

MINNESOTA

SPRING 2024

# Defense



THE DESIGN DEFECT IN PRODUCT LIABILITY  
LAWS

MID-WINTER CONFERENCE RECAP

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## ARTICLES FROM PAST ISSUES

Members wishing to receive copies of articles from past issues of *Minnesota Defense* should forward a check made payable to the Minnesota Defense Lawyers Association in the amount of \$5 for postage and handling. In addition to the articles listed below, articles dating back to Fall '82 are available. Direct orders and inquiries to the MDLA office, [director@mdla.org](mailto:director@mdla.org).

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## JOIN A COMMITTEE

MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.

If you would like to join a committee's distribution list, please update your member profile on [mdla.org](http://mdla.org) specifying the appropriate committee under the "Practice Type" section. You will be automatically added to the distribution list.

To learn more about an MDLA committee, please visit [www.mdla.org](http://www.mdla.org). Meeting times and dates for each committee are listed online.

### Committees available include:

- Amicus Curiae
  - Construction Law
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  - Technology
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  - Women in the Law
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## THE PRESIDENT'S COLUMN



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### BRENDAN TUPA

MESSERLI KRAMER

What an absolute honor it is to serve as president of MDLA, especially as a former member of the Minnesota Association for Justice (aka the civil plaintiff bar). I share with you my prior membership with the plaintiff bar association to highlight the symbiotic relationship among defense attorneys and plaintiff attorneys, the many hats we wear as attorneys during the course of our careers, and the absolute requirement of civility among lawyers of both bars. In case no one else has not already told you, a lawyer must work with opposing counsel to be effective in resolving your clients' disputes.

In my legal career, I have worked on "both sides of the aisle," defense work for a private firm, plaintiff work as a solo and small firm, in-house for an insurance company, and in private firms handling commercial matters for businesses and individuals. I repeatedly remind attorneys that it is imperative that counsel work together, be civil at all times, and try to avoid unnecessary, vexatious disputes no matter what your client expectations. If you dish out unreasonable demands and expectations, you should expect the same in return. On the other hand, if you extend professional courtesies liberally, as you always should on non-case dispositive issues, you should expect the same by opposing counsel, and if not, a favorable ruling by a judge.

I often hear gripes by defense lawyers about plaintiff attorneys making a certain argument, bringing a bizarre claim, or seeking crazy amounts of damages. Some of these lawyers seem to even take these issues personally and allow them to cause stress in their lives to the point where they get fixated on them after they leave the office, once they are at home with their families, and even on nights and weekends. I try to remind these lawyers that litigation is a symbiotic profession. If plaintiff lawyers do not bring claims or lawsuits, defense lawyers do not have work. In other words, defense lawyers need plaintiff lawyers to bring claims and lawsuits or defense lawyers do not have jobs. Don't be afraid to befriend opposing counsel.

Back in my plaintiff lawyer days, I recall a prominent defense attorney who actually thanked me for "the business" when I sued out a claim. When I switched hats to the defense, I may have told some of my plaintiff attorney friends, "when in doubt, sue it out." My point in sharing this with you, especially those of you who may get personally stressed while defending cases, is to change your way of

thinking. Those of us who defend civil lawsuits should not become personally overly invested regarding any claims, arguments, or unreasonable positions of plaintiffs. This is our profession. We should think of these things as "opportunities for greatness."

In my experience as a civil trial lawyer, both on the defense as well as the plaintiff side, the more unreasonable, bizarre, and outlandish the other side, the more reasonable your arguments become and the greater the opportunity for "greatness" or success. I say, let them bring it. However, should you find yourself in a position where opposing counsel and their client are being reasonable and you are getting along, you may want to rethink your position, and heaven forbid, reach an amicable solution and settle your case. The toughest cases for a defense lawyer are when your client expects you to "pitch a no-no," that is: no liability; no damages, which is a "perfect game" in trial speak. (Which can happen and should be celebrated appropriately with "D-Fence" cakes at my firm or a "gong" if your firm has one—Larson King.)

One of my favorite jury trials I was honored to try with the legendary personal injury attorney, Paige Donnelly, before Ramsey County Chief Judge Leonardo Castro, is an exemplary case. This was a personal injury matter, arising from a motor vehicle accident, where my client may have run a red light and t-boned his client, and damages were essentially the only issue for trial. In my usual course of dealing in litigation, I try to get to know opposing counsel to better understand them, their client, and develop a working relationship. In this case, I had multiple opportunities to have conversations with Mr. Donnelly. We spoke at length over the phone, we had conversations during depositions, and we even had a flight together on the return from a deposition in North Carolina where I sat next to him, and he generously shared with me some of his "war stories" about trials and working with other attorneys. Despite being adversaries, I believe we developed an understanding that we were both advocating for our clients, but that didn't mean we could not be cordial with each other.

At trial, we both vigorously advocated for our respective clients. As many of you know, in Ramsey County, opposing parties awkwardly share a conference table and face each other, but with the rapport developed with Mr. Donnelly,

*The President's Column continued on page 5*



it was collegial. Even though we worked together and got along during trial, this did not prevent him from asking the jury to award more than a million dollars, and from me asking for only a few thousand dollars. After our closing arguments and while the jury was still deliberating, we shook hands, he indulged me with a photo of the two of us, and we had lunch together across the street from the courthouse.

I share this with you because I believe this kind of working relationship with opposing counsel is ideal. An adversarial relationship among attorneys does not mean we cannot be civil, cordial, and even friendly among each other. As another example of civility, I have another personal injury attorney friend, Matt Brenengen, who always insists that I personally deliver settlement checks to him at a restaurant so he can buy me lunch, which is always appreciated. My point is, get involved in an organization such as MDLA, share your knowledge, skills, experiences and become a better advocate, but always be civil and try your best to get along with opposing counsel. If you can get along with opposing counsel, not only will your life be less stressful, but judges and jurors will notice, you will alleviate stress, and you may likely get a better result for your client. The worst-case scenario is that you may develop a reputation as a reasonable person that people want to work with, refer business, and buy you lunches.

While I have many more stories and experiences I can share with you, our MDLA members have a plethora of stories, experiences, and resources at your disposal through our conferences, committee meetings, and gatherings. After 60 years of sharing ideas and helping fellow defense attorneys advocate for clients, MDLA has served as the go to resource to provide you with the tools for success when you have your opportunity for greatness. Don't be stranger and feel free to ask for help, bring your questions, join a committee or two or three, and come to conferences. And remember this: no case is indefensible---just because an incident or accident occurred does not mean that anyone was negligent---this is in the jury instructions and the judge will read this to your jury. (Tattoo this in your brain and repeat it at every trial.)

Now, buck up and take on your next opportunity for greatness and share it with us---win, lose, or draw. Remember, there are several metrics for "winning." An award for less than the last demand, but larger than the last offer is still a "tier two win," so share those as well. For example, if the last demand was \$100k, last offer is \$20k, but the net award is \$90k, it means you resolved the case for less than you could have settled it, which is a "win." While not in trial, be sure to attend our conferences. Our next conference will be in Duluth, at the DECC, August 15-17, 2024. See you at the next committee meeting, conference, or in the Twin Cities Jury Verdict Reporter, and good luck!

