

A08-1993

**STATE OF MINNESOTA
IN COURT OF APPEALS**

SARAH ERDMAN,
individually and on behalf of
others similarly situated,

Plaintiffs/Respondents,

vs.

LIFE TIME FITNESS, INC.,

Defendant/Appellant.

APPELLANT'S BRIEF

DWORKEN & BERNSTEIN CO. LPA
Patrick J. Perotti (Ohio #0005481)
Nicole T. Fiorelli (Ohio #0079204)
60 South Park Place
Painesville, OH 44877
(440) 352-3391

BUSINESS LAW CENTER, PLC
Steven E. Ness (#177301)
7825 Washington Avenue, Suite 500
Bloomington, MN 55439
(952) 943-3939

Attorneys for Respondents

DORSEY & WHITNEY LLP
Douglas R. Christensen (#192594)
Michael J. Wahoske (#113670)
Zeb-Michael Curtin (#352640)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600

Attorneys for Appellant
Life Time Fitness, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

CERTIFIED QUESTIONS PRESENTED 1

STATEMENT OF THE CASE AND OF THE FACTS 3

 A. Introduction 3

 B. Statement Of The Case..... 4

 C. Statement Of The Facts. 6

 1. The Parties 6

 2. LTF’s Bonus Plan..... 7

 3. Respondents’ Lawsuit And The District Court’s Denial
 Of LTF’s Motion For Summary Judgment 10

ARGUMENT..... 13

I. Appellate Review Standard 13

II. The District Court Erred In Its Construction Of Minnesota Statutes
Section 181.79 15

III. The District Court Erred In Its Construction of Minnesota Rule 5200.0211 17

 A. Under The DOLI’s Interpretation Of Its Administrative Rule,
 Managerial Employees’ Salaries Are Still “Guaranteed” If They
 Can Be Reduced To Recover Bonus Overpayments..... 18

 B. “Guaranteed” As Used In Rule 5200.0211 Should Not Be Read
 To Prohibit Pay Deductions Explicitly Contemplated By
 Section 181.79. 19

IV. The District Court Erred In Finding The Remedy Under Rule 5200.0211
To Be The Destruction Of Exempt Status For All 126 Employees For
All 100 Weeks They Were Covered By The Bonus Plan At Issue 23

CONCLUSION..... 26

CERTIFICATE OF COMPLIANCE

ADDENDUM

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF AUTHORITIES

	Page(s)
CASES	
<u>Auer v. Robbins</u> , 519 U.S. 452 (1997)	26
<u>Becker v. F&H Restaurant Group, Inc.</u> , 413 N.W.2d 202 (Minn. Ct. App. 1987)	14, 15
<u>Custom Ag. Service of Montevideo, Inc. v. Comm’r of Revenue</u> , 728 N.W.2d 910 (Minn. 2007)	22, 23
<u>Employers Mut. Cas. Co. v. A.C.C.T., Inc.</u> , 580 N.W.2d 490 (Minn. 1998)	14
<u>Long Island Care at Home v. Coke</u> , 127 S.Ct. 2339 (2007)	22
<u>Milner v. Farmers Insurance Exchange</u> , 748 N.W.2d 608 (Minn. 2008)	<i>passim</i>
<u>Murphy v. Allina Health Sys.</u> , 668 N.W.2d 17 (Minn. Ct. App. 2003)	14
<u>Prof’l Fiduciary, Inc. v. Silverman</u> , 713 N.W.2d 67 (Minn. Ct. App. 2006)	13, 14
<u>Tesoro Refining & Marketing Co. v. State Dep’t of Revenue</u> , 190 P.3d 28 (Wash. 2008)	22

STATUTES & RULES

Minn. Stat. § 181.79	<i>passim</i>
Minn. R. 5200.0170	24
Minn. R. 5200.0211	<i>passim</i>
29 C.F.R. § 541.118	26
29 C.F.R. § 541.603	25, 26

OTHER AUTHORITIES

Minnesota Dep't of Labor & Industry, "A guide to Minnesota's Overtime
Laws" (2005)..... 14, 18, 19

CERTIFIED QUESTIONS PRESENTED

Question 1: Where an employer advances bonus payments to an employee, with the understanding that the employee may be required to repay those bonus advances if he or she does not earn them, and the employer thereafter reduces the employee's paycheck solely to recover the amount of the unearned and overpaid bonus, is that a deduction made to recover "claimed indebtedness running from employee to employer" such that Minnesota Statutes section 181.79 applies?

District Court Ruling: The District Court, at Respondents' insistence, misconstrued the plain text of Minnesota Statutes section 181.79 in holding that paycheck deductions to recover overpaid bonus advances were not deductions to recover "claimed indebtedness running from employee to employer" within the meaning of section 181.79.

Authorities: Minnesota Statutes § 181.79.

Question 2: What is the interaction between Minnesota Statutes section 181.79 and Minnesota Rule 5200.0211? Specifically, where an employer makes a deduction to recover "claimed indebtedness," such as an overpayment of any sort, but fails to obtain prior written authorization for such deduction, is an affected employee's remedy under section 181.79 (which deals with deductions from wages and requires damages in double the amount of the improper deduction) or Minnesota Rule 5200.0211 (which deals with exemptions from overtime requirements)?

District Court Ruling: The District Court, at Respondents' insistence, ignored the Minnesota Supreme Court's recent instruction that Minnesota's wage-and-hour laws must be construed in light of the overall legislative scheme, rather than in isolation, in

holding that Minnesota Rule 5200.0211 forbids paycheck deductions clearly contemplated by section 181.79, and, in the process, erred in holding that Minnesota Rule 5200.0211 provides a remedy for such paycheck deductions.

Authorities: Milner v. Farmers Ins. Exchange, 748 N.W.2d 608 (Minn. 2008); Minnesota Statutes § 181.79; Minnesota Rule 5200.0211.

