Legal Update Article

Trade Associations Weigh In on Claim Accrual Under Illinois Biometric Information Privacy Act

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March 8, 2022

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Adopting a "per-scan" theory of accrual or liability under the Illinois Biometric Information Privacy Act (BIPA) would lead to absurd and unjust results, argued a friend-of-the-court brief filed by Jackson Lewis in *Cothron v. White Castle Systems, Inc.,* in the Illinois Supreme Court, on behalf of a coalition of trade associations whose more than 30,000 members employ approximately half of all workers in the State of Illinois.

The associations include the Illinois Manufacturers' Association, the National Association of Manufacturers, the Illinois Health and Hospital Association, the Illinois Retail Merchants Association, the Chemical Industry Council of Illinois, the Illinois Trucking Association, the Mid-West Truckers Association, and the Chicagoland Chamber of Commerce (collectively, Associations).

In *Cothron,* the Illinois Supreme Court will decide whether claims under Sections 15(b) and (d) of the BIPA, 740 ILCS 14/1, *et seq.,* "accrue each time a private entity scans a person's biometric identifier and each time a private entity transmits such a scan to a third party, respectively, or only upon the first scan and first transmission." The U.S. Court of Appeals for the Seventh Circuit certified this question for the Illinois Supreme Court, noting, "the issue of claim accrual under the Act is a close, recurring, and hotly disputed question of great legal and practical consequence that requires authoritative guidance from the Illinois Supreme Court." *Cothron v. White Castle Sys., Inc.*, 20 F.4th 1156, 1166 n.2 (7th Cir. 2021).

In the brief, Jackson Lewis argued on behalf of the Associations that an interpretation of BIPA that allows for a "per-scan" theory of accrual or liability would lead to absurd and unjust results that could bankrupt Illinois businesses and cause thousands of Illinois employees to become unemployed. This broad interpretation would be contrary to the remedial purpose of BIPA, which was intended to promote adoption of commonsense data privacy practices so as to minimize the risk biometric information could be improperly accessed or used.

To date, more than 1,450 class action lawsuits have been filed under BIPA. The Illinois Supreme Court should note the widespread interest the *Cothron* case has generated, as well as the potentially ruinous ramifications a "per-scan" interpretation of accrual or liability would have on Illinois businesses. For these reasons, Jackson Lewis urged the Illinois Supreme Court to rule that claims under Sections 15(b) and (d) of BIPA accrue only once, upon the first scan and first transmission of biometric data.

Please contact a Jackson Lewis attorney with any questions about this case or the BIPA.

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