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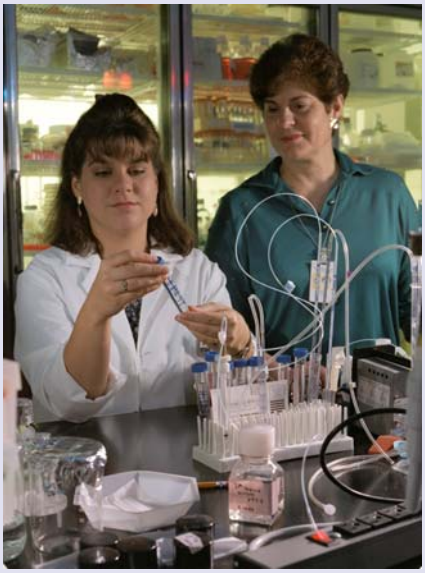
EMPLOYERS LIABILITY

Plaintiff Could Not Demonstrate Proximate Cause for Her Claim of Retaliatory Discharge after Two Years Passed between the Times Plaintiff Reported Possible Violations of Federal Law and Her Termination.

Flick v. Southern Illinois Healthcare, 2014 IL (App 5th) 130319

The plaintiff filed suit for retaliatory discharge after she was fired. Prior to her termination, Plaintiff worked as the director of medical laboratories at Southern Illinois Healthcare (SIH). She managed the laboratory at Memorial Hospital and oversaw some of the functions at the defendants other two hospitals in Herrin and St. Joseph.



In 2003, the plaintiff reported possible violations of federal law to the manager of the lab at Herrin Hosptial and other employees at SIH. After the incident, SIH informed the plaintiff that her management style was not conducive to a long-term relationship with the hospital and presented her with a severance package. The plaintiff declined and was allowed to continue in her position for another two years.

In 2004, SIH began converting to a new computer system. The hospital laboratories made the transition first. Plaintiff was in charge of making sure the transition in the Memorial Hospital lab occurred smoothly, but the lab at Memorial experienced many more problems than the labs at Herrin and St. Joseph. Shortly thereafter, SIH presented the plaintiff with another severance package, which she declined, and she was terminated.

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After the plaintiff filed suit, SIH moved for summary judgment on the basis that the plaintiff could not demonstrate a causal connection between the violation she reported and her termination. The trial court granted Defendant's motion. The two-year gap between the reported violation and the plaintiff's termination was too long to demonstrate proximate cause, and the plaintiff did not present other evidence to support her claim. In addition, the plaintiff's termination followed a steady stream of performance reviews that reflected her poor management style and a transition period in which the laboratory she oversaw performed worse than other SIH locations. Accordingly, the Appellate Court affirmed the circuit court's grant of summary judgment in favor of Defendant.

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INSURANCE

Insureds Who Collected Rental Driver's Policy Limits after Sustaining Injuries in a Collision with a Rental Car Were Not Required to First Exhaust the Minimum Financial Responsibility Coverage Required to Be Provided by Rental Companies before Collecting Underinsured Motorist (UIM) Benefits Notwithstanding Exhaustion Clause in UIM Policy.

Safeway Ins. Co v. Hadary, 2014 IL App (1st) 132554

The plaintiffs were involved in a collsion with the driver of a rental car. The received the $40,000 per accident limits under the rental driver's policy, which they claimed did not cover their injuries, so they asserted a UIM claim with Safeway, requesting the difference between their $300,000 UIM limit and the rental driver's $40,000 liability limit. Safeway filed a declaratory judgment action seeking a declaration that the plaintiffs were not entitled to UIM benefits. Safeway argued an exhaustion clause in the policy required the plaintiffs to exhaust all other coverage before obtaining UIM benefits. The provision states, "[Safeway] shall not be obligated to pay under this coverage until after the limits of liability under all applicable bodily injury bonds or policies or other applicable security have been exhausted by payment of judgments or settlements." Safeway further based its argument on Illinois's Financial Responsibility Statute (625 ILCS 5/9-105), which requires rental car companies like Hertz to carry liability insurance of $50,000 per person and $100,000 per occurrence. The trial court granted Safeway's motion for summary judgment.

