



ILLINOIS SUPREME COURT DECIDES THAT SETTLING PARTIES ARE NOT INCLUDED ON THE VERDICT FORM

On November 25, 2008, an eagerly awaited opinion was handed down by the Illinois Supreme Court in *Ready v. United/Goedecke Services, Inc.*, 2008 WL 5046833. The court settled a dispute among different Judicial Districts in the state, regarding whether settling defendants were to be considered by the jury in allocating liability under Illinois' Civil Procedure Code Section 2-1117.

At the heart of the dispute was whether settled tortfeasors were "defendants sued by the plaintiff" within the meaning of Section 2-1117. The defendants argued that since "sued" is in the past tense, defendants dismissed from an action prior to verdict based on settlement were sued by the plaintiff and should be on the verdict form. The plaintiffs argued that dismissed and former defendants are not defendants at all and should not be considered by the jury in the apportionment of fault. Plaintiffs also argued that inclusion of settled tortfeasors in the allocation of fault would discourage future settlements.

The Illinois Supreme Court found the meaning of Section 2-1117 ambiguous, citing to the conflicting interpretations of the statute by the appellate courts. The Court then went on to state that in 1995, the appellate court held in *Blake v. Hy Ho Restaurant*, 652 N.E.2d 807, that under Section 2-1117, settling defendants were not

to be included in apportionment of fault. When the legislature amended Section 2-1117 in 2003, this prior appellate court holding was not addressed. The Court found that this was an indication of the legislature's acceptance of the appellate court's interpretation of the statute. The Court also cited to remarks made by State Senator John Cullerton as co-sponsor of Senate Bill 1296, which is aimed at amending Section 2-1117 to clarify its intent. Senator Cullerton stated that the intent of the law was that settling defendants were not to be placed on the verdict form.

In the end, the court held that Section 2-1117 did not apply to good-faith settling tortfeasors who have been dismissed from the lawsuit, and that settled defendants were not to be placed on the verdict form. Much of the basis for the decision was pinned on the legislature's failure to address the *Blake* court's judicial construction of the statute in its 2003 amendment, thus confirming that judicial interpretation.

For further information on this issue, contact **Paul Steinhofer** at 312.558.3985 or psteinhofer@mckenna-law.com.

OMNIBUS PROVISIONS OF AN AUTOMOBILE INSURANCE POLICY DO NOT PROVIDE COVERAGE FOR RENTAL VEHICLES

In *State Farm Mutual Automobile Insurance Co. v. Enterprise Leasing Company of Chicago*, Docket No. 1-07-2589 (November 21, 2008), the Illinois Appellate Court of the First District ruled that the omnibus

provisions of an automobile policy do not apply to non-owned rental vehicles and, therefore, an insurer does not owe a duty to defend or indemnify. This matter involved a rental vehicle leased by Enterprise to Taylor. The rental agreement provided for collision insurance, but only covered Taylor. Other drivers of the vehicle were not covered. The rental agreement also stated that the vehicle was not permitted to leave Illinois. At the time of the rental, Taylor had automobile insurance with State Farm, which covered Taylor's 1998 Chevrolet Cavalier.

Shortly after the vehicle was rented, Taylor let a friend, Doby, drive the vehicle. Doby totaled the vehicle while driving in Michigan. The collision coverage was voided when Doby was driving the vehicle. Enterprise informed State Farm that the collision coverage was voided and that Taylor was responsible for the value of the rental vehicle. State Farm sent Taylor a letter denying coverage because she was not driving the rental vehicle at the time of the accident. Enterprise filed a complaint against Taylor for the damage to the rental vehicle. State Farm appeared in the case to represent Taylor under a reservation of rights and filed a declaratory judgment seeking a determination that it owed no coverage to Taylor. The trial court granted State Farm summary judgment finding that the omnibus provision of the policy did not provide coverage. Enterprise appealed.

On appeal Enterprise focused its argument on the omnibus provision of its policy and relied on the provisions of the Illinois Safety and Family Financial Responsibility Law, ("Financial Responsibility Law")(625 ILCS 5/7-100 *et seq.*) as the basis for its argument that State Farm was required to provide coverage for the damage to the rental vehicle. In affirming summary judgment, the Appellate Court found that Section 7-317(b) of the Financial Responsibility Law was not

intended to be applicable to rental vehicles. The court explained that Section 7-317(b) contained specific language that referred to owned vehicles of the named insured, which does not account for rental vehicles. Further, the court noted that the legislature designated a separate chapter in the Illinois Vehicle Code for rental vehicles and the required level of insurance, which shows that the Financial Responsibility Law was not intended to apply to rental vehicles.

For further information on this issue, contact **Dan Connell** at 312.558.8298 or dconnell@mckenna-law.com.

UPDATE ON PROPOSED PREJUDGMENT INTEREST LEGISLATION

We previously alerted you to the Illinois State Bar Association (ISBA) legislative proposal requiring defendants to pay prejudgment interest to successful plaintiffs in almost all Illinois tort cases. The ISBA Assembly voted on December 13, 2008 on whether to include this proposal in their 2009/2010 legislative package. As President of the Illinois Association of Defense Trial Counsel (IDC), Greg Cochran of our firm led the opposition of the Illinois defense bar to this very plaintiff-friendly initiative. The IDC submitted a position paper that was distributed to all ISBA Assembly members and addressed the Assembly members before the vote was taken.