**JOIN ONE OF MDLA'S COMMITTEES**

## **WOMEN IN THE LAW**

The mission statement of the Women in the Law Committee is to connect the more than 200 women who are MDLA members by:

- Providing opportunities to develop and strengthen relationships, facilitating business growth and professional development;
- Supporting women's career advancement by providing a forum for leadership and professional development; and
- Raising awareness about issues of interest to women lawyers.

For more information, email committee chairs: Ashely Ramstad - [ashley@iversenlaw.com](mailto:ashley@iversenlaw.com), Vicky Hruby - [VHruby@jlolaw.com](mailto:VHruby@jlolaw.com), Anissa Mediger - [anissa.mediger@ci.stpaul.mn.us](mailto:anissa.mediger@ci.stpaul.mn.us) or Kaylin Schmidt - [Kaylin.Schmidt@gtlaw.com](mailto:Kaylin.Schmidt@gtlaw.com).

## *Save The Date*

*August 15-17, 2024*

*Trial Techniques Seminar*

**DECC  
Duluth**

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# RECAP: MID-WINTER CONFERENCE



CALLY KJELLBERG-NELSON  
MID-WINTER CONFERENCE CHAIR

Although the snow was scarce and there was no ice fishing to be had, MDLA enjoyed a successful Mid-Winter Conference at Arrowwood Resort in Alexandria in January. The conference began on Friday with the New Lawyers committee leading the way, first with a frank discussion about what associates are looking for in their careers, as well as an overview of strategies we can all use in defending death cases, with the recent enactment of survival as a cause of action in Minnesota. A historic moment for MDLA's Board followed the presentation, with what is thought to be the first-ever all-women MDLA board meeting. Although we missed our male board members who were not able to attend, the meeting highlighted the progress MDLA has made in creating a pipeline of women leaders for the organization. Although there is still progress to be made in diversifying our ranks, seeing the progress along the way is certainly encouraging.

The conference continued on Saturday, with very practical tips on how we can be better mentors within our organizations, strategies for addressing life care planners, effectively working with experts, and a discussion from Steve Schleicher about his work on some of the most high-profile cases in Minnesota history. On Saturday afternoon, we enjoyed various activities, from the resort waterpark to visits to a local dairy farm and Alexandria's Nordic-themed brewery. We came back together at Arrowwood in the evening for dinner and s'mores around the fire!

On Sunday, our conference included discussions about the importance of physical well-being in the profession, along with an update on legal ethics and malpractice, followed by an enlightening discussion as to the pros and cons of providing a number to the jury during closing arguments. Thank you to all of our talented speakers and especially to Cally Kjellberg-Nelson for organizing such a successful conference! The conference certainly continued MDLA's

rich tradition of providing high quality education and camaraderie opportunities for our members.

On that note, please make plans now to join us in Duluth, August 15-17, 2024, for our annual Trial Techniques Seminar. The seminar will be focused on, you guessed it, trial tactics! We have an all-star line of Minnesota best and brightest trial attorneys preparing to share their wisdom, and we will also have some fun along the way, highlighted with a Friday night boat outing on beautiful Lake Superior. I can't wait to see you there!

Elizabeth Sorenson Brotten,  
MDLA 2023-2024 Vice-President



*Liz Sorenson Brotten is a Partner in Foley Mansfield's Minneapolis office, a member of the firm's Executive Committee, and the chair of the firm's Product Liability Practice Group. She devotes her practice to defending product manufacturers, suppliers, and installers in high-risk product liability and toxic tort cases. Her experience includes serving as national coordinating counsel in the defense of asbestos claims pending throughout the country and defending one of the largest product liability lawsuits in North Dakota history following a catastrophic train derailment. Liz defends clients in asbestos, benzene, and Legionnaire's Disease cases throughout the upper Midwest. She has tried cases to verdict in both Minnesota and North Dakota courts.*



# THE DESIGN DEFECT IN PRODUCTS LIABILITY LAWS: OVER-EXPOSURE OF NON-MANUFACTURER DESIGNERS

BY RYAN PAUKERT

## I. Introduction

Most states approach products liability claims with a preliminary qualification: the proper defendant must be either a manufacturer or a seller, which can typically be any entity along the chain of distribution – all of whom may find themselves added as parties to products liability litigation. While on the surface this may appear to be a straightforward litmus test for who can and cannot be sued in products liability, the reality is many other entities connected to a given product, such as non-manufacturer designers, could find themselves in court as well. This article discusses “design” language found throughout many states’ products liability statutes and how these statutes could prove problematic for product designers long after their plans have been completed. Additionally, there will be a review of some states whose products liability laws provide a more thorough analysis of the various actors tied to any given product, beyond the general (and overinclusive) “manufacturer” and “seller” terms used by the majority, as well as states that have provided some protections to these designers through developments in case law. And lastly, a few methods are explored regarding how non-manufacturer designers can counter the overly broad statutes to which they may find themselves subjected over the life (and distribution) of their products.

## II. What are “Non-Manufacturer Designers”?

A non-manufacturer designer is an individual or entity that designs or creates plans for a product, but which leaves the actual manufacture of the product to a separate entity or individual (“manufacturer”). Oftentimes, a single company will hold both roles of designer and manufacturer. But, later on, this company may choose to stop manufacturing the product, or it might instead turn over or sell the rights to manufacture the product to a third-party that will begin manufacturing the product. In these scenarios, the original company will no longer carry the title of “manufacturer” for future items, but it is still the designer of the product. This subset of non-manufacturer designers must become,

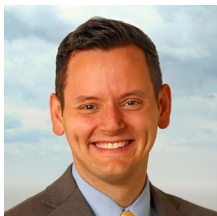
and remain, aware of the statutes to which they are subject.

## III. Risks to Non-Manufacturer Designers

Problems can arise when designers release their plans, schematics, and other blueprints into the world, relinquishing the control they once had over these nascent products. While a manufacturer can cease manufacturing and a seller can stop selling, once a design has been created it cannot so easily be erased or removed from the public’s knowledge and returned to the mind of its inventor.

The situation for non-manufacturer designers is even more precarious as many states’ statutes define “manufacturer” to include one who “designs,” without any apparent need for additional contribution to a given product. *See, e.g.*, Colo. Rev. Stat. § 13-21-401(1); Del. Code tit. 18, § 7001(a)(1) (a); Md. Code, Cts. & Jud. Proc. § 5-115(a)(3)(i); Mont. Code § 27-1-719(9)(b); N.J. Stat. § 2A:58C-8(1); N.C. Gen. Stat. § 99B-1(2); N.D. Cent. Code § 28-01.3-01(1); Ohio Rev. Code § 2307.71(A)(9); Tenn. Code § 29-28-102(4); Tex. Civ. Prac. & Rem. Code § 82.001(4). Many other states add another requirement, considering designers to be “manufacturers” if they are involved in both the design and sale of the products, even if they do not actually manufacture the products. Overall, a significant number of state laws make non-manufacturer designers as liable in products liability as the individuals or entities which manufacture the actual products. Notably, the manufacturer—not the non-manufacturer designer possesses the autonomy to end production of any dangerous or defective consumer goods.

