNSON & JOHNSON SUNSCREEN: On June 14, 2021, Johnson & Johnson issued a recall of all lots of five Neutrogena and Aveeno aerosol sunscreen product lines. Internal testing by Johnson & Johnson identified “low levels” of benzene in some samples of the products. The World Health Organization describes benzene as a well-established cause of cancer in humans. Robins Kaplan is investigating a potential connection between use of these sunscreens and certain cancers, including acute myeloid leukemia.

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1. U.S. Food and Drug Administration, June 16, 2020 Supplemental Elmiron Package Insert. DRUGS@FDA, available at https://www.accessdata.fda.gov/drugsatfda_docs/label/2020/020193s014lbl.pdf.
 2. William A. Pearce et al., Pigmentary Maculopathy Associated with Chronic Exposure to Pentosan Polysulfate Sodium. OPTHALMOLOGY. E. Pub. May 22, 2018, available at <https://doi.org/10.1016/j.ophtha.2018.04.026>.
 3. Concerns about Metal-on-Metal Implants, available at www.fda.gov.
 4. M. Anderka et al. Medications Used to Treat Nausea and Vomiting of Pregnancy and Risk of Selected Birth Defects. Birth Defects Res A Clin Mol Teratol. (Jan. 2012); JT Anderson et al. Ondansetron use in Early Pregnancy and the Risk of Congenital Malformations – A Register Based Nationwide Cohort Study. Pharmacoepidemiology and Drug Safety. (Oct. 2013).





SAVE THE DATE

ANNUAL ROBINS KAPLAN MAJ RECEPTION AT MADDEN'S

AUGUST 19, 2021

Robins Kaplan is pleased to sponsor the annual reception of cocktails and hors d'oeuvres at this year's Minnesota Association for Justice Convention. All convention attendees are invited to stop by Madden's Cookout Pavilion on Thursday, August 19, from 6 to 8 p.m. to see friends, network with other MAJ members, enjoy the scenery, and celebrate the past year in civil justice. No additional RSVP is required. Questions? Contact Christine Berndt at CBerndt@RobinsKaplan.com or 612.349.8404.

2021 TRIAL ADVOCACY SEMINAR

Watch your email for an update on the 2021 seminar coming soon!

CASE RESULTS

\$700,000 SETTLEMENT IN NORTH DAKOTA WRONGFUL DEATH MEDICAL MALPRACTICE CLAIM

Peter Schmit and Seth Zawila negotiated a \$700,000 settlement against a North Dakota health care provider in a wrongful death medical malpractice claim arising from the death of a 40-year-old male.

SETTLEMENT IN DELAY OF DIAGNOSIS CASE OF A 53-YEAR-OLD MOTHER OF TWO

Peter Schmit and Seth Zawila negotiated a seven-figure settlement in a case of delayed diagnosis of breast cancer in a 53-year-old wife and mother with a strong family history of the disease.

\$400,000 SETTLEMENT IN TBI CASE RESULTING FROM A DISTRICTED DRIVER CAR ACCIDENT

Tony Schrank negotiated a \$400,000 settlement after the judge granted a punitive damages motion for a client who sustained a traumatic brain injury when she was rear-ended by the defendant, who was scrolling through Facebook.

\$350,000 SETTLEMENT IN SOUTH DAKOTA WRONGFUL DEATH MEDICAL NEGLIGENCE CLAIM

Teresa Fariss McClain negotiated a \$350,000 settlement in a South Dakota medical negligence claim for wrongful death.

\$9 MILLION SETTLEMENT IN PRE-CONCEPTION NEGLIGENCE CLAIM

Teresa Fariss McClain confidentially settled a wrongful conception claim with a Twin Cities health provider for \$9 million. The claim involved pre-conception negligence and the subsequent birth of a child with a genetic disorder.

\$2.6 MILLION SETTLEMENT IN DELAY OF DIAGNOSIS CASE OF 72-YEAR-OLD MAN

Teresa Fariss McClain confidentially settled a case on behalf of a 72-year-old married male for \$2.6 million. It involved a delay in diagnosis and treatment of colon cancer by a Twin Cities Clinic, resulting in lowered life expectancy and decreased quality of life.



PETER SCHMIT



SETH ZAWILA



TONY SCHRANK



TERESA FARISS MCCLAIN

AWARDS AND RECOGNITION



BRANDON VAUGHN NAMED PRESIDENT OF THE HENNEPIN COUNTY BAR

Brandon Vaughn has been appointed president of the Hennepin County Bar Association (HCBA). Vaughn has been a member of the HCBA for 13 years, and for the past three years has served on the organization's Executive Board as Secretary (2018-2019), Treasurer (2019-2020), and President-Elect (2020-2021). In 2014, before his HCBA board terms, Brandon served on its Board of Directors as a delegate for the Minnesota Association of Black Lawyers. He also was a member of the 2016-2017 HCBA Mentoring Task Force, evaluating how the HCBA could contribute to mentoring in the Hennepin County legal community.



SETH ZAWILA NAMED TO MINNESOTA LAWYER'S "UP & COMING ATTORNEY" LIST

Seth Zawila has been named to the *Minnesota Lawyer* 2021 "Up & Coming Attorney" list. The magazine's prestigious award is given to a few select lawyers within their first 10 years of practice based on their excellent and distinguishing performance.

ATTORNEYS RECOGNIZED AS SUPER LAWYERS AND RISING STARS

Super Lawyers recently included the following attorneys from the Minneapolis office of Robins Kaplan LLP on the "2021 Minnesota Super Lawyers" and "2021 Minnesota Rising Stars" lists. Chris Messerly was also named in the rating service's "Minnesota Top 100," recognizing his accomplishments and leadership in his field. Part of Thomson Reuters, Super Lawyers uses a peer-based patented process to research and evaluate lawyers across the country.

2021 Minnesota Super Lawyers

Robert Bennett
Kate E. Jaycox
Teresa Fariss McClain
Munir R. Meghjee
Chris Messerly, Minnesota Top 100
Andrew J. Noel
Peter A. Schmit
Philip Sieff
Tara D. Sutton

2021 Minnesota Rising Stars

Katie Bennett
Jason DePauw
Elizabeth M. Fors



PHILIP SIEFF SELECTED TO LAWDRAGON 500 LEADING PLAINTIFF CONSUMER LAWYERS LIST

Lawdragon recently announced that Philip Sieff was named to the 2021 "Lawdragon 500 Leading Plaintiff Consumer Lawyers in America" guide. Compiled by the Lawdragon editorial board, the guide recognizes the nation's preeminent attorneys who represent consumers who have been injured or had family killed through accidents, medical malpractice, faulty products, or toxic exposure.

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ROBINS  KAPLAN LLP

REWRITING THE ODDS