The Appellate Court First District reversed in part and affirmed in part. Notwithstanding the exhaustion clause, the appellate court held that Safeway's interpretation would contravene public policy because the purpose of Illinois's Financial Responsibility Statute (625 ILCS 5/9-105) is to protect those who would otherwise be uninsured, not to protect other insurance companies. By contrast, the purpose of UIM coverage is to cover the shortfall between the amount of insurance contracted for and the amount received from the liable driver. Thus, the plaintiffs were not required to obtain $100,000 in coverage from Hertz before accessing UIM benefits under their own policy. The Appellate Court affirmed the trial court's denial of a counterclaim brought by plaintiffs for alleged vexatious and unreasonable denial of the claim pursuant to section 155 of the Insurance Code. 215 ILCS 5/155.

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Language in Declarations Page Was Inconsistent with Anti-Stacking Provision in Endorsement Creating an Ambiguity Which Construed against the Insurer Allowed UIM Coverages on Three Vehicles to Be Stacked.

Bowers v. General Casualty Insurance Co., 2014 IL App (3d) 130655

Plaintiff sustained injuries when an underinsured motorist drove his vehicle into a convenience store in which the plaintiff was standing. Plaintiffs filed a declaratory judgment action against their insurer seeking a judgment that their underinsured (UIM) motorist coverage for three of their vehicles under their automobile policy was not limited to one just one vehicle under the policy. The declarations page for the policy listed three limits of UIM coverage and three premiums for each vehicle listed. A provision on the

declarations page stated "The coverages listed below apply separately for each vehicle and are provided only where a premium or Included is shown. The Limit of Liability applies separately for each vehicle." The plaintiff's moved for summary judgment claiming that the UIM coverages could be stacked.

The Appellate Court affirmed summary judgment for Plaintiffs, finding that the UIM limit for each vehicle could be aggregated or stacked. The Court found that the insurance policy contained contradictory provisions. The language contained in the declarations page was inconsistent with the endorsement's anti-stacking provision and thus created an ambiguity. Therefore, the insurance policy was construed against the insurer. The Court found that by listing each vehicle separately in the vehicle coverages section, ambiguity arose in the policy as the insured may reasonably presume separate UIM limits apply to each covered vehicle and that limits could be stacked because separate UIM premiums were paid for each vehicle.

The language contained in the declarations page was inconsistent with the endorsement's anti-stacking provision and thus created an ambiguity.

Professional Liability Insurer Had No Duty to Defend or Indemnify Insurance Agent/Broker from Lawsuit for Damages Arising out of Unsolicited Automated Phone Calls Advertising Its Services.

Margulis v. BCS Insurance Company, 2014 IL App (1st) 140286

Plaintiff filed a class action petition in Missouri against insurance agent/broker that had transmitted unsolicited, automated phone calls advertising its services. The law suit alleged common law invasion of privacy and violation of federal statute that restricts telephone solicitations. The insurance agent/broker's professional liability insurer denied coverage and did not defend him in the action. The insurance agent/broker settled the case in Missouri for $4.999 million, with the judgment to be satisfied exclusively from proceeds of insurance policies and claims against agent/broker's professional liability carrier. Plaintiff then filed declaratory judgment action in Cook County, Illinois against insurance agent/broker's professional liability carrier seeking an order declaring that they had a duty to defend the insurance agent/broker in the underlying action. The professional liability insurer filed a motion for summary judgment claiming that the automated telephone calls at issue did not constitute negligent acts, errors or omissions by the insurance agent/broker arising out of the conduct of his business in "rendering services for others" as a licensed insurance agent, general agent or broker, as required for coverage under the insurance policy. The trial court granted summary judgment and the plaintiff appealed.

