

## Minnesota High Court Rejects Verdict against University Coach for Negligent Misrepresentation in Hiring

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Ending five years of contentious litigation, the Minnesota Supreme Court has reversed a million-dollar jury verdict for negligent misrepresentation against the head coach of the University of Minnesota (“U of M”) Men’s Basketball Team for offering an assistant coaching job to a former assistant coach only later to withdraw the offer. The University withdrew the offer after discovering the candidate’s prior recruiting violations at the University. *Williams v. Smith, et al.*, Nos. A10-1802 and A11-0567 (Minn. Aug. 8, 2012). This decision clarifies and narrows the scope of negligent misrepresentation claims in job offer and hiring situations for both public and private employers in Minnesota.

### Facts

James Williams was an Oklahoma State University assistant basketball coach when he received a call from Orlando “Tubby” Smith in April of 2007, shortly after Smith assumed the position of head coach of the U of M Men’s Basketball Team. Williams claimed Smith offered him an assistant coaching job with the Minnesota “Golden Gophers.” He also claimed that, in reliance on that telephone conversation (in which Smith offered an annual salary of \$200,000), he resigned his position at Oklahoma State and put his house up for sale.

Smith, however, maintained he never finalized the deal. He said the day after he spoke to Williams, Joel Maturi, then the U of M Athletic Director with ultimate hiring authority, decided against hiring Williams. Maturi had learned that Williams had been connected to NCAA recruiting violations while serving as assistant with the Golden Gophers in the 1970s and 1980s. The offer was revoked and Williams lost his job at Oklahoma State. After that, he spent some time without a coaching position.

### The Suit

Williams sued the U of M and Smith in 2007 for lost wages and other claims related to his reliance on what he considered a job offer. The U of M moved to dismiss all of the claims based on its statutory immunity as a quasi-state entity. The Minnesota Court of Appeals remanded the case for trial in June of 2010 on the sole surviving claim: negligent misrepresentation against Smith. The jury found in favor of Williams and awarded him damages of \$1.2 million, later reduced to \$1 million. Smith appealed to the Minnesota Court of Appeals, which affirmed the verdict. Smith then sought review by the Minnesota Supreme Court. The High Court reversed.

### Special Legal Relationship Required

To prevail on a negligent misrepresentation claim in Minnesota, a plaintiff must establish:

- (1) a duty of care owed by the defendant to the plaintiff;
- (2) false information supplied by the defendant to the plaintiff;
- (3) justifiable reliance upon the information by the plaintiff; and
- (4) failure by the defendant to exercise reasonable care in communicating the information.

The Minnesota Supreme Court explained that when a prospective government relationship (including an employment relationship) is negotiated at arm's length between sophisticated business persons and does not involve a professional, fiduciary, or other special legal relationship between the parties, the prospective employee is not entitled to protection against negligent misrepresentations by the prospective government employer's representative. The Court agreed with the lower courts that as a tort, the negligent misrepresentation claim was not automatically barred by the U of M's statutory immunity.

In the case before it, moreover, the Court found that the U of M and Smith, its employee, did not owe Williams a duty of care. The duty of care in negligent misrepresentation cases, the Court explained, previously has been limited to professional relationships such as accountant/client and attorney/client and certain fiduciary relationships involving guardians, executors and directors of corporations, or where one party has superior knowledge or expertise. The Court determined this case was an arm's length negotiation, and therefore, Smith did not owe Williams a duty of care. The holding is consistent with the Minnesota High Court's prior decisions in which it declined to recognize negligent misrepresentation in decisions involving negotiation of typical at-will employment relationships.

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The holding in *Williams* is not limited to public entities and their employees. All Minnesota employers will be less likely to be found liable for reckless or negligent communications made by their employees to applicants or prospective employees. Job applicants' claims for intentional fraud, or fraud in the inducement of an employment relationship, are unaffected by this decision. Nevertheless, representations made when hiring employees deserve special attention from all employers, public or private. Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

## [practices](#)

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