

THE PERILS OF BEING A GOOD SAMARITAN

Two courts have recently looked at the Illinois Good Samaritan Act and the “rescue doctrine” in cases involving attempted rescues of persons in peril. In *Tobin v. AMR Corporation*, 2009 WL 2025152 (N.D. Tex.), the U.S. District Court determined that the Illinois Good Samaritan Act did not provide immunity to all rescuers. In *Strickland v. Kotecki*, 2009 WL 2163467 (Ill.App. 3rd Dist.), the Illinois Appellate Court determined, in a case of first impression, that a rescuer could recover from a rescued party if the rescuer is injured in the course of the rescue.

In *Tobin*, the estate of an airline passenger sued the airlines when the passenger suffered a heart attack and died after running to catch a connecting flight. Airline crew members attempted to use an automated external defibrillator (AED) to help the passenger prior to the arrival of paramedics. The plaintiffs alleged wrongful death against the airlines in failing to train employees in the proper use of AED devices. The airlines sought immunity under the Illinois Good Samaritan Act.

The Illinois Good Samaritan Act in pertinent part states:

Any person currently certified in basic cardiopulmonary resuscitation who complies with generally recognized standards, and who in good faith, not

for compensation, provides emergency cardiopulmonary resuscitation to a person who is an apparent victim of acute cardiopulmonary insufficiency shall not, as a result of his or her acts or omissions in providing resuscitation, be liable for civil damages...

Plaintiffs argued that the “not for compensation” phrase of the Act established a narrow entitlement to immunity. In essence, since the on-duty flight attendants were compensated for their normal job activities, which included providing emergency services when necessary, the immunity did not apply to them. The defense argued that the flight attendants were like doctors who are generally protected by immunity when responding to emergencies outside of normal settings, as long as they don’t charge a fee.

The court found that “not for compensation” did not imply a payment tied to a specific service. One can be compensated while rendering a service, although they are not paid a fee for that purpose. The court found that on-duty flight attendants were required to receive training in emergency services and were not volunteering their time and talents when assisting a passenger. The court further stated that the flight attendants were not “Good Samaritans” as the term is used in the statute, but rather professionals performing services within their job duties. The airline was not entitled to immunity under the Good Samaritan Act.

In *Strickland*, the plaintiff was alerted to the fact that his brother-in-law was attempting to commit suicide at a particular fenced in property. Upon arriving at the scene, the plaintiff jumped over the fence to rescue his brother-in-law and injured his foot. The plaintiff filed suit against the brother-in-law alleging negligence. Defendants filed a motion to dismiss alleging that the plaintiff failed to allege the existence of a duty.

Illinois has long recognized the rescue doctrine. It arises when a plaintiff brings suit against a defendant whose negligence has placed a third party in a position of peril. The Appellate Court indicated that the doctrine provides that it is always foreseeable that someone may attempt to rescue a person who has been placed in a dangerous position and that the rescuer may incur injuries in doing so. Prior to this decision, no Illinois court had decided whether the rescue doctrine allowed a rescuer to bring a negligence action against a defendant who places himself in danger when the rescuer is injured in the attempted rescue.

The Court looked to other jurisdictions in their analysis and found an overwhelming majority of states allow a rescuer to recover from a rescued party if the rescuer is injured during the rescue. The Court found no logical reason to distinguish situations in which defendants place someone else in danger and situations where the defendants placed themselves in danger. However, this did not end the Court's analysis. It also looked into the argument made by the defendant that people attempting suicide do not owe a duty to those attempting to rescue them. The Court found that it was foreseeable, if not likely, that someone would attempt to rescue the defendant based on the fact that he was in an open area where he knew he could be easily seen

by others. Under the rescue doctrine, the defendant owed a duty to his rescuer.

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MERE "POSSIBILITY" NOT SUFFICIENT FOR PROVING CAUSATION IN SLIP AND FALL CASE

In *Richardson v. Bond Drug Company*, 387 Ill.App.3d 881 (1st Dist. 2009) the plaintiff sued the defendant when he slipped on the floor of the defendant's business. In the plaintiff's deposition he testified that he assumed the floor was wet after he fell because his pants were wet when he stood up. The defendant's manager testified in her deposition that it was snowing lightly outside, there was no liquid on the floor prior to the plaintiff's fall, but the plaintiff's knees were wet when he stood up. The manager testified employees were walking around that day to keep an eye out for wet floors and if it had been snowing hard enough, wet floor signs would have been placed out. No signs were out before the fall because no wet areas had been spotted.