Question 3: In the event Minnesota Rule 5200.0211 provides a remedy for deductions to recover “claimed indebtedness,” what is the proper scope of that remedy? Specifically, is the loss of exempt status confined to those employees who actually had their salaries reduced, or is exempt status destroyed for all employees who theoretically could have had their salaries reduced, whether they were actually reduced or not, and, in either event, for what time period is the exempt status lost?

District Court Ruling: The District Court, at Respondents’ insistence, held that the remedy under Minnesota Rule 5200.0211 is the broad destruction of exempt status for all individuals who “possib[ly]” could have had paychecks reduced at any time, in the process ignoring the Minnesota legislature’s carefully chosen scheme under which the remedy for an improper pay deduction is narrowly tailored to redressing the actual improper deduction and, accordingly, is limited to the individuals who actually experienced the improper deductions and the time period of such deductions.

Authorities: Milner v. Farmers Ins. Exchange, 748 N.W.2d 608 (Minn. 2008); Minnesota Statutes § 181.79; Minnesota Rule 5200.0211.

STATEMENT OF THE CASE AND OF THE FACTS

A. Introduction.

Despite the documented explosion of wage-and-hour litigation under the federal Fair Labor Standards Act and state wage-and-hour laws, the jurisprudence of wage-and-hour law is not well developed in Minnesota, and the district courts have not had the benefit of appellate guidance on important aspects of these increasingly popular lawsuits. This case presents three legal questions of first impression impacting virtually all Minnesota employers, specifically: (1) Where, pursuant to a contract, a Minnesota employer advances bonus payments to employees, with the understanding that the employees may be required to repay those bonus advances in the future if they do not earn them, has the employer violated Minnesota's wage-and-hour laws? (2) If so, does the proper remedy lie under Minnesota Statutes section 181.79, which expressly contemplates pay deductions "to recover . . . claimed indebtedness running from employee to employer" and provides a narrowly-tailored remedy for any such deductions, if they are improperly taken, or under Minnesota Rule 5200.0211, which defines what being paid a "salary" is for purposes of overtime exemption? (3) If Rule 5200.0211 applies, does it apply beyond the employees and/or paychecks/pay periods involved?¹

Although these substantive issues are novel, the Minnesota Supreme Court has provided an important guiding principle for their resolution: Provisions of the Minnesota Fair Labor Standards Act ("MFLSA") and its accompanying rules, such as those

¹ For the Court's convenience, Minnesota Statutes section 181.79 and Minnesota Rule 5200.0211 are set forth in their entirety in the attached Addendum at Add. A and Add. B.

Respondents have sued under here, must be read in light of similar wage-and-hour provisions of Chapter 181 of the Minnesota Statutes, rather than in isolation. Milner v. Farmers Ins. Exchange, 748 N.W.2d 608 (Minn. 2008). Despite Appellant Life Time Fitness, Inc.'s ("LTF") repeated invocation of Milner, the District Court, at Respondents' urging, erred fundamentally by entirely ignoring (indeed, even failing to cite to) Milner, which, as explained below, compels the exact opposite of the conclusion reached by the District Court. Under the District Court's unprecedented and erroneous decision, Minnesota employers who make pay deductions contemplated by a statute may nonetheless unwittingly violate an administrative rule and be exposed to massive, unanticipated liability in no way reflective of the actual alleged harm. LTF respectfully submits that the proper course is to follow the guidelines of Milner and thus to grant the Company's motion for summary judgment, dismissing Respondents' "overtime" claims in their entirety, or, at the very least, limiting Respondents' claims for overtime to the individuals who had actual deductions made and/or to the four pay periods in late 2005 during which such deductions were made.

B. Statement Of The Case.

As is developed more fully in the Statement of the Facts *infra*, Respondents are a certified class of current and former executive and managerial employees who worked for LTF in Minnesota and were eligible to receive monthly bonus advances pursuant to LTF's managerial bonus plan. They claim that LTF's bonus plans violated Minnesota's wage-and-hour laws, and seek to recover retroactive overtime pay for all hours they worked over 48 in a workweek during the class period. On September 10, 2008, the

Hennepin County District Court (The Honorable Marilyn Brown Rosenbaum) resolved the parties' cross-motions for summary judgment in Respondents' favor. (A. 98-106.) The District Court ruled that LTF's bonus plans violated Minnesota Rule 5200.0211, and, as a result, Respondents had been improperly classified as exempt for the entire time period they were covered by such plans, and were entitled to retroactive overtime pay for hours worked over 48 in a workweek. (A. 104-05.)

By motion made on September 23, 2008, LTF requested the District Court to certify that order for interlocutory appeal as important and doubtful pursuant to Minn. R. Civ. App. P. 103.03(i). (A. 107-112.) Because of the importance of the questions presented, LTF also determined it would seek discretionary review of that order from this Court. Accordingly, when the 30-day period allowed for seeking such review was coming to an end without a ruling from the District Court on the certification request, LTF filed a petition for discretionary review pursuant to Minn. R. Civ. App. P. 105 with this Court on October 10, 2008, and also sent a letter on that date to the District Court, apprising her of that filing and providing copies thereof.

Thereafter, on November 12, 2008, the District Court certified its order for appeal under Rule 103.03(i), finding the questions presented to be important and doubtful.² (A. 123.) On November 14, 2008, LTF filed its Notice of Appeal and Statement of the Case with this Court, perfecting its appeal. (A. 124-32.) On November 26, 2008, this Court

² Although the District Court did not set out in its November 12 order the questions it certified, this Court ruled on November 24, 2008, that it would construe the District Court's order as incorporating the three certified questions presented in the proposed order LTF had submitted to the District Court. (A. 134.)

denied LTF's Rule 105 petition on the grounds that the issues presented therein were already up on appeal via the Rule 103.03(i) certification and the perfected appeal therefrom. (A. 135-36.)