To illustrate how this could be problematic, one only needs to look at some of the more famous products liability cases. One of the most famous products liability cases is *Grimshaw v. Ford Motor Co.*, where the placement of the gas tank in the 1972 Ford Pinto hatchback led to an increased rate of fires and explosions following low-speed, rear-end collisions. *See generally* 119 Cal. App. 3d 757, 771, 174 Cal. Rptr. 348, 358 (Ct. App. 1981). While the Ford Pinto’s gas tank placement designs have long since been discontinued,



*This article does not necessarily represent the views of Meagher + Geer, P.L.L.P. or its clients.*

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these products liability laws create a troubling hypothetical: if a new car manufacturer were to begin producing a new fleet of vehicles based on the exact design specifications of the 1972 Ford Pinto and a bevy of new lawsuits arose due to the vehicle's design, could Ford be held liable as the original designer of this present-day iteration of its unsafe model? Although a scenario like this actually taking place is highly unlikely for various reasons (number one being a lack of eager buyers), it demonstrates the possibility of liability danger to designers of allegedly defective products: while a designer may wish to wash its hands and be free from any particular design, a manufacturer might revive the product and, along with it, the original designer's tort exposure.

### IV. Bright Spots: States that have well-built product liability laws

In contrast to the liability many states' laws have created for non-manufacturer designers who have little or no say regarding revisions to their creations or whether certain products ultimately need to be discontinued, a few states close off non-manufacturer designer liability.

In Mississippi, the Mississippi Products Liability Act ("MPLA") provides "the exclusive remedy in any action for damages caused by a product against a product manufacturer, designer, or seller." *Funches v. Progressive Tractor & Implement Co., L.L.C.*, 905 F.3d 846, 850 (5th Cir. 2018), *as revised* (Oct. 8, 2018) (quotation omitted). The MPLA distinguishes among manufacturers, designers, and sellers:

in any action for damages caused by a product, including, but not limited to, any action based on a theory of strict liability in tort, negligence or breach of implied warranty, except for commercial damage to the product itself:

(a) The *manufacturer, designer or seller* of the product shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer, designer or seller:

(i) 1. The product was defective because it deviated in a material way from the manufacturer's or designer's specifications or from otherwise identical units manufactured to the same manufacturing specifications, or

2. The product was defective because it failed to contain adequate warnings or instructions, or

3. The product was designed in a defective manner, or

4. The product breached an express warranty or failed to conform to other express factual representations upon which the claimant justifiably relied in electing to use the product; and

(ii) The defective condition rendered the product unreasonably dangerous to the user or consumer; and

(iii) The defective and unreasonably dangerous condition of the product proximately caused the damages for which recovery is sought.

Miss. Code. § 11-1-63. In *Lawson v. Honeywell International, Inc.*, the plaintiff sued defendant Honeywell under the MPLA as a non-manufacturer designer, alleging it had defectively designed a seatbelt. 75 So. 3d 1024, 1026 (Miss. 2011). Plaintiff argued that the plain meaning of "manufacturer" indicated that the MPLA applied to non-manufacturer designers in addition to manufacturers and sellers. In its opinion, the court noted that where no specific definition of the word "manufacturer" is provided, the word must be given its meaning in the "common or popular sense." *Id.* at 1028. The court held that "[a] mere designer of a product does not fall under the definition of a 'manufacturer,' as that term is used in the MPLA. Accordingly, we affirm the trial court's grant of summary judgment to Honeywell with respect to Lawson's statutory claim of design defect." *Lawson v. Honeywell Int'l, Inc.*, 75 So. 3d at 1029. In this case, the Mississippi Supreme Court pointed out a common sense reality that most state legislatures ignore in their statutes: a designer can be, and often is, distinct from a manufacturer.

Texas also limits the liability exposure that non-manufacturer designers face. The Texas Court of Appeals explained in *Arceneaux v. Lykes Bros. S.S. Co.* that, "[a] defendant who designs a product as a conscious part of the overall development of that product may be subjected to strict product liability or liability for negligence, even though the designer never actually manufactures the product or holds title to it." 890 S.W.2d 191, 195 (Tex. App. 1994), *writ denied* (June 28, 1996). But the *Arceneaux* court refused to extend products liability to a non-manufacturer designer who did not design the specific product at issue, which a third party "cop[ied], mimic[ed] or plagiarize[d]" from the non-manufacturer designer's original product. *Id.* In *Firestone Steel Prod. Co. v. Barajas*, the Texas Supreme Court added further protection to non-manufacturer designers, holding that "[i]f the original designer of a system or prototype gives the design to another party, this action alone is not enough to impose liability under a strict products liability theory." 927 S.W.2d 608, 613 (Tex. 1996).

Missouri has also found non-manufacturer designers not liable in products liability cases where their original designs were appropriated without their knowledge or consent. In *Chem. Design, Inc. v. Am. Standard, Inc.*, the court observed that the defendant designer, American Standard, "had neither actual or [sic] constructive knowledge that its directive [not to transmit or disclose its designs] would be violated and that plaintiff . . . would misappropriate its plans and specifications." 847 S.W.2d 488, 490 (Mo. Ct. App. 1993). The court concluded, "American Standard undertook to assume exposure to liability for injury caused by use of the gas compressor it designed and manufactured. But no relationship upon which to base a duty exists between American Standard and persons injured by the use of a *different product copied by a third party* from American Standard's plans and specifications." *Id.* at 491 (emphasis added).

Although some states have added or included protections for non-manufacturer designers, either legislatively or judicially, the majority of states have not created any serious distinction between manufacturers and non-manufacturer designers. Therefore, these non-manufacturer designers should be proactive in negating these unreasonable and inequitable hazards with the

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means available to them.

### V. How Designers Might Protect Themselves

For non-manufacturer designers, there are some remedies and, more importantly, protections that can be utilized to mitigate potential tort exposure after they have relinquished control of their designs.

Possibly the best solution for these designers is to incorporate indemnification language into their contracts with manufacturers, and possibly sellers, of their products. Placing an expiration date on the designer's contribution to litigation, particularly for design defect claims arising many years after the designer has exited the business, could reduce the aforementioned risks. However, this solution may be a sticking point in contract negotiations between designers and manufacturers. Discussing these issues early in negotiations may be useful in reaching an equitable agreement.

As another solution, non-manufacturer designers can include disclaimers regarding copying designs, as demonstrated in *Chem. Design, Inc. v. Am. Standard, Inc.* In that case, the defendant non-manufacturer designer created a gas condenser for the plaintiff and provided the plaintiff with the plans and specifications, but placed this notice on the face of the drawing:

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*Chem. Design, Inc.*, 847 S.W.2d at 490. Several years later, the plaintiff hired a third party to create a replacement gas condenser according to the plans created by defendant. The replacement exploded, causing injuries to an employee, but the defendant designer avoided liability by showing it was unforeseeable that its plans and specifications would be misappropriated. Including a notice similar to the one used in *Chem. Design, Inc.*, may be an effective way for non-manufacturer designers to retain control of designs provided to manufacturers and shield designers from claims arising from unauthorized third-party duplicates.

Finally, while some entities may optimistically rely on statutes of limitations and statutes of repose, such a course of inaction may be unwise. Statutes of limitations periods nearly universally commence upon occurrence of the injury. For non-manufacturer designers, statutes of limitation do little to solve their liability exposure because injured parties can usually bring suit against them for recent injuries allegedly resulting from products designed far in the past.

