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Damages

Statutory Caps on Noneconomic Damages are Unconstitutional.

Lebron v. Gottlieb Memorial Hosp., 2010 WL 375190 (Ill., Feb. 4, 2010).

The Supreme Court held that a statute placing maximum limits on noneconomic damages in medical malpractice actions violated the separation of powers clause of the Illinois Constitution. In effect, the statute imposed a legislative remittitur requiring courts to supersede the jury's determination and reduce any award of noneconomic damages that exceeds the statutory cap notwithstanding the particular facts and circumstances of each case. Remittitur of excessive verdicts is fundamentally a judicial prerogative requiring an analysis of the unique circumstances of each case.

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Evidence

Vehicle Photographs are Admissible in the Discretion of the Trial Court without Expert Testimony as Relevant to Prove Plaintiff's Injury was More or Less Probable.

Ford v. Grizzle, 2010 WL 572527 (Ill. App., 5th Dist., 2010)

After securing a defense verdict in this personal injury motor vehicle accident case, Reed Armstrong Partner Michael J. Bedesky successfully briefed, argued and defended an appeal by a plaintiff who sought reversal of the trial court's entry of judgment on the jury verdict. Among other issues, the plaintiff claimed the court erred in allowing evidence concerning his prior accidents and injuries, the amount of damage to his vehicle, photos of his vehicle, and argument regarding minimal impact.

After reviewing the evidence heard at trial, the 5th District held that the trial court did not abuse its discretion by admitting evidence of the plaintiff's prior accidents and injuries. The Court noted that pursuant to *Voykin v. Estate of Deboer*, 192 Ill. 2d 49 (2000), the defendant must produce competent medical evidence to establish a causal connection between the evidence offered and the complained of injury. The Court found that the testimony of the doctors was sufficient to make that connection since they testified that plaintiff's prior chronically painful neck condition, for which treatment had continued, was relevant to the complaints of neck pain that he blamed on the motor vehicle accident with defendant. The Court further held that the trial court did not abuse its discretion in admitting the photographs. The Court noted two of its recent opinions (both defended by Reed Armstrong attorneys) where it held that "the critical question in admitting those photographs into evidence is whether the jury can properly relate vehicular damage depicted in the photos to the injury without the aid of an expert" and held that it is an evidentiary question left to the discretion of the trial court which "could have properly

found the photographs were relevant to prove that the plaintiff's injury was more or less probable.”

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Insurance

Insurance Policies that Defined an “Insured” more Narrowly under the UIM Provisions than they did under the Liability or UM Provisions, thereby Eliminating UIM Coverage for Certain Occupants, Violated Illinois Law and were Unenforceable.

Schulz v. Illinois Farmers Insurance Company, 2010 WL 966206 (Ill., March 18, 2010)

The Illinois Supreme Court recently addressed the issue of whether Illinois law permits “insurers to issue motor vehicle liability policies in which occupants of a covered vehicle are afforded uninsured motorist (UM) coverage but excluded from underinsured (UIM) coverage.” This case involved the appeal of two declaratory judgment actions where the insurance policies defined an “insured” more narrowly under the UIM provisions than they did under the liability or UM provisions, thereby eliminating UIM coverage for certain occupants. In each case, the UM provisions defined an “insured person” as the person to whom the policy was issued, a family member, or any other person while occupying the car described in the policy. The UIM provisions limited an “insured person” to the named insured or a family member who resided in the named insured’s household only. The plaintiffs, who were not named insureds nor family members residing in the named insureds’ households, filed declaratory judgment actions seeking a determination that the UIM provisions violated Illinois law and were unenforceable.

In its analysis, the Illinois Supreme Court noted that Illinois law requires that “all motor vehicles operated or registered in this State...must be covered by a liability insurance policy. Illinois law also requires certain minimum liability limits and contains specific coverage requirements, such as coverage for the named insured, their family members and “any other person using or responsible for the use” of the vehicle at issue with permission. The Court noted that the Illinois law speaks in terms of permissive users, not permissive drivers. The Court then looked to the dictionary definition of “use” as well as case law from other jurisdictions and held that Illinois’ mandatory liability coverage requirements extend “to permissive passengers as well as permissive drivers” and stated that “both must be treated as insured’s for purposes of liability coverage.” The Court further noted that pursuant to Illinois law, motor vehicle policies must include UM and UIM coverage to all who are insured under the liability provisions of the policy, which includes permissive users and permissive passengers. The Court held that Illinois law “affords some latitude to the parties to determine who will be insured under the liability provisions of the policy, but...it does not give them the option of excluding permissive users, a category which includes permissive passengers as well as permissive drivers.” Further, “once it has been determined who qualifies as an insured for purposes of liability coverage, that determination must be applied consistently for purposes of UM and UIM coverage.” The Illinois Insurance Code “makes it clear that the legislature