C. Statement Of The Facts.

The record developed by the parties and presented to the District Court established the following undisputed material facts:

1. The Parties.

Appellant LTF is headquartered in Chanhassen, Minnesota and owns and operates over 70 health and fitness clubs nationwide, including 25 within Minnesota. (A. 200-01.) Respondents are a certified class of 126 current and former executives and managers of LTF, occupying 83 different positions ranging from club-level managers of discrete departments all the way up to and including the senior executives of the Company, including its Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, and General Counsel (for the Court's convenience, the entire group is hereinafter referred to collectively as "managerial employees").³ These managerial employees are classified by LTF as exempt from the overtime requirements of the MFLSA and federal FLSA, and, by contract, they are paid a salary rather than by the hour. (A. 12.) As managerial employees, they are expected to work as many hours as necessary to satisfactorily

³ This case was certified as a class action on June 27, 2008, but, in light of the parties' then-pending cross-motions for summary judgment and this subsequent appeal of the District Court's summary judgment order, the District Court has not yet directed that notice be issued to class members.

perform their job responsibilities, and their salaries are intended to compensate them for all the hours they work. (Id.)

2. LTF's Bonus Plan.

Attracting and retaining talented employees is important to LTF's continued success in the competitive health and fitness market, and the Company's salary and bonus structure was created with this employee-friendly goal in mind. (A. 179-80.) By contract, in addition to receiving an annual salary paid out in installments twice per month, managerial employees are eligible for an annual bonus. That bonus is not finally determined until year's end, but, to provide employees with more frequent payment opportunities rather than merely a year-end lump-sum, its estimated amount is given out in advance in monthly installments, based on year-to-date results versus year-to-date goals.⁴ (A. 145-52.)

⁴ Two general measures of results versus goals are used in calculating eligibility for monthly bonus advances: revenue and EBITDA (earnings before interest, taxation, depreciation, and amortization; in other words, revenue minus expenses, or a measure of profitability). (A. 141, 145, 149, 154.) These targeted goals vary depending on position. For example, the Spa Department Head bonus plans pursuant to which Named Plaintiff Erdman was eligible to receive bonus advances during the eight-month period she was in that position were based on the actual results versus goals of the Savage fitness center's spa department as a whole. (A. 202, 206, 210.) For General Managers, eligibility for bonus advances was based on the actual results versus goals of their club as a whole. (A. 142.) For LTF's corporate officers, eligibility was based on the results versus goals of the entire enterprise. Employees' actual results were influenced by several factors, including the size and location of the fitness center at which they were employed, fitness-center usage dynamics and seasonal variations, the budgeting process, the maturity of the fitness center, and the results of the particular fitness center as a whole; as to some of these, their individual efforts as managers could make a difference, and to others, not. (A. 141-42, 154, 156.) Because of this, a poor performer could receive a bonus advance by virtue of working at a high volume club, whereas a stellar performer might receive no bonus advance if she worked at a club with low customer-usage. (A. 141.)

The bonus plans at issue contained a written proviso informing employees that LTF reserved the discretion to recover these advanced bonus installments (if it so chose), out of what would otherwise be the amount of some future salary installment payments, if the bonus is not actually earned. (A. 145, 149, 184-86.) As the plans make clear, only the amount of the bonus overpayments, if any, could be recovered; the total amount of the annual salary would always be fully paid. (A. 138, 145, 149, 184-86.)

Although the Company's bonus plans contained this proviso from January 1, 2004 through March 3, 2006 (A. 138, 186-87),⁵ the only time LTF actually chose to exercise its right to recover this indebtedness was in November and December 2005, when 12 Minnesota managerial employees had certain of their paychecks reduced to recover some of the amounts of bonus advances they had received, but had not earned (A. 196-97).⁶

Around summer of 2005, LTF had noticed that several individuals had been advanced significantly greater bonus payments than they had earned on a year-to-date basis. (A. 176.) LTF decided to take a "wait-and-see" approach to see if the total of the bonus amounts actually earned would grow enough to get back in line with the advances that had been paid. (Id.) Thereafter, it became clear that the earned bonus amounts for

⁵ After LTF learned that an employee believed its bonus plans containing this proviso violated the "salary-basis" test contained in federal law (see discussion of federal lawsuit filed February 8, 2006, *infra* note 6), out of an abundance of caution (even though the Company believed the plans and this proviso were lawful, and still so believes (A. 139, 155-56)), LTF decided to and did alter the plans so that no recovery of bonus overpayments would be taken from salary payments (A. 186-87). These revised plans were rolled out on March 3, 2006. (Id.)

⁶ LTF had the opportunity to make deductions to recover unearned bonus overpayments prior to these late 2005 deductions (which were first made on November 9, 2005), but affirmatively chose not to. (A. 176-77.)

certain employees would be unable to “catch-up” with the advances, and that the overpayments would thus not right themselves by year’s end. (A. 177.)

The Company notified affected employees that it would be reducing their paychecks to recover a portion of the overpaid bonus amounts. In late 2005, Named Plaintiff Erdman and 11 other Respondents had certain of their paychecks reduced to recover some of the amounts of bonus advances they had received, but had not earned. (A. 196-97.) For 10 of the 12 Respondents affected, the amounts were recovered out of one or two of their paychecks; the other two had three paychecks reduced to recover bonus overpayments. Collectively, there were a total of 22 paycheck reductions across four pay periods. (Id.)

As a practical matter, despite these reductions, every one of the 12 affected managerial employees received 100% of his or her promised 2005 yearly base salary (as they had every other year). (A. 138.) This was necessarily the case under the bonus plans, which authorized reductions only to recover the amounts of *bonus overpayments*; every one of the 12 had earlier in the year been advanced bonus payments totaling at least the amount of the deductions. In the case of Named Plaintiff Erdman, for example, even after LTF recovered \$1,000.00 of bonus payments it had previously advanced to her but she did not ultimately earn, she ended up keeping approximately \$200.00 in bonus she did not earn under the terms of her bonus plan. (A. 202, 206, 214-31.) As did all the others, she also received 100% of her annual base salary. (A. 138.)