Meanwhile, products liability statutes of repose typically create a deadline for bringing claims where the clock starts ticking upon the sale or delivery of the product. While statutes of repose are much more favorable to manufacturers, designers, and sellers, than statutes of limitations, these statutes, if they exist at all, are inconsistent and many have been found to be unconstitutional

by state supreme courts. See, e.g., *Lankford v. Sullivan, Long & Hagerty*, 416 So. 2d 996 (Ala. 1982); *Hazine v. Montgomery Elevator Co.*, 861 P.2d 625 (1993); *Heath v. Sears, Roebuck & Co.*, 464 A.2d 288 (1983); *Dickie v. Farmers Union Oil Co. of LaMoure*, 611 N.W.2d 168 (N.D. 2000); *Kennedy v. Cumberland Eng'g Co.*, 471 A.2d 195 (R.I. 1984).

Some states combine their statutes of repose with a "useful safe life" provision. In Idaho, a product's "useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored in a safe manner." Idaho Code § 6-1403(1)(a). There is a rebuttable presumption that an injury occurring more than ten years after delivery of the product occurs after expiration of the product's "useful safe life," after which point an action may not be commenced. Idaho Code § 6-1403(2)(a). Similarly, Kansas has a rebuttable presumption that a product's useful safe life expires ten years after delivery. Kan. Stat. Ann. § 60-3303(b)(1). And while Colorado does not use the term "useful safe life," it has codified a presumption of non-defectiveness ten years after the product is first sold for use or consumption. Colo. Rev. Stat. § 13-21-403(3).

Alternative approaches, such as the one used in Minnesota, to statutes of repose include an affirmative defense for injuries occurring after "the expiration of the ordinary useful life of the product," which is determined by a jury. Minn. Stat. § 604.03, subd. 1. Finally, a few states have simple, definitive statutes of repose. See Conn. Gen. Stat. § 52-577a(a) (ten years from date party last had possession or control of the product); Ga. Code Ann. § 51-1-11(b)(2) (ten years from the date of first sale for use or consumption of the product.)

Due to the large array of states' approaches to statutes of limitation and repose, non-manufacturer designers' best option to limit products liability exposure is through contractual protections negotiated with the other parties in the chain of distribution.

### Conclusion

While the issues surrounding non-manufacturer designers may be somewhat rare and narrow as designers and manufacturers are often one and the same, it is our job as attorneys to anticipate and help our clients address potential exposure that can crop up, regardless of the role held, and consider countermeasures proactively. Non-manufacturer designers, and the attorneys advising them, would do well to explore creative solutions to the problems presented by the "one size fits all approach" presented in many products liability statutes. While a few stopgaps have been suggested here, they are by no means an exhaustive list and attorneys should explore new avenues by which to support their non-manufacturer designer clients.

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**Steve Erffmeyer**

Arthur Chapman is proud to have two shareholders on the MDLA Board of Directors. Shayne's practice is focused in automobile and No-Fault litigation and Steve's practice focuses in the areas of commercial transportation and general liability.

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# BEYOND THE BAR: THE DEMOGRAPHIC INSIGHTS STEERING A DIVERSE LEGAL FUTURE

BY NEVEN SELIMOVIC

Diversity within the legal profession is an essential aspect of ensuring justice, equity, and inclusivity in society. Lawyers serve as advocates, advisors, and guardians of the law, and their diversity is critical to reflecting and understanding the vast array of experiences and perspectives in our communities; and providing the highest quality service to our clients.

Like many other states, the demographics of lawyers have been evolving in Minnesota, but there remain significant disparities in representation. This article delves into the current status of diversity, equity, and inclusion, in the Minnesota legal community, analyzes the progress made, identifies ongoing challenges, and identifies ongoing effects to foster a more representative legal workforce in the state.

## WHAT IS DIVERSITY, EQUITY, AND INCLUSION?

“Diversity,” “Equity,” and “Inclusion,” (often abbreviated as DEI) are interconnected concepts that have gained momentum for transforming many institutional aspects of the modern world. They have become focal points for organizations, institutions, and communities, that aim to ensure fairness, representation, and opportunities, for everyone. For example, searching “Minnesota diverse law firms” (without quotes) will give you page after page of law firms’ DEI pages summarizing their commitment to these concepts. And for good reason; studies show that diverse co-workers make better decisions. Erik Larson, *New Research Diversity Inclusion Better Decision Making at Work*, FORBES (Sept. 1, 2023), <https://www.forbes.com/sites/eriklarson/2017/09/21/new-research-diversity-inclusion-better-decision-making-at-work/?sh=1e5687394cbf>.

But taking a blunt approach by adding diversity without any other changes and hoping for the additional benefits and growth associated with a truly diverse entity is not a practical approach, which is what many well-intentioned

people and organizations do. In any DEI initiative there needs to be a shift in mindset and the employment culture that includes building trust, actively working against discrimination, embracing a wide range of styles and voices, and using cultural differences as an opportunity for learning and potentially growth. To do that, we must establish the perspective that DEI goes beyond race and gender to include all experiences and perspectives, such as that of a single parent, a first-generation graduate, a neuro-divergent individual, and so on to embrace the true diversity of human experience; in the law, your clients, colleagues, and jurors, will represent all of these individuals—your practice will be more successful if your organization also contains and understands diversity.

Using a mechanical approach, as defined by Merriam-Webster, “diversity” means “the condition of having or being composed of differing elements,” especially, “the inclusion of different types of people of different races, cultures, etc. in a group or organization.” MERRIAM-WEBSTER’S DICTIONARY, <https://www.merriam-webster.com/dictionary> (last visited Sept. 12, 2023) (emphasis added). And, “Equity” means “dealing fairly and equally with all concerned.” *Id* Finally, “inclusion” is “the act of including: the state of being included,” which means “to take in or comprise as a part of a whole or group.” *Id*. So, when discussing DEI, we must frame actions and discussions in the context of dealing fairly and equally with all types of people who comprise humanity and therefore the legal community.

## WHY DEI IS IMPORTANT TO YOU, A LEGAL PROFESSIONAL

Armed with a workable framework of DEI, understanding the demographic makeup of the local legal and general community is vital to building a diverse future.

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Neven Selimovic is an associate at Hellmuth & Johnson. He splits his time between the commercial litigation group and legal writing group where he writes briefs, memoranda, and other various legal documents for both internal and external clients. He seeks to bring a diverse and unique perspective to his clients through his refugee experience emigrating from Bosnia in 1996. He earned his J.D. from Mitchell Hamline School of Law in 2018. He also recently welcomed his first child into this world and has been enjoying the challenges of being a parent.

Fundamentally, lawyers serve clients, and cultural competence will increase aptitude in that service. Clients may prefer lawyers who understand their cultural or demographic background because knowing the local community's demographics allows lawyers to better understand and empathize with clients with different cultural, linguistic, or social needs. And, whether as negotiators, or trial lawyers, advocates or adversaries, our understanding of jurors, parties, and witnesses' diverse experiences and needs increases the quality of representation we provide.

A lawyer will offer more effective and empathetic legal representation by understanding the nuances of diverse cultural perspectives, experiences, and expectations. Lawyers who understand these differences can communicate more effectively with their clients and other community members.