The ISBA Assembly passed the ISBA prejudgment interest proposal at their December meeting over strong opposition from the IDC. Despite every effort to make our voice heard before and during the meeting, the plaintiff bar contingent within the ISBA controlled the ultimate result. The plaintiff attorney who introduced the proposal for the legislation committee claimed that its

purpose is to facilitate settlement and to remedy the problem of plaintiffs having to often wait three years to obtain a judgment for their past damages. He did not explain why, if designed to promote settlement, the measure fails to provide any incentive to plaintiff to accept a reasonable settlement offer. Nor did he explain why, if intended to provide prejudgment interest on past damages, the proposal also awards prejudgment interest on future damages. These are just some of the many flaws in the proposal detailed in the IDC position paper.

Although the IDC was unable to defeat the proposal before the ISBA Assembly, our voice was heard loud and clear and we are now well positioned to continue the fight in the Illinois General Assembly. Under Greg Cochran's leadership, the IDC will stay closely involved in this issue and will work with the business and insurance communities to oppose any prejudgment interest bill introduced in the Illinois General Assembly.

Please feel free to contact **Greg Cochran** at 312.558.3935 or gcochran@mckenna-law.com if you have any questions or comments regarding this proposed legislation, or if you would like a copy of the IDC position paper. We will continue to keep you informed of developments on this issue.



TRIALS AND CASE DISPOSITIONS

Dick Clark obtained a verdict in favor of his client in a recent medical malpractice trial.

The plaintiff claimed that Dick's client and another defendant improperly diagnosed and treated her which resulted in a herniated disc requiring surgery. Dick was able to show that the plaintiff had been properly treated and any problems she had were from a pre-existing degenerative condition.

Julie Ramson obtained a verdict for the defendant in a retrial of a case she originally tried in October, 2005. The defendant admitted that he had misread an x-ray film showing the plaintiff had an aortic aneurysm. However, the mistake was caught in time and the plaintiff was transferred to a hospital for surgery. That hospital delayed in performing the surgery and the aneurysm ruptured leaving the plaintiff with a brain injury. He died four years later. At the initial trial the jury found for the plaintiff but the plaintiff appealed as he believed the award was insufficient. At the retrial the jury found in favor of the defendant. **Robert Pisani** assisted with the trial.

Julie also obtained a verdict for her defendant in another medical malpractice case. In that case the plaintiff claimed that Julie's defendant had failed to order IV antibiotics to treat a urinary tract infection and that such failure caused the plaintiff's death. The jury agreed with Julie that the doctor had properly treated the infection and that the plaintiff died from an unrelated cardiac cause. **Dawn Ehrenberg** assisted with the trial.

Jim DeNardo and **Kristin Tauras** recently prevailed on a motion for summary judgment before Judge Norgle of the U.S. District Court for the Northern District of Illinois in an age and race discrimination and retaliation case. The plaintiff filed a complaint alleging that she had a heavier workload and was subjected to higher scrutiny than younger, Caucasian employees and that she was later

wrongfully terminated for filing an EEOC complaint based on age and race. We represented her employer, a large insurance company. We were able to successfully prove that all similarly situated employees had heavy workloads and were subjected to the same level of scrutiny and also that she was terminated for failing to improve her work performance. In our opinion, there may be an increase in the number of claims filed for alleged discrimination because of the current rate of job loss as well as recent changes in employment law.

Jim DeNardo and **Kristin Tauras** also recently won an appeal before the Illinois Appellate Court in a construction case in which we represented a construction company. At issue was whether a construction company could be held liable for property damage where a third-party stole a Caterpillar loader from a fenced-in construction site and drove it into a neighboring house. Illinois courts have held that there is generally no duty to protect against damages resulting from a stolen vehicle unless there are special circumstances that would put the defendant on notice that a theft was likely to be perpetrated. The plaintiff attempted to distinguish this case on the basis that the theft was of a large construction vehicle, capable of doing greater destruction than most vehicles, and that the defendant should have known that a theft was likely because the neighborhood was described as “not so good.” The Appellate Court

rejected the argument that a construction vehicle should be treated differently than any other vehicle and also determined that the fact that the crime occurred in a neighborhood described as “not so good” was insufficient to put the Defendant on notice that a crime was likely. Accordingly, the Appellate Court affirmed summary judgment in favor of the defendant. **Bruce Marr** and **Dan Connell** defended the case in the Circuit Court of Cook County.

MCKENNA NEWS

Recently, **Dan Connell** was honored at the 2008 Chicago Volunteer Legal Services Award Ceremony. Dan was awarded a Distinguished Service Award in recognition of his years of volunteer work at the Jane Addams Legal Clinic and for his many hours of free legal representation that he provided through the CVLS organization.

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McKenna Storer has offices located at:

33 N. LaSalle Street
Suite 1400
Chicago, IL 60602
(312) 558-3900

666 Russel Court
Suite 303
Woodstock, IL 60098
(815) 334-9690

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