The undisputed record evidence further demonstrates that of the 126 managerial employees in the entire class of Respondents, 114 (90% of them) had no bonus

overpayment reductions made. (A. 196-97.) They thus received 100% of their usual paychecks for each of the 100 weeks in the putative class period. Of the 12 who actually had a paycheck reduced in late 2005, four had one paycheck reduced, six others had two reduced, and two had deductions taken from three paychecks. (Id.) No paychecks were reduced for anyone in at least 94 of the 100 weeks in the class period, including the first 82 weeks of the putative class period prior to the first deductions, which were made on November 9, 2005.⁷ (Id.)

3. Respondents' Lawsuit And The District Court's Denial Of LTF's Motion For Summary Judgment.

Named Plaintiff Sarah Erdman commenced this action on March 30, 2007, contending that LTF's bonus plans violated the MFLSA and seeking to represent a class of all 126 Minnesota managerial employees covered by those plans.⁸ (A. 2, 5.)

⁷ The above facts are all that are needed as background to decide the certified questions before the Court on this appeal. In the proceedings below, Respondents presented additional "facts" in an attempt to enhance the atmospherics of their theory. These include, for example: their contention that their paychecks could be cut if they failed to meet performance requirements (in truth, deductions could only be made from their paychecks to recover earlier-advanced but ultimately unearned bonus overpayments, without regard to performance); their contention that LTF's bonus plans were intended as a corporate directive for employees to "put in lots of overtime" without receiving overtime premium pay (which contention they base solely upon an inapposite email from one Illinois employee to one other Illinois employee, dated almost two years after the bonus plans went into effect); and their broad contention that, because of the bonus plans, they all worked over 50 hours every single week of the class period (which is contradicted by Respondents' discovery responses, among other things). In addition to being unsupported by the record evidence and very much in dispute, these "facts" are not material to the Court's resolution of the three legal questions presented on appeal.

⁸ The roots of this lawsuit can be traced back to February 2006, when the Ohio lawyers representing Respondents here filed a lawsuit in Ohio federal court under the federal FLSA, seeking to represent an "opt-in" class action of approximately 350 managerial

Following its certification of Erdman's proposed class, the District Court entertained the parties' cross-motions for summary judgment as to liability.

Respondents contended that LTF's bonus plans violated Minnesota Rule 5200.0211's requirement that exempt employees be paid a "guaranteed" "salary," and alleged that because there was a *possibility* under the bonus plans that employees' periodic salary payments might be reduced to recover bonus overpayments, this meant that all 126 Respondents were not truly exempt employees for any of the 100 weeks of the putative class period (spanning March 30, 2004 to March 3, 2006).⁹ Respondents

employees nationwide (including all 126 Respondents here). Only 26 individuals opted into the lawsuit, including just three of the 126 Respondents here. (A. 38-39.) In the parties' cross-motions for summary judgment submitted there, the 26 federal plaintiffs alleged that because LTF made a handful of deductions in late 2005 to recover earlier-advanced bonus payments that were ultimately unearned on an annual basis, none of LTF's managerial employees were ever exempt, under federal law, between January 1, 2004 and March 3, 2006—the beginning and end dates of the bonus plans with the written proviso discussed above. The federal district court disagreed, granting partial summary judgment in favor of LTF and ruling that, under federal law, the proper remedy is limited to the loss of exempt status only during the pay periods of such actual deductions. (A. 253-54, 258-59.) That case is now on appeal to the United States Court of Appeals for the Sixth Circuit, with the remaining trial proceedings stayed pending the resolution of all appeals.

⁹ The Minnesota legislature has established a two-year limitations period for violations of the MFLSA, which may be extended to three years only if a violation is "willful." Minn. Stat. § 541.07(5). Respondents have alleged that LTF willfully violated the MFLSA and that the class period should therefore extend back to March 30, 2004 (within three years of the March 30, 2007 date on which this suit was brought). LTF moved for partial summary judgment on the issue of willfulness, but the District Court, after denying LTF's motion for summary judgment as to liability, further denied LTF's alternative motion as to willfulness and set the issue for trial. (A. 98.) If this Court resolves the certified questions as LTF respectfully submits it should, there will be no need for trial of any issues, as the case would be dismissed. If not, the District Court will need to determine whether Respondents are able to meet their burden to establish a willful violation, making the class period March 30, 2004 to March 3, 2006, or whether

further contended that the proper remedy was retroactive overtime pay for all “overtime” hours—any hours in excess of 48 per week—these managerial employees worked over the course of those 100 weeks.

LTF, on the other hand, argued that Respondents’ position was inconsistent with the Minnesota Supreme Court’s recent Milner decision, which requires that Minnesota Rule 5200.0211 be read in light of the entire legislative scheme governing wage-and-hour laws in Minnesota, specifically the laws housed in Chapter 181 of the Minnesota Statutes. (A. 44-48, 84-86.) As LTF explained in its briefing to the District Court, its recovery of unearned bonus advances from the 12 employees was explicitly contemplated by Minnesota Statutes section 181.79, which allows for pay deductions to recover “claimed indebtedness running from employee to employer,” provides a rule for making those deductions, and provides a specific remedy in the event that rule is not complied with. (A. 48, 85-86.) If the deductions here were improper, a remedy would lie under section 181.79 (if the Respondents had sought that relief), which provides for damages of double the amount of any improper deduction actually taken.¹⁰ Under the legislature’s carefully chosen scheme in Minnesota, the remedy for an improper deduction of this sort is thus limited to the individuals who actually experienced the improper deductions, and is narrowly tailored to redressing the actual improper deduction. This is in stark contrast to Respondents’ assertion of a broad class-wide loss-of-exemption remedy, which, as LTF

the default two-year period will apply, making the class period March 30, 2005 to March 3, 2006.

¹⁰ Respondents have chosen not to allege a claim under section 181.79 in this action.

noted in its briefing, found absolutely no support in Minnesota law, entirely ignored the existence of section 181.79, and was even more expansive than the remedy provided under federal law (under which loss of exemption is limited to the weeks of any improper deductions actually made).