Lawyers also often play active roles in their local communities. Greater understanding and interest in diverse perspectives will aid lawyers in focusing their efforts on community engagement and pro bono work. And, Lawyers aware of cultural and demographic trends may be better equipped to address emerging legal issues influenced by changing demographics.

Lawyers can work towards greater cultural competency and by regularly attending community events, workshops, and meetings. This will offer firsthand insights into the concerns and aspirations of the community; but remember to look for ways to expand your community outside of your own class, race, religion, age group, educational background, and other definitions that cause people to self-isolate. Looking for opportunities to connect with diverse communities is the first step; including, reading local newspapers, following community leaders on social media, and engaging with local organizations that can help you stay updated about community happenings and sentiments.

From a business perspective, law firms and legal organizations should strive to build diverse teams. Diversity within firms creates options for business growth, accessing new clients, better serving existing clients, more rounded viewpoints, and better analysis of social trends like changing jury verdicts and increased focus on conflict resolution rather than oppositional tactics. For insurance defense attorneys, insurance companies are regularly asking firms for their DEI efforts and performing surveys of their attorneys; your relationship with these insurer-clients can only be benefitted by showing DEI efforts and that you are in touch with a changing world and the individuals that make up the claimants, the defendants, the judges, and the jurors, who control the outcome of your cases.

While the primary role of a lawyer is to provide legal advice and representation, understanding diversity and inclusion is crucial for ensuring that attorneys can effectively serve their clients, navigate legal challenges, and uphold the principles of justice and equality under the law. Knowledge of the local legal community's demographics can foster community connection and growth; which can then foster environments where diversity is valued and supported. These valuable changes then foster networking, client relations, recruitment, advocacy, community engagement, and litigation outcomes. Connection to diverse communities and diverse firms enable lawyers to be more effective and responsive to the needs and dynamics of their local legal environment.

#### GROWTH IN MINNESOTA

Minnesota's legal history is characterized by a lack of diversity, especially in terms of race and gender; however, pioneering individuals broke barriers and contributed to greater inclusivity over time. There is a long way to go, but it helps to track the starting points so we can celebrate progress while striving for more growth.

When Minnesota was first settled by immigrants and then established as a state in 1858, its legal profession was overwhelmingly composed of white male lawyers. Like much of the United States at the time, women and people from racial and ethnic minority backgrounds faced significant barriers to entering the legal profession. Despite these barriers, Minnesota had some early pioneering women lawyers. For example, Martha Angle Dorsett was Minnesota's first female lawyer who helped pass legislation that allowed anyone, regardless of sex, to be admitted to the state bar. Ellen Jaquette, *Dorsett, Martha (1851–1918)*, MNOPEdia, Minnesota Historical Society, <http://www.mnopedia.org/person/dorsett-martha-1851-1918> (last visited Sept. 16, 2023).

As Minnesota's population grew and diversified during the late 19th century, the legal profession very slowly started to permit some diversity. While significant racial and gender disparities persisted, there were now attorneys from diverse backgrounds, including new immigrants and people of different ethnicities. Notable African-American lawyers in the late 19th and early 20th centuries, such as William T. Francis, one of the first African-American lawyers in the state, pioneered the viability of a legal career for men of color by becoming a politician and diplomat. The 20th century has shown a gradual increase in diversity among legal practitioners in Minnesota, particularly as the state's population also grew and diversified. Civil rights movements and changes in social attitudes contributed to more opportunities for lawyers from different backgrounds.

Notable individuals include Justice Alan Page, the first African American male to serve on the Minnesota Supreme Court, and Margaret Treuer, the first Native American (Ojibwe) female lawyer in Minnesota who became a tribal judge.

Now, the legal profession in Minnesota, like in the rest of the United States, has become more diverse—but it lags behind many professions, and certainly begs for more attention on the school to career pipeline. While legal practitioners now come from various racial, ethnic, gender, and socioeconomic backgrounds, contributing to a richer, more inclusive legal community, the goal of representative diversity is far from met. Law firms, bar associations, and legal organizations, in Minnesota have and continue to implement diversity and inclusion initiatives to promote a more inclusive legal profession. These initiatives aim to address historical disparities and create opportunities for underrepresented groups.

#### CURRENT STATE: MINNESOTA BY THE NUMBERS

Despite some progress, the demographics of Minnesota's legal profession do not yet reflect the state's diversity. Historically, the legal field has struggled to attract and retain attorneys from underrepresented racial and ethnic backgrounds. According to data from the American Bar Association, as of 2020, only 5% of lawyers in the United States identified as African American, compared to 13% of the general population. Similarly, 5% of all lawyers are Hispanic compared to 18.5% of the general population. And 2% of all lawyers are Asian, while the U.S. population is 5.9% Asian. *ABA Profile of the Legal Profession 2020*, AMERICAN BAR ASSOCIATION, <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> (last visited Sept. 16, 2023).

This underrepresentation in the profession as a whole is mirrored in Minnesota, where law firm diversity falls behind the national averages for law firm diversity. There is significant work to do because “[c]hange in representation of ethnic and racial minorities was essentially flat from 2018 to 2020, according to the report from the Minnesota Coalition of Bar Associations of Color (MN-CBAC).” Todd Nelson, *State Law Firm Diversity Lags Nation*, MINNESOTA LAWYER (October 22, 2021), <https://minnlawyer.com/2021/10/22/state-law-firm-diversity-lags-nation>.

In 2020, Minnesota's total population was 5,706,494. The non-Hispanic, White population alone accounted for 76.3% of the population (4,353,880 residents), while Black, Indigenous, and People of Color (BIPOC) populations comprised 23.7% (1,352,614 residents). MINNESOTA STATE DEMOGRAPHIC CENTER, MINNESOTA DEPARTMENT OF ADMINISTRATION, <https://mn.gov/admin/demography/data-by-topic/population-data/2020-decennial-census/> (last visited Sept. 16, 2023).

The Minnesota Lawyer Registration Office's 2016 Annual

Report shows 25,229 active attorneys. Of those active attorneys, 20,015 were White/Caucasian, while 589 were Asian/Pacific Islander, 467 were Black/African-American, 253 were Hispanic/Latino, and 106 were Native American / Alaskan. The remaining 3,556 chose not to answer. Additionally, there are 9,312 female attorneys compared to the 14,211 male attorneys. 2016 Annual Report, MINNESOTA BAR ASSOCIATION, <https://www.mnbar.org/docs/default-source/diversity-msba/mn-lawyer-registration-office-2016-demographic-data.pdf?sfvrsn=2>.

The data shows that while Minnesota remains predominately white, a significant portion of people are not—almost one in four people, particularly in the state's population centers. And among those three out of four, there is a lot of variance in socioeconomic status, perspectives, and background. So why is Minnesota's legal community so lacking in diversity? Many attorneys did not answer. Approximately 14 percent declined to answer their race and ethnicity, and nearly seven percent declined to declare their gender; this appears to show that younger attorneys may be the ones declining to answer, which would mean more balanced results in diversity in practice compared to the study results. Therefore, while there has been significant progress made in equity between male and female attorneys, there needs to be more intent and energy spent on inclusion in the broader sense to champion DEI truly.

