



## The Voice

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### And The Defense Wins

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#### Gary Zipkin and Josh Van Gorkom



DRI Members [Gary Zipkin](#) and [Josh Van Gorkom](#) of **Guess & Rudd P.C.** in Anchorage, Alaska obtained summary judgment for Susitna Valley Unit #35 of the American Legion Auxiliary on the issue of vicarious liability in a case filed in the Alaska State Superior Court in Palmer, Alaska.

A member of Unit #35 was driving to a districtwide (multi-unit) auxiliary convention, carrying with her a variety of patriotic clothing that she hoped to sell at the convention as part of her personal efforts to support American troops and veterans. Along the way, she hit a patch of ice, crossed the center line, and struck a vehicle occupied by four members of a family. The family brought suit against Unit #35, alleging that the member was acting as an agent of the Unit at the time of the accident and that the Unit should therefore be held vicariously liable for her conduct.

Unit #35 moved for summary judgment, emphasizing that the member was not asked or instructed to attend the convention, was not compensated for doing so, and that Unit #35 had not paid for the patriotic clothing she was transporting and would have no control over the proceeds of any sales. Rejecting the family's contention that the member's history of active involvement in Unit #35 created a question of fact for the jury, the trial court granted summary judgment in favor of the Unit, concluding that the member was acting in her personal capacity at the time of the accident and was not subject to the control of Unit #35. The court also ruled in favor of Unit #35 on the family's claim of "negligent training and/or supervision," explaining that the Unit did not have a duty to either "train" or "supervise" the member with regard to driving because she was neither an employee nor an agent of the Unit.

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