In a decision filed September 10, 2008, the District Court granted Respondents' motion and denied LTF's cross-motion for summary judgment as to liability. Adopting Respondents' arguments, the District Court found that LTF's bonus plans violated Minnesota Rule 5200.0211 because there was a "possibility" that some bi-monthly salary payments would be reduced, further found that the remedy was the total loss of exempt status for all 126 Respondents for the entire maximum limitations period (subject to a willfulness determination), and ordered that a trial be set to determine the amount of overtime damages and various related issues. (A. 104-05.) The District Court thus adopted Respondents' unsupported theory that, despite section 181.79, Minnesota law simply and absolutely prohibits deductions from exempt employees' salary payments. Notably, the District Court did not cite to any authority to support its decision, and did not even reference the Milner decision.

ARGUMENT

I. Appellate Review Standard.

In deciding certified questions arising from the denial of summary judgment, this Court applies the familiar Rule 56 standard and "review[s] the record to determine whether any genuine issues of material fact exist and whether the law was correctly applied." Prof'l Fiduciary, Inc. v. Silverman, 713 N.W.2d 67, 70 (Minn. Ct. App. 2006)

(citing and quoting Murphy v. Allina Health Sys., 668 N.W.2d 17, 20 (Minn. Ct. App. 2003)). Because there are no issues of material fact here, the Court will review the certified questions, which relate to the proper construction of Minnesota's wage-and-hour laws, under a *de novo* standard, asking whether the District Court erred in its application of the law. Id. (citing Employers Mut. Cas. Co. v. A.C.C.T., Inc., 580 N.W.2d 490, 493 (Minn. 1998)). Accordingly, in reviewing the three issues of first impression presented by this appeal, the Court need afford no deference to the District Court's decision.

Respondents allege that LTF improperly classified them as exempt from the overtime provisions of the MFLSA. For an employee to be properly classified as exempt, three conditions must be satisfied: the duties test, the salary amount test, and the "salary" method-of-payment test. Minn. R. 5200.0180-.0211. Respondents allege solely that LTF's bonus plans violated the "salary" method-of-payment requirement defined in Rule 5200.0211, which requires that salary payments be "guaranteed" in the sense that they "do[] not vary based on productivity or weather." Minnesota Dep't of Labor & Industry, "A guide to Minnesota's Overtime Laws" (2005). In other words, they acknowledge, as they must, that they meet the duties test and the amount test: the duties they performed were exempt managerial duties and the amounts they earned were more than enough salary for them to properly be classified as exempt from receiving overtime premium pay.

With respect to the test that is at issue, LTF bears the burden of proving, by a preponderance of the evidence, that its method of compensating Respondents was consistent with Rule 5200.0211, and thus that they were properly classified as exempt from the overtime provisions of the MFLSA. E.g., Becker v. F&H Restaurant Group,

Inc., 413 N.W.2d 202, 205 (Minn. Ct. App. 1987). As detailed below, the proper answer to that question requires that Rule 5200.0211 be read in light of the overall legislative scheme, and, in particular, in light of Minnesota Statutes Chapter 181. When the undisputed material facts are considered under the proper legal standards, it is clear that LTF's bonus plans in no way affected Respondents' exempt status under the MFLSA.

II. The District Court Erred In Its Construction Of Minnesota Statutes Section 181.79.

In their briefing to the District Court, Respondents contended that LTF's bonus plans, which reserved to the Company the discretion to recover earlier-advanced but ultimately unearned bonus overpayments, violated Minnesota's wage-and-hour laws. Specifically, they contended that the bonus plans violated Rule 5200.0211's requirement that exempt employees be paid a "guaranteed" salary.

LTF, on the other hand, explained that its bonus plans simply reserved to the Company the discretion to make deductions clearly contemplated by Minnesota Statutes section 181.79, which predated Rule 5200.0211 by nine years and provides a specific remedy for the exact harm alleged by Respondents if those deductions are not properly made. As LTF explained to the District Court, an employer that reserves its right to make a paycheck deduction contemplated by a statute that provides its own remedy for a violation does not thereby expose itself to massive, unanticipated liability for retroactive overtime under an administrative rule, especially in light of the Minnesota Supreme Court's instruction in Milner that this state's wage-and-hour rules must be read in light of the overall legislative scheme rather than in isolation.

The District Court, at Respondents' insistence, sidestepped the issue of the interaction between section 181.79 and Rule 5200.0211 by erroneously holding that deductions made to recover previously-advanced bonus overpayments were not deductions to recover "claimed indebtedness" under section 181.79, and thus the statute was not at issue. (A. 105.) To reach that result, the District Court adopted Respondents' tortured reading of the statute, holding that section 181.79 does not apply at all because LTF did not obtain written authorization before making the deductions. (Id.)

Not surprisingly, Respondents' reading of section 181.79 had never been endorsed by a Minnesota court prior to the instant case. In fact, both their reading and the District Court's cursory analysis adopting it betray the plain language of section 181.79 itself.

Section 181.79 generally contemplates employers making paycheck deductions for certain enumerated categories of items, including "to recover . . . claimed indebtedness running from employee to employer," without penalty. If, however, an employer fails to obtain written authorization prior to the deductions but after the indebtedness has arisen, any employee whose paycheck was actually reduced can bring a claim and recover double the amount of those deductions. Minn. Stat. § 181.79, Subd. 2.

At Respondents' urging, the District Court misconstrued the statute as requiring a written authorization before the statute could apply at all, even to supply the remedy for having failed to obtain a written authorization. (A. 105.) The plain language of the statute, however, shows this is not the case: it only requires that the indebtedness be "claimed," not "acknowledged."

Under a correct reading of the statute, deductions to recover earlier advanced but ultimately unearned bonus overpayments are deductions made to recover “claimed indebtedness”: the employer claims the employee holds money owed back to the employer because, under the terms of a contract, the money was not actually earned. The deductions at issue are therefore within the scope of section 181.79, which provides the remedy for any such deductions not taken properly.¹¹ Accordingly, this Court should reverse the District Court’s holding as to certified question number one and address certified question number two, which relates to the interaction between section 181.79 and Rule 5200.0211.