#### CHALLENGES FACED

Minnesota lawyers and law firms face challenges concerning diversity that are not unique to the state. Some might be more pronounced due to specific demographics, cultural factors, and local professional practices. However, with the increasing diversity of Minnesota's population, especially with the growth of immigrant and refugee communities (e.g., Somali, Hmong, and others), lawyers need to be culturally competent and foster business environments that are welcoming to diverse individuals from many backgrounds and with unique experiences. Without this competence, they might not effectively serve or represent these communities or litigate surrounding these communities whose members serve as litigants and jurors.

Many challenges and barriers to increasing DEI grow from historical roots. Like many other parts of the United States, the legal profession in Minnesota has historically been dominated by white males. This has shaped legal institutions' culture, norms, and structures, which can resist change. Minnesota, especially outside of the Twin Cities metropolitan area, has historically been less diverse than other parts of the country. This can result in fewer role models in the legal profession for minority communities and potential biases against or misunderstandings of these communities. Even with the best intentions, individuals can harbor unconscious biases affecting hiring decisions, case

*Beyond the Bar continued on page 14*



assignments, promotions, and other actions that perpetuate historical inequalities. Recognizing and addressing these biases is crucial to fostering diversity.

Retention is a tough challenge for many firms. Law firms might find it challenging to recruit diverse candidates if they are perceived as lacking an inclusive culture. Once diverse lawyers are hired, retention can be another challenge if the firm does not adequately support and provide opportunities for growth for all.

There are also subtle, often unintentional, statements or actions that can be hurtful or offensive to individuals because of their race, gender, or other identity markers. They can make a workplace feel unwelcoming or hostile to lawyers from diverse backgrounds. Not all law firms or lawyers are equally aware of the importance of diversity, equity, and inclusion, or how to promote these principles. Continuous education and training are necessary to address this.

While progress is being made, resistance to change can be challenging. Some attorneys may resist diversity initiatives, viewing them as unnecessary or unfair. Overcoming this resistance will also require continued education and advocacy.

Addressing these challenges requires a concerted effort from the entire legal community, including law schools, law firms, courts, and professional organizations. Fortunately, many entities in Minnesota's legal field have recognized the importance of diversity and are actively working on initiatives and programs to promote it. Implementing diversity initiatives in the specific context of Minnesota might require adjustments or additional strategies.

#### CURRENT INITIATIVES

Many ongoing efforts are aimed at reaching the goal of greater diversity, equity, and inclusion.

The MSBA's Diversity and Inclusion Leadership Council has gone beyond token gestures. It has worked diligently in creating platforms where diverse lawyers can network, learn, and grow. Their annual diversity conference has become a cornerstone event, drawing attention from law firms, corporations, and law schools.

Other groups, like MDLA have prioritized efforts to support and attract diverse law students and lawyers, such as the annual MDLA DEIA seminar and sponsorship for diverse law students at multiple conferences and events as well as a diversity law clerkship program and an unlearning racism book group aimed at helping white lawyers better talk about race and create welcoming environments.

Numerous affinity bar associations in Minnesota support diverse groups of lawyers. These associations often host events, provide mentorship opportunities, and offer

resources to their members. They include the Minnesota Association of Black Lawyers (MABL), the Minnesota Hispanic Bar Association (MHBA), the Minnesota Asian Pacific American Bar Association (MNAPABA), the Minnesota Women Lawyers (MWL), and the Minnesota Disability Bar Association (MDisBA), among others.

Leading law firms in Minnesota are not just passively awaiting change; they are spearheading it. By revising recruitment policies, firms ensure they attract a diverse pool of candidates. They are participating in diversity clerkship programs. These programs are designed to introduce first-year law students from underrepresented backgrounds to law practice in Minnesota and provide them with valuable clerkship experience. MDLA's diversity clerkship program and the Twin Cities Diversity in Practice (TCDIP) are great examples. Many firms also focus on fostering an inclusive work culture where every lawyer feels valued for their unique experiences and perspectives.

With collaborative efforts from educational institutions, law firms, professional associations, and the broader community, Minnesota is positioning itself at the forefront of a transformative shift in the legal industry. A concerted effort from all stakeholders can drive Minnesota to achieve its diversity goals and serve as a beacon for other states on this critical journey.

## DIVERSITY & INCLUSION COMMITTEE

Seeking to promote diversity within its membership and the law firms in which its members work. We appreciate and embrace that our legal community and clientele come from a rich variety of diverse cultures, beliefs, perspectives and backgrounds. Through an open and inclusive membership, we hope to achieve a better understanding of the broader issues of diversity, as well as the cultural similarities and differences within our society, so that we may better serve the legal community and the people we represent.

- Annual Diversity Seminar
- Law Clerk Summer Program
- Law Student Attendance at Seminars

For more information, email committee Chair, Madison Fernandez - [mfernandez@larsonking.com](mailto:mfernandez@larsonking.com) or Vice-Chair, Aaron Brown - [abrown@larsonking.com](mailto:abrown@larsonking.com)



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# 10 BENEFITS OF MDLA MEMBERSHIP

By STEPHANIE ANGOLKAR

Has your law firm started to question expenditures on membership in bar associations like MDLA? Are you a new lawyer curious about bar associations and how to figure out what organizations to join? I welcome your personal call or e-mail to sell you on why MDLA is an investment that will provide you an incredible return, let me start the conversation with the below 10 Benefits of MDLA Membership!

## 1) A civil defense focus to filter information for the case you have now

The best way to get to know the MDLA community is to join the substantive law committees related to your own practice. Committees meet regularly for networking and educational opportunities, including CLE credits. You can join committee mailing lists to be informed of upcoming meetings and publication opportunities. MDLA substantive law committees each focus on select areas of the defense practice. Each committee has meetings throughout the year to keep members connected and up-to-date on ongoing issues.

Our committees include: Amicus, Construction, Diversity, Editorial, Employment Law, Government Liability, Insurance, Law Improvement, Law Firm Management, Long Term Care, Medical Liability, Membership, Motor Vehicle Accident, New Lawyers, Products Liability, Retail & Hospitality, Technology, Wellness, Women in the Law, and Workers Compensation.

## 2) Expanding your resource bank with experts and other defense counsel

Need to find a biomechanical engineer? Need to find an expert for an origin and causation inspection stat? Don't even know what kind of expert you need? Look no further. MDLA has several sponsors who provide a variety of expert services. If they don't have someone to help, they will refer you to someone who can.

MDLA also offers an easy way to share and request information with other defense attorneys. It collects requests for information throughout the week and sends

a consolidated e-mail to all MDLA members every Friday. This e-mail can include requests for expert deposition transcripts or information.

More than once, reaching out to fellow MDLA members has helped me find experts.

## 3) Educational Opportunities

MDLA provides numerous educational opportunities to easily meet your CLE requirements. At the end of January each year, MDLA's Secretary organizes the Mid-Winter Conference, which is held at a central or northern Minnesota resort. Many members make a tradition of bringing their families for a mid-winter family break, but there are opportunities to socialize for those traveling solo as well. The Mid-Winter Conference also provides an opportunity for the New Lawyers Committee to assist in organizing speakers and programming. The New Lawyers Committee has a dinner the first night of the Conference, followed by a Welcome Reception. The next evening includes a reception and dinner open to families, as well as a kid-friendly movie night. MDLA also hosts two diverse law students at this seminar, providing a scholarship to cover lodging and the seminar. It also provides attorney mentors to these students.