The Appellate Court affirmed the trial court's summary judgment in favor of the defendant stating that the plaintiff failed to show, by more than a mere possibility, that the floor was wet prior to his fall. The appellate court held that to prove causation, the plaintiff must show circumstances justifying at least an inference of probability, as opposed to a mere possibility. The existence of one fact cannot be inferred when a contrary fact can be inferred with equal certainty from the same set of facts. Since the allegations and testimony did not show with any level of probability the floor was wet before the

plaintiff fell, there was insufficient evidence of a causal nexus between the defendant's conduct and the plaintiff's injuries.

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NEW ILLINOIS JURY INSTRUCTIONS

The Illinois Supreme Court approved some modifications to existing jury instructions on circumstantial evidence (I.P.I. 3.04) [changes the example given from mandatory to optional] and agency - issue as to scope of authority of agent only (I.P.I. 50.06) [changes in pronouns and changes phrasing from "transaction of business" to "an activity"]. Those modifications were relatively minor and the basic focus of the instructions remains the same.

However, the Court approved a new instruction on Employee - Issue as to Scope of Employment (50.06.01) which will be of importance in cases involving a claim of respondeat superior. The instruction sets forth the three criteria that must be met for the jury to determine whether an employee was acting within the scope of his/her employment. The first is that an employee's conduct is of a kind he/she is employed to perform or it is reasonably contemplated to be performed as part of his/her employment. The second is that the employee's conduct occurs substantially within the authorized time and space limits of his/her employment. The last one is that the employee's conduct is motivated, at least in part, by a purpose to serve the employer.

The example given was that a hospital phlebotomist who disclosed confidential patient information at a tavern was determined to have acted beyond the scope

of her employment. Her actions were not the kind of conduct an employee of the hospital was employed to perform, nor was such conduct motivated to serve her employer. This instruction should help a jury focus on the issue that they need to look beyond the mere fact of employment in a respondeat superior case.



MCKENNA NEWS

HAPPY ANNIVERSARY!

This year the Firm celebrates 55 years of service to our clients, and our Woodstock office's tenth anniversary in McHenry County. The McHenry office was opened in 1999 across from the McHenry County Court House. Sara Cook started the office with the help of Laurel Palma, the Office Manager. Initially, the office was focused on a variety of litigation practice areas. Over the years it has expanded to include a broad based general business practice.

Pat Kraft joined the office in 2000 and focuses on estate planning and transactional work, as well as litigation support. Jim Fine joined the office in 2008 and concentrates in bankruptcy and commercial litigation. Kristin Tauras and Andrew Bratzel also work on Woodstock files, and although they office in Chicago, they work out of the Woodstock office from time to time.

Greg Cochran was recently interviewed by **Crain's Chicago Business** for an article concerning the lessons learned from asbestos litigation. The article includes a discussion of how companies can protect themselves from mass tort liability. A link to the Q&A with Greg can be found on the Firm's website at www.mckenna-law.com or you can contact Greg directly at 312.558.3935 or gcochran@mckenna-law.com if you have any questions.

Kristin Tauras was a presenter at the Fall IDC Continuing Legal Education Seminar. Kristin spoke on the topic of recent updates in evidence, jury instructions and civil procedural law in Illinois.

If you are interested in having one of our attorneys speak at one of your in-house educational seminars, please feel free to contact any of us. Our attorneys routinely speak on topics ranging from tort law, civil procedure, and toxic torts to employment law, business law and estate planning. The contact information for our attorneys can be found on our website at www.mckenna-law.com.

WELCOME!!

McKenna Storer is pleased to welcome **Andrew Bratzel**, Of Counsel. Before joining McKenna Storer, Andrew worked for over 18 years in the law department of a *Fortune 500* company with global operations handling a wide variety of legal matters in corporate and commercial law — areas he now practices in at McKenna Storer. As a corporate/commercial generalist, his experience includes contract drafting and interpretation, commercial litigation, handling commercial and real estate transactions, construction matters, franchising, conducting internal investigations, loan workouts and corporate finance, among other matters. He is also a trained and certified mediator.

Andrew is a 1981 graduate of Michigan State University with a B.A. in International Relations, and received his J.D. from the DePaul University College of Law in 1984.

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