III. The District Court Erred In Its Construction Of Minnesota Rule 5200.0211.

Respondents advocated, and the District Court agreed, as a matter of law, that if there is any *possibility*, however remote, that an individual’s paycheck *could* be reduced, for any reason whatsoever, she is not “guaranteed a predetermined wage for each workweek,” and thus is not an exempt employee. Without analysis, the District Court held that the remedy for such “destruction” of exempt status is an award of retroactive overtime pay for all hours worked over 48 in a workweek during the entire time period deductions possibly could have been made, whether any were actually made or not.

¹¹ In their briefing to the District Court, Respondents made much of the fact that the 12 individuals who had pay deductions made to recover bonus overpayments across a total of four pay periods in late 2005 did not give written authorization prior to the deductions. But that is a different issue: LTF acknowledges, as it did in its summary judgment briefing, that the 12 Respondents who actually had bonus overpayments recovered might have a claim under section 181.79, which provides a precise remedy for the allegedly improper deductions, but Respondents have not asserted any such claims.

Read literally, the District Court's order would require destruction of exempt status under Rule 5200.0211 whenever an employer makes any of the deductions expressly contemplated by section 181.79, with or without prior written authorization. Indeed, the order would require loss of the exemption if the employer merely reserves the right to make the statutorily-authorized deductions, since mere reservation of that right would mean the amount of each paycheck was not absolutely "guaranteed" against any eventuality. LTF respectfully submits that this is not an accurate statement of Minnesota law: it is contrary to the Minnesota Department of Labor & Industry's ("DOLI") interpretation of the term "guaranteed" as used in Rule 5200.0211, it ignores entirely and renders meaningless section 181.79 (which contemplates certain deductions being made), and it thus violates the Minnesota Supreme Court's instruction in Milner that this state's wage-and-hour laws must be construed harmoniously in light of the overall legislative scheme rather than in isolation.

A. Under The DOLI's Interpretation Of Its Administrative Rule, Managerial Employees' Salaries Are Still "Guaranteed" If They Can Be Reduced To Recover Bonus Overpayments.

As an initial matter, Respondents' theory adopted by the District Court fails because it is inconsistent with the interpretation of "guaranteed" taken by the administrative agency that promulgated and is charged with interpreting Rule 5200.0211. Under the DOLI's interpretation, "A salary is defined as a guaranteed predetermined wage for each workweek *that does not vary based on productivity or weather*. It is not an hourly rate." Minnesota Dep't of Labor & Industry, "A guide to Minnesota's Overtime Laws" (2005) (A. 233) (emphasis added). This statement does not remotely

support the District Court's holding that an employee is not paid a "guaranteed" salary whenever there is a "possibility that [her] . . . salary payment could be reduced" for any reason. (A. 105.)

If "guaranteed predetermined wage" meant that exempt status would be destroyed if there is any possibility, however remote, that a deduction could occur, for any reason, then there would be absolutely no reason for the DOLI to clarify that it defines "salary" to be a "guaranteed predetermined wage . . . that does not vary based on productivity or weather." Put simply, deductions to recover "claimed indebtedness," like those at issue here, are not made because of "productivity or weather," and thus are consistent with Rule 5200.0211 and do not destroy exempt status.¹² The District Court erred in failing to so recognize. LTF respectfully requests that this Court reverse and grant summary judgment in favor of LTF, dismissing Respondents' claims in their entirety.

B. "Guaranteed" As Used In Rule 5200.0211 Should Not Be Read To Prohibit Pay Deductions Explicitly Contemplated By Section 181.79.

The District Court followed Respondents' suggestion to ignore section 181.79 and read Rule 5200.0211 as if it were in a vacuum. If allowed to stand, this will cause a sea change in Minnesota wage-and-hour law, permitting an administrative regulation to

¹² To the extent the District Court's order intimates that the deductions were made because managerial employees failed to meet "performance goals," that is incorrect. The undisputed record evidence demonstrates that Respondents were entitled to receive their salaries regardless of the number of hours they worked in a workweek and regardless of their productivity. The only reason their pay could have been reduced was to recover bonus overpayments advanced to them earlier in the year that they did not actually earn. There were no performance requirements that, if not met during a pay period, would result in a lesser paycheck during that pay period.

trump the plain terms of a more specific statute. The ramifications of the District Court's erroneous decision extend far beyond the parties in this case, and affect virtually all Minnesota employers in the everyday implementation and administration of their policies regarding payment of managerial employees.

Until the District Court's order, Minnesota employers reasonably expected that they would not be exposed to massive potential overtime liability because of deductions to recover claimed indebtedness from the paychecks of exempt employees. Rather, Minnesota employers could confidently consult section 181.79, which expressly contemplates such deductions, to determine their obligations and possible liability if they failed to comply therewith. The remedy provided by the legislature in section 181.79 is specific and narrowly tailored, providing employees who experience actual deductions with damages equal to double the amount of the deductions taken, in the event those deductions are not taken properly. Minn. Stat. § 181.79. No court had ever held that a different remedy for such deductions might be available under Rule 5200.0211, or otherwise.

The District Court's order has changed that landscape, unexpectedly and dramatically. For example, under the legislature's chosen scheme, if an employer reduces an employee's paycheck by \$250.00 to recover, for example, the cost of a company computer the employee was loaned and lost, the employer knows that if it fails to obtain prior written authorization, its maximum exposure will be \$500.00. See Minn. Stat. § 181.79, Subd. 2. If the employer obtains prior written authorization, then there can be no potential liability. Id. Under the District Court's order, on the other hand, the

simple fact that the employer had a policy under which employees' paychecks could possibly be reduced to recover the cost of lost computers converts all employees to non-exempt for the entire time period the policy is in existence, whether or not all (or, in theory, even any) of those employees' paychecks are actually reduced. Thus, despite the well-established and widely relied upon legislative remedy defined in section 181.79, under the District Court's order, Minnesota employers following section 181.79 are exposing themselves to massive potential liability (up to three years of retroactive overtime pay for all employees subject to the policy) under an administrative rule, Rule 5200.0211, that has never been applied in this context.