MDLA has several committees that meet throughout the year and provide CLE credit for those meetings. If you present at a meeting, you can also claim credit for your time preparing to present.

The annual diversity seminar provides a great opportunity to obtain bias credits and expand your thinking. The Diversity Committee organizes this seminar, with topics varying each year. This seminar is typically held in late spring.

The third weekend of August, many MDLA members travel to Duluth's shores for the Trial Techniques Seminar. Traditionally, MDLA has hosted a welcome reception on Thursday evening, followed by a past-president's dinner. After the programming on Friday morning, there is time to join one's family or firm for an afternoon activity or to unwind in Canal Park. That evening, MDLA hosts a dinner and activity which is family friendly. Many members extend



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**MDLA Membership Continued on page 17**



their weekends to enjoy one of the last summer weekends in Duluth and the North Shore. It is not unusual to run into each other at Gooseberry Falls or Split Rock Lighthouse.

In 2023, MDLA provided a New Associate Series, which provided a monthly CLE topic targeted at newer lawyers and skill-building for a civil defense practice. MDLA has also historically hosted a Trial Academy meant to give attorneys an opportunity to practice a trial from beginning to end. The next Trial Academy is in the works by its co-chairs, so stay tuned for a date.

#### **4) Value for your Dollar**

I just shared numerous CLE opportunities. Most of them are FREE with your MDLA membership! Committee meetings are no cost for the CLE credit, and many committees provide hybrid meeting options. The seminars have modest cost, but the content and opportunities provided at these seminars are worth the expense.

#### **5) Mentoring Opportunities**

It can feel discouraging to join an organization and receive no acknowledgement of joining, no welcome, and no idea where or how to become involved. MDLA provides an opportunity to pair new members with a mentor, if they choose, to have their own tour guide as they navigate their new membership. If you are a new member interested in being paired with a mentor, or you are an experienced MDLA member interested in being an ambassador, please contact me.

#### **6) Diversity, Equity, and Inclusion, Efforts**

MDLA has been honored by the Defense Resource Institute for the Diversity Committee's efforts including a diversity clerkship program and annual diversity seminar. The diversity clerkship program recruits diverse law students for participating law firms interested in providing a 10-week paid clerkship. Many law students have continued their employment beyond the 10 weeks, and the program has aided participating law firms in their DEI efforts.

#### **7) Affinity Bar Rate**

MDLA has an affinity bar rate promotion. If you are a member of an affinity bar association such as Minnesota Women Lawyers, Minnesota Association of Black Lawyers, Lavender Bar Association, etc., you may join MDLA for a reduced fee of \$100. MDLA started this initiative as an additional effort to improve diversity within the organization.

#### **8) Women in the Law Committee**

One of the most well-attended events each year is the Annual Women's Breakfast (not just for women!), which features

a keynote speaker and the opportunity for fellowship with other women attorneys in MDLA and men supporting the event. The Women in the Law Committee organizes the breakfast, as well as other events to encourage networking and support of women practicing in civil defense.

#### **9) Fellowship and Friendships**

Through MDLA, I have developed several close friendships with other attorneys. During the board meeting at the 2023 Mid-Winter Conference I had organized, I received our trial verdict. It was a defense win! I have great memories of a "Spartan"-style cheer and celebrating with fellow civil defense attorneys. We trial attorneys live vicariously through each others' wins and losses, and it was so much fun to celebrate a win together. I have found many mentors through MDLA. Some are long-standing mentors. Some provide invaluable advice and stories to learn from on a specific topic. We members do not all agree on everything – as you can imagine in a room full of litigators – but even where we disagree, we are learning from each other.

#### **10) An opportunity to build your litigation and professional skills**

In MDLA, I learned from other attorneys regarding motions in limine, what "reptile theory" was, and tactics that were working or not working at trial. These are not things taught in law school. And no matter how great a law firm's mentoring may be, it cannot replace the value of expanding the professional skills of an attorney through access to quality-programming with a focus on the civil defense litigator and hearing from many voices; juries are made up of different experiences and mentors must be as well.

MDLA publishes a magazine three times a year (you are reading it), featuring substantive law articles written by MDLA members, news of the Association, event highlights and photos, and notices of upcoming events. The Editorial Committee oversees the publication process. Each committee develops topical articles throughout the year. Those interested in being published or co-authoring an article should reach out to the committee chair or MDLA executive director.

MDLA members also have the opportunity to present for CLE credit throughout the year. We prioritize members as conference and event speakers. Members are encouraged to share their expertise with the substantive law committees through one hour committee meetings.

The committees also offer opportunities for leadership and growth. Committees are led by two or more chairs. Chairs facilitate topic selection, frequency, scheduling of meetings, and select articles for publication. Any member can be a committee chair. If you are interested, you should connect with current chairs to discuss succession planning or the MDLA executive director.

# UNLEARNING RACISM BOOK REVIEW

BY RACHEL BEAUCHAMP

## So You Want To Talk About Race, by Ijeoma Olou

The Unlearning Racism Book Club in partnership with MDLA's Diversity Equity Inclusion and Accessibility read its first book and met to discuss the same in February, 2024. "So You Want To Talk About Race, by Ijeoma Olou" is a book written primarily for non-Black-American readers who want to do the work and also want to know how to do the work of unlearning racism and talking honestly about race. Over the last years when business and social groups have given lip service to the goals of promoting diversity, there has also been a push for white individuals to stop relying on their friends, family, and colleagues, of color to provide unpaid unlearning racism training.

That position is entirely reasonable. However, when I talk to many individuals my age and older, they report that while they understand they have a duty to educate themselves, at this point, it is just a daunting and overwhelming task to determine where and how to start their formal education. (As author Olou would say, "imagine how daunting and overwhelming it would be to have to give this free education to every single white individual who asks!"). This book group is a form of accountability for this type of education; and this was a perfect first book because it was literally written as a starting point for vocabulary, history, clarification of buzz words and ideas, and talking points for engaging in conversations about racism.

I highly recommend this book for anyone and everyone who has any interest in creating or participating in supportive diverse communities of any kind (familial, employment, community, social, etc.). This book does exactly what its title implies; it provides intro level commentary on numerous aspects of the topics that regularly come up when discussing racism in America, topics like privilege, educational opportunity gaps, affirmative action, and microaggressions. The book starts with the essential explanation of systemic vs personal racism and that unlearning racism focus is most essentially on the systemic aspect. The book then moves through various specific topics, one chapter at a time, in sort of bite-sized pieces that are not overwhelming or overly intricate; this is a practical guide not a philosophical treatise. For the very personal, painful, and overwhelming topics addressed, the book is extremely readable, not particularly dense, and written in a clear direct communication style that asks readers to do their work, while providing a clear roadmap to do so. Readers can

casually read it fairly quickly; or, can stop and do some specific assignments and work for deeper understanding. The paper copy of the book comes with talking points/discussion questions to focus readers who want more directed reflection on the topics raised.

