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Illinois Supreme Court agrees to hear 7 civil cases, denies others

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Jan. 27 saw the issuance of grants and denials of petitions for leave to appeal by the Illinois Supreme Court. The court took seven civil cases. However, the denials of leave to appeal are also important as the principles of law in those appellate court decisions will have effect until another opportunity for challenge.

No one following BIPA litigation will be surprised to find out that the court took *McDonald v. Symphony Bronzeville Park, LLC*. This case deals with whether the exclusive remedy of workers' compensation applies to bar such civil claims. Federal district courts and state circuit courts have tangled with this issue and universally held that it does not, and now the Illinois Supreme Court will finally decide it. As the number of BIPA suits balloons, with many of them against employers, this is an important case to watch.

Continuing the theme of litigation regarding the struggle between law and technology, in a Rule 308(a) appeal of *Jane Doe v. Lyft, Inc.*, the court will decide the constitutionality of Section 25(e) of the Transportation Network Providers Act. That section provides that ride share companies are not common carriers. The issue is whether this carve-out is special legislation violative of Art. IV, Sec. 13 of the Illinois Constitution. The circuit court and the 1st District Appellate Court found in favor of Lyft, but there was a dissent from Justice Robert E. Gordon.

In a case that will affect plaintiffs, defendants, and automobile insurers in the investigation of automobile accidents, in *Mancini Law Group, P.C. v. Schaumburg Police Department* the court will decide whether personal information redacted from police reports is proper under FOIA and whether there is a waiver when the department provides unredacted information to LexisNexis as part of its mandatory reporting requirements to the Illinois Secretary of State.

In *PNC Bank, National Association, v. Kusmierz* the court will address a petition to vacate a six-year-old foreclosure judgment under 735 ILCS 5/2-1401(f) and claim of lack of proper service on the defendants.

The last three civil cases that will be reviewed follow alleged errors in trials. Remember trials?

Following a \$9 million judgment, including an \$8 million punitive damage award for physical and sexual abuse, the defendant in *Jane Doe v. Parrillo*, who did not appear at trial by himself or through counsel, sought to have the judgment vacated and a new trial claiming the trial court abused its discretion in refusing to grant a requested continuance among other alleged errors.

McQueen v. Green follows the reversal by the appellate court of a plaintiff's verdict in a motor vehicle case and *Ittersagen v. Advocate Health and Hospitals Corporation* follows an appeal of an affirmed defense verdict in a medical malpractice case.

Which brings us to the cases where review was denied by the court.

The high court denied review in *Country Mutual Insurance v. Oehler's Home Care*, 2019 IL App (4th) 190080, wherein the appellate court held that a commercial general liability policy excludes "use" when loading someone into a vehicle. This maintenance of the demarcation of the policy and commercial automobile coverage is important to the risks to be insured against.

In *County of Cook, v. USI Insurance Service*, 2020 IL App (1st) 181889-U, a judgment will stand in which the appellate court found an exception to the two-year statute of limitations against an insurance broker because of a change in the identity of the insurer providing coverage despite the fact that the change did not alter the available coverage and the policy brokered covered the loss.

In a case with a paragraph regarding the need to adhere to the rule of law and the plain language of a policy of insurance that will be used by those who represent insurers for decades, the court declined to review *General Casualty Company of Wisconsin v. Burke Engineering*, 2020 IL App (1st) 191648, wherein the appellate court found no coverage for alleged involvement in hiding the source of contaminated water.

The court refused to review *Buss v. Ford Motor Company*, 2020 IL App (4th) 190386-U, in which the appellate court held that the defendants did not waive their contractual arbitration right by challenging the plaintiff's chosen forum as inconvenient and further held that it was proper for the defendants to move to dismiss and not move to compel arbitration.

For defense practitioners who are often dealing with former employees, the decision not to review *Cherri Benefield v. Big H Amusements*, 2020 IL App (4th) 190613-U, is important as the appellate court held that the trial court did not err in denying the plaintiff's motion to compel a defendant to produce former employees for deposition.

The trial court's finding of personal jurisdiction in *Hasbrouck v. Burlington Healthcare Providers*, 2020 IL App (4th) 200166-U, that was reversed by the appellate court and will not be reviewed by the Supreme Court in case involving a physician referral service based in Wisconsin, with no connection to Illinois.

Not the high-profile and socially significant cases of the last round of PLA grants that were reviewed in this space on Oct. 21, 2020, but nonetheless important cases that will be reviewed and the affirmation of principles of law in those cases not chosen to be reviewed.