Here, the District Court held all 126 Respondents to be "non-exempt" for the entire 100-week period LTF's bonus plans were in effect, even though only 12 of them actually had some of their periodic payments reduced, over at most three consecutive pay periods, to recover bonus overpayments. (A. 104-05.) The District Court did not cite to any case law, from Minnesota or elsewhere, to support its holdings. That there are no such cases is not surprising; Minnesota courts have not been confronted with such interpretations of this state's law, and federal jurisprudence is not helpful because the federal scheme differs dramatically from that chosen by the Minnesota legislature (it has no provision equivalent to section 181.79). It is peculiar, however, that the District Court failed to discuss in any way the Minnesota Supreme Court's Milner decision, which compels a different conclusion than that reached by the District Court.

In Milner, the Supreme Court instructed that the provisions of the MFLSA must be construed in light of related laws addressing the same subject, rather than in isolation. In

Milner, the Court construed a provision of the MFLSA in light of another employment statute contained in Chapter 181 of the Minnesota Statutes. 748 N.W.2d at 617. In accordance with the mandate of Milner, here, Rule 5200.0211, an administrative rule interpreting the MFLSA, and its “guaranteed” salary language must be construed in light of section 181.79, which permits certain categories of deductions and provides an explicit remedy in the event deductions of the type allowed are improperly done.

By ignoring Milner and construing Rule 5200.0211 as if it were in a vacuum, the District Court flaunted the legislature’s provision that certain categories of deductions are *per se* permissible and its provision of a specific remedy if they are not properly taken. But it simply cannot be the case that employers who make deductions specifically permitted by the legislature somehow run afoul of a general administrative rule, with draconian consequences.¹³ See, e.g., Tesoro Refining & Marketing Co. v. State Dep’t of Revenue, 190 P.3d 28, 36 (Wash. 2008) (“[T]he ‘bottom line’ is that a statute trumps a regulation that conflicts with that statute.”) (Alexander, C.J., concurring); Long Island Care at Home v. Coke, 127 S.Ct. 2339, 2348-49 (2007) (noting that “normally the specific governs the general”); Custom Ag. Service of Montevideo, Inc. v. Comm’r of

¹³ The Minnesota DOLI could not have intended such a result, particularly when Rule 5200.0211 is read in light of section 181.79, which predates the rule by nine years and expressly contemplates the deductions LTF reserved the right to make. Moreover, if the DOLI intended to promulgate a rule providing that even the deductions contemplated by section 181.79 were prohibited from the salaries of exempt employees and would cause destruction of exempt status, they could have done so, but did not. Similarly, the Minnesota legislature could have amended section 181.79 at the time of the enactment of Rule 5200.0211 or any time in the 20 years between then and now to clarify that if deductions authorized under that section are taken from an exempt employee, it will result in destruction of their exempt status. The legislature, however, has not.

Revenue, 728 N.W.2d 910, 917 (Minn. 2007) (same). To make any sense of Minnesota's legislative scheme and Milner, Rule 5200.0211's term of art "guarantee" must be read in light of pre-existing law, and must be read to permit deductions of the type contemplated by section 181.79 without exempt status being destroyed.

Accordingly, the only remedy available to Respondents here would be the remedy provided by section 181.79, subdivision 2. As noted above, 12 of the Respondents may have claims under this provision, but none have brought claims thereunder.

Respondents' attempt to seek an expansive remedy of overtime under a claim that their exempt status was destroyed because of a deduction to recover "claimed indebtedness" fails as a matter of law. This Court should reverse the District Court's holding and grant summary judgment for LTF, dismissing Respondents' rule-based "overtime" claims in their entirety.

IV. The District Court Erred In Finding The Remedy Under Rule 5200.0211 To Be The Destruction Of Exempt Status For All 126 Employees For All 100 Weeks They Were Covered By The Bonus Plan At Issue.

Even if the District Court were correct that Rule 5200.0211 provides a remedy for the deductions to recover bonus overpayments at issue here (which, as detailed above, it is not), the District Court's expansive loss-of-exemption remedy finds no support in and is contrary to Minnesota law, and should be reversed.

As LTF pointed out to the District Court, although no Minnesota court has defined the parameters of the scope of lost exemption due to allegedly improper deductions, there are two salient provisions of Minnesota law which require a narrow remedy. The first is the widely relied upon Section 181.79, which, under Milner, must inform the analysis of

the proper remedy for the deductions at issue here. Section 181.79 makes clear the Minnesota legislature's preference that remedies for pay deductions should be narrowly tailored to the actual challenged deductions themselves. See Minn. Stat. § 181.79. Here, this would mean that the destruction of exempt status should be limited to the individuals who actually had deductions taken from their salaries in late 2005 and to the pay periods during which such deductions occurred. The second salient provision is the DOLI's emphasis on the "workweek" as the standard used for determining compliance with the MFLSA, which similarly communicates that the effect of violations of the MFLSA should be temporally tailored to the actual facts. See Minn. R. 5200.0170. Here, this would limit the maximum loss of exemption to the eight workweeks subsumed within the four pay periods during which some individuals had actual pay deductions taken.