Each chapter identifies an issue and explains that issue societally; and, then makes the societal personal through real-life stories. These stories are accessible and often painful. Olou gifts us with her own history as a bi-racial queer woman author who has lived and worked in white-dominated spaces her entire life. By detailing painful lived experiences, mistakes she has made, and mistakes made by white people she loves, Olou pushes readers to accept the ways they [the readers] have participated in and benefitted from white privilege and systemic racial oppression – as well as other intersectional system privileges such as able-bodied, heteronormative, and patriarchal, privileges. This is step one to unlearning racism; and, this book has something for you and your work on this path whether this is day one in your journey and commitment or whether you are years into your process but still ready to have your mind blown by one perfect sentence or story that opens any door or window in your own understanding and commitment to intersectional anti-racism work. Each chapter has some talking points for when, how, or if, to respond to various issues in personal and social interactions.

People are terrified of being called racist and acknowledging their own internalized racism (something addressed straightforwardly in this book as well). So You Want To Talk About Race specifically, and without pulling its punches, informs readers they are racist (and/or carry other "isms"), they carry and support systemic racism (or other isms) unless they directly challenge them, they will make mistakes and mess up in both their everyday life and when they try to talk about race and racism; it tells them how they already have; it clarifies that the readers' intention to "not be racist" is not the measuring stick, it is the impact of their lifestyle and actions; and, it then gives readers a roadmap on how to do better – and, how to not be overwhelmed by the enormity of the societal issues. You cannot ask for a fairer, more empathetic, or more clear communication, and directive than that.

If you wish to join the MDLA Unlearning Racism Book Club, please send an email to [lmortier@mdla.org](mailto:lmortier@mdla.org) for the next date, to be added to the email list, and for notification for the book



*Rachel Beauchamp is a shareholder at Cousineau Malone P.A. where she specializes in commercial trucking, insurance coverage, and civil litigation. She serves on the MDLA Board of Directors, as Executive Editor of MN Defense Magazine, and is moderating the Unlearning Racism Book Group.*



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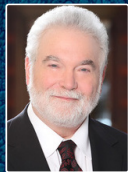
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# DRI CORNER

## *The Voice of the Defense Bar*

BY JESSICA SCHWIE

KENNEDY & GRAVEN, CHTD

MDLA DRI State Representative



Hello from DRI! It has been a minute since I have caught up with the membership. Reflecting back to August, attending the MDLA Trial Techniques Seminar and Gala with DRI and MDLA members was a treasure. It was valuable to learn legal trends in our cases while also learning how to build and maintain a successful practice. Similar concepts were touched upon again at the MidWinter in January at Arrowwood, Alexandria. As we reflect on what we learned at the seminars, I encourage you to jot some notes on what your personal definition of a successful practice is—what are your goals for hours, income, flexibility, nature of practice, the people you encounter, and service to and in the profession. Pull the notes out again 3-5 years from now. Are you meeting your definition of a successful practice? Are changes to either your definition or your actions and philosophies needed? The journey goes by fast. Try to spend as much time as you can living it in alignment with your desires.

In the Fall, DRI held its annual meeting in San Antonio, Texas. There were entertaining speakers such as storyteller NPR Political Correspondent Mara Liasson, but the one who really stole the show was Connie Podesta. In the opening session, Podesta gave a quick personality test to all attendees and then in a comedic, improv style set provided guidance on how to build strong professional relationships and lead those affected by the profession based on your unique personality. The remainder of the seminar individuals reflected on their personality styles and engaged with one another. The MDLA Board members and others who attended were able to have a laugh over how their personality traits affect their communications and stronger leadership bonds were formed.

Kicking off the holidays, DRI hosted the North Central Regional leadership conference in New York and then they meet up again in Miami in February. At each, the leadership of approximately 11 states gathered to share ideas on how to best meet the needs of civil defense trial lawyers today. A consistent theme developed around the need to keep the playing field even and just. Issues such as third-party funding of litigation arise and now become nationwide issues with courts and state legislative bodies such as our own tackling the issue. Does allowing third parties to fund litigation advance justice or does it create an opportunity for fraud and dilatory practices? DRI's Center for Policy provides assistance on these issues in amicus briefs, white papers for legislative consideration, and facilitating conversations like those held in New York.

DRI has a few substantive law meetings coming up, including the Trucking Law Seminar at the in St. Louis and the Employment Law Committee seminar in Washington D.C. Mark your calendars for the DRI Annual Seminar in Seattle in October. In between will be MDLA's 2024 Trial Tactics Seminar in Duluth with a DRI speaker and other members attending. If we run into each other, please let me know in what ways DRI can better meet your practice needs. I would like to assemble a list to take with me next October as we continued to build strong professional associations that connect and develop civil defense trial attorneys. For more information on the membership opportunities, upcoming meetings and access to resources, visit [dri.org](http://dri.org) or reach out to me at [jschwie@kennedy-graven.com](mailto:jschwie@kennedy-graven.com) and we will get you connected.

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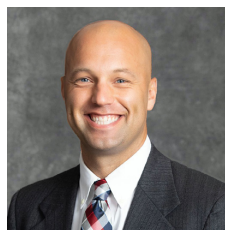
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## JOIN A COMMITTEE

*MDLA committees provide great opportunities for learning and discussion of issues and topics of concern with other members in similar practices. Activity in committees can vary from planning CLE programs, to working on legislation, to informal gatherings that discuss updated practice information or changes in the law. Serving on a committee is one of the best ways to become actively involved in the organization and increase the value of your membership.*

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For more information, email committee Co-Chairs Kelly Magnus - [kmagnus@nilanjohnson.com](mailto:kmagnus@nilanjohnson.com) or Brandon D. Meshbesh - [brandon.meshbesh@lindjensen.com](mailto:brandon.meshbesh@lindjensen.com)

### MOTOR VEHICLE ACCIDENT

MDLA's Motor Vehicle Accident Committee consists of attorneys who primarily represent insurance carriers and their insureds in the defense of motor vehicle accident related claims. The attorneys associated with this committee typically defend claims involving no-fault, property damage, bodily injury and wrongful death issues. We focus on providing members with relevant speakers and regular updates on developments in this practice area. We also provide the members with a committee-specific listserv for communicating about relevant and emerging topics involving this practice area.

For more information, email committee chair Shannon Nelson - [sanelson@arthurchapman.com](mailto:sanelson@arthurchapman.com)

### EDITORIAL COMMITTEE

MDLA's Editorial Committee is responsible for publication of its quarterly magazine, Minnesota Defense. If you would be interested in publishing in the Minnesota Defense or serving as an editor, please contact us at [director@mdla.org](mailto:director@mdla.org).

- Published three times a year
- March 1, July 1, November 1
- Deadlines here:
- January 15, May 15, September 15

For more information, email committee chair Rachel Beauchamp - [rbeauchamp@cousineaulaw.com](mailto:rbeauchamp@cousineaulaw.com)

### GOVERNMENT LIABILITY

Attorneys who work with municipalities on a wide range of government liability issues. The Committee typically meets quarterly with a CLE type format. An annual update regarding recent case law decisions, focusing on issues that pertain to cities, counties and other municipalities, is given in the winter at the League of Minnesota Cities in St. Paul. Other meetings rotate among the firms. The December holiday party is always enjoyable.

- Quarterly CLE
- Winter Annual Update of Case Law Decisions
- Representing Cities
- Representing Counties
- Representing other Municipalities
- Annual Holiday Party

For more information, email committee Co-Chairs Jordan H. Soderlind - [jhs@ratwiklaw.com](mailto:jhs@ratwiklaw.com) or Julia Kelly - [julia@iversonlaw.com](mailto:julia@iversonlaw.com)







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