The Appellate court affirmed because the recipients of the unsolicited automated telephone calls advertising the services of an insurance agency were not clients of the agency, the calls did not arise out of the conduct of the agency's business in rendering professional services and therefore were not within the scope of coverage of the professional liability insurance policy. The policy at issue did not provide advertising injury coverage, and thus case law that had found potential coverage for suits arising from unsolicited advertisements under liability policies that included advertising injury coverage had to be distinguished. Thus, insurer had no duty to defend or indemnify, as terms of policy clearly preclude possibility of coverage.

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SUMMARY JUDGMENT

Failure to Attach Factual Data Underlying Expert Opinion in Summary Judgment Affidavit Precluded Court from Considering Expert's Assertion That Freight Broker Would Have Found Freight Carrier Was Unsafe Had It Conducted an Adequate Investigation before Hiring It.

Hayward v. C.H. Robinson Company, Inc., 2014 IL App (3d) 130530

Plaintiff brought a wrongful death action against a truck driver, the driver's employer, and the freight broker that retained the employer as an independent contractor freight carrier. On February 4, 2009, truck driver attempted to make an illegal U-turn with his tractor-trailer in the middle of the highway when a vehicle driven by Decedent struck the side of the tractor-trailer. Decedent died nearly 2 years later from injuries sustained in the collision. Plaintiff alleged the freight broker was negligent in its hiring, retention, and supervision of the carrier. The freight broker filed a motion for summary judgment alleging the undisputed facts contained in the pleadings and attachments were insufficient to support any of the plaintiffs' theories of recovery based on negligence or willful and wanton misconduct.

The pleadings established the defendant driver had a valid commercial driver's license, his driver's record did not include any traffic tickets or moving violations, and the tractor trailer was in good condition with no safety violations when the accident occurred. Plaintiff's opposition to the freight broker's motion for summary judgment included an affidavit and deposition of his expert, a commercial vehicle safety specialist who opined the freight broker neglected its duty to investigate the carrier since it failed to investigate the carrier beyond information that was available to the public. The expert opined that the freight broker would have learned that the carrier had a poor safety record if it had conducted a Freedom of Information Act request through the Department of Transportation. The trial court granted the freight broker's motion for summary judgment and the plaintiff appealed.

Affidavits in support of summary judgment "… shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence."

The Appellate Court affirmed summary judgment for the freight broker finding Illinois Supreme Court Rule 191(a) precluded the Court from considering the expert's assertion that the carrier lost its federal licensing due to specific safety issues, rather than on some other basis, or that the freight carrier's drivers may have had some traffic violations in 2008. Among other things, the rule requires affidavits in support of summary judgment "… shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence." The opinion in the expert's affidavit could not be considered by the appellate court as an established fact for purpose of summary judgment since the appellate court was unable to review the Department of Transportation information the expert relied upon while drawing his opinions.

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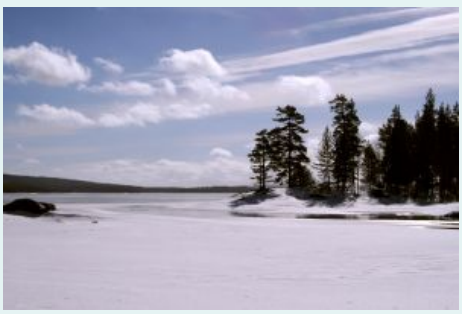

TRIAL

Illinois Civil Juries Will Be Reduced to Panels of Six.

Senate Bill 3075 / Public Act 98-1132

The Illinois House and Senate have passed legislation that will limit juries in a civil case to six members. The current law (55 ILCS 5/4-11001) allows any party to request a twelve member jury. For cases filed before the effective date of this law, a party who has paid for a jury of 12 may demand a jury of 12 upon proof of payment. The new law will also raise the minimum compensation for jurors. Senate Bill 3075 passed the House on December 2 and the Senate on December 3. The governor signed it into law on December 19, 2014. Public Act 98-1132 becomes effective on June 1, 2015.

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