The District Court, at Respondents' insistence, ignored LTF's attempted invocation of these provisions and held, without analysis, that the loss of exempt status extends to all employees covered by bonus plans for the entire time period they were covered by the plans, regardless of whether their pay was ever reduced, and regardless of the actual facts of the case. (A. 104-05.) In addition to ignoring Minnesota law, the District Court's remedy, if affirmed, would yield a remarkable windfall to Respondents and produce an absurd result under the facts of this case, which do not even remotely support a finding that all 126 Respondents were never "guaranteed" to receive a salary in any workweek.¹⁴

¹⁴ Respondents' proffered remedy adopted by the District Court also went further than that authorized under the *broader* language of the federal salary-basis test, under which

Put simply, nothing in Minnesota law supports a finding that deductions from just 12 of 126 individuals, across a total of four consecutive pay periods (corresponding to eight weeks) out of a possible 100 weeks, converts the entire putative class to “non-exempt” employees more akin to hourly-paid employees than salaried employees, let alone for the entire time period such individuals were covered by a bonus plan. At the very least, the loss of exempt status should be confined temporally to the four consecutive pay periods in late 2005 during which 12 Respondents had paycheck deductions taken (but they still received 100% of their promised annual salaries for 2005 and the other years they were covered by bonus plans). This is the only result that makes sense here, both under the law and the facts.

Accordingly, in the event this Court affirms the District Court’s holding that Rule 5200.0211 applies and provides a loss of exemption remedy for the allegedly improper deductions, LTF respectfully requests that this Court limit the remedy to the loss of exempt status for the 12 Respondents whose pay was actually reduced, and to the pay periods during which such actual deductions occurred.¹⁵

employees are “subject to” improper deductions, and lose exempt status, *only* if they have experienced *actual deductions* from salary or if an employee similarly situated to them (*i.e.*, covered by the same policy) has experienced actual deductions from salary, and, if so, *only* for the time period of such actual deductions. See 29 C.F.R. § 541.603(b).

¹⁵ LTF submits that this remedy is the proper one under Minnesota law because it tracks the legislature’s section 181.79 by focusing on the individuals actually affected and the workweeks in which they were affected. In the event this Court disagrees, LTF proposes two alternative ways to limit the loss of exemption based on the approaches taken under federal wage-and-hour law, which contains no provision similar to section 181.79. First, consistent with the federal regulations in effect since August 2004, the Court could limit the remedy to the loss of exempt status for the four pay periods during which deductions

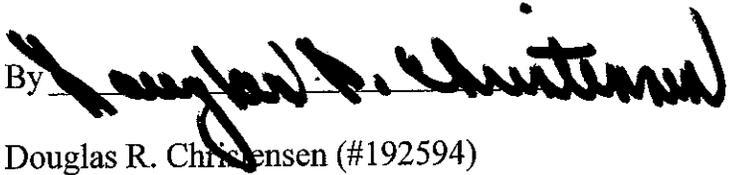
CONCLUSION

This case presents this Court the opportunity to provide much-needed guidance to Minnesota employers, who, prior to the District Court's order, properly assumed that making deductions permitted under a Minnesota statute would, if improperly done, at most expose them to liability only under the narrowly-tailored remedy provided in that statute. For Respondents' national lead counsel (and, because of them, for the District Court), however, Minnesota Rule 5200.0211 is violated if an employer simply has a policy that permits deductions contemplated by statute, and Milner may simply be ignored. LTF respectfully requests that this Court correct the District Court's unexpected, dramatic, and erroneous change of the legal landscape governing the daily pay practices of Minnesota employers, by answering the certified questions consistent with the analysis set forth above, granting summary judgment in favor of LTF, and dismissing Respondents' claims in their entirety, or, at the very least, limiting Respondents' claims as set forth above.

occurred in late 2005, with loss of exemption extending to all Respondents who worked during that time period and who thus could have had their paychecks reduced then. See, e.g., 29 C.F.R. § 541.603. Second, consistent with the federal regulations in effect prior to August 2004, the Court could limit the remedy to the loss of exempt status for all employees who worked during the time period from November 9, 2005, the first day of actual deductions, through March 3, 2006, the date on which LTF revised its bonus plans to remove the takeback proviso at issue here. See, e.g., Auer v. Robbins, 519 U.S. 452 (1997) (applying federal Department of Labor's interpretation of 29 C.F.R. § 541.118(a)); see also A. 248-52.

Dated: December 15, 2008

DORSEY & WHITNEY LLP

By 

Douglas R. Christensen (#192594)

Michael J. Wahoske (#113670)

Zeb-Michael Curtin (#352640)

50 South Sixth Street, Suite 1500

Minneapolis, MN 55402-1498

Telephone: (612) 340-2600

Attorneys for Appellant

Life Time Fitness, Inc.

A08-1993

**STATE OF MINNESOTA
IN COURT OF APPEALS**

SARAH ERDMAN,
individually and on behalf of
others similarly situated,

Plaintiffs/Respondents,

vs.

LIFE TIME FITNESS, INC.,

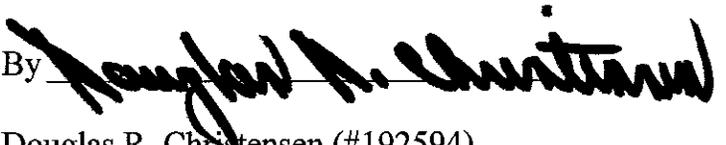
Defendant/Appellant.

**CERTIFICATE OF COMPLIANCE
WITH MINNESOTA RULE OF CIVIL APPELLATE
PROCEDURE 132.01**

The undersigned hereby certifies that this brief conforms to the requirements of Minnesota Rule of Civil Appellate Procedure 132.01, Subds. 1 and 3(a). This brief (exclusive of the table of contents, the table of authorities, any addendum, and any certificates of counsel), contains 7,718 words, as ascertained by using the word count feature of the Microsoft® Office Word 2003 word-processing software used to prepare the brief, and conforms to the typeface and type style requirements of the Rules by being in 13-point Times New Roman format.

Dated: December 15, 2008

DORSEY & WHITNEY LLP

By 

Douglas R. Christensen (#192594)

Michael J. Wahoske (#113670)

Zeb-Michael Curtin (#352640)

50 South Sixth Street, Suite 1500

Minneapolis, MN 55402-1498

Telephone: (612) 340-2600

Attorneys for Appellant

Life Time Fitness, Inc.