intended a policy's UIM coverage to parallel the coverage afforded by UM provisions" where the coverage limits exceed statutory minimums. Therefore, the Court held that Farmer's UIM provisions violated Illinois law and are unenforceable.

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Negligence

The Dram Shop Act does not Preempt In-Concert Liability for Encouraging or Assisting Another in Tortious Conduct Where One does so Independently of Providing Alcohol.

Simmons v. Homatas, 2010 WL 966139 (Ill. , March 18, 2010)

In this case, the administrators of two decedents' estates brought a negligence action against the owners of an adult entertainment club for negligently encouraging a patron to consume alcoholic beverages until he was intoxicated and then requiring that patron to drive away from the premises, which resulted in a fatal collision. One of the decedents was the intoxicated driver's passenger and the other decedent was the driver of the other vehicle. The facts taken from the Complaint allege that although the club was not allowed to sell alcohol, it sold glasses, ice, soft drinks and other mixers, thereby encouraging its patrons to bring their own alcohol into the club. After club employees learned that the intoxicated person had vomited in the restroom, they kicked him and his passenger out of the club, the valet brought the car around, and they assisted both persons into the vehicle and told them drive away from the premises. The trial court found that the Dram Shop Act did not apply because the club did not sell or provide alcohol to its customers. However, the trial court denied the club's motion to dismiss the common law counts of negligence, but certified the question as to whether the Defendant, "a business operator who is not subject to the Dram Shop Act (because it does not sell or serve alcoholic beverages on its premises)" owed a duty of care to the intoxicated person's passenger who was killed and/or the other motorist who was killed. Based on Restatement (Second) of Torts §876, the Appellate Court answered the certified questions in the affirmative and held that Defendant owed a duty of care to both decedents.

On appeal to the Illinois Supreme Court, the Defendant argued that the Dram Shop act preempted all alcohol-related liability, including any common law liability. The Court analyzed the line of cases dealing with the issue of whether a common law action exists in addition to liability under the Dram Shop Act, or in cases where the Dram Shop Act does not apply. The Court concluded "it is well established that under the common law, no liability is imposed on a person who gives or sells alcohol to another person who later harms a third party while intoxicated." Therefore, the Dram Shop Act did not apply to the Defendant. However, the Court noted that the issue in this case was not whether there was liability resulting from the provision of alcohol, but whether there was liability "as a result of the encouragement of, or assistance in, tortious conduct," which is conduct independent of providing alcohol. The Court noted that the Defendant's duty here did not arise from providing alcohol, but from "a series of actions taken by club employees in response" to finding the intoxicated person vomiting in the restroom. The

Court stated that the Defendant “acquired a duty not to encourage and assist” the intoxicated person in the “tortious conduct of driving while intoxicated” when it made a determination that he was intoxicated and kicked him out of the club. Further, pursuant to Section 876 of the Restatement (Second) of Torts, which sets forth the five factors to determine whether in-concert liability will attach, “the question of whether a defendant has substantially assisted or encouraged another person in his tortious conduct based” on those factors is a question for the jury. Therefore, the Court held that the Defendant could owe the decedents a duty of care under the facts alleged in this case and remanded the case to the trial court for disposition.

Leading Driver’s Excessive Speed and Failure to Warn the Following Driver about Dangerous Road Conditions did not Give Rise to In-Concert Liability.

Norman v. Brandt, 2010 WL 447328 (Ill. App., 4th Dist., 2010)

The 4th District recently held that the driver of the first vehicle did not act in concert with the driver of the second vehicle, for purposes of Section 876 of the RESTATEMENT (SECOND) OF TORTS, though the second vehicle was following the first vehicle to a specific destination. In this case, several teenagers were having a birthday celebration and decided to drive to the defendant’s relative’s lake house for a swim. Because nobody else was familiar with the area, the defendant, carrying two passengers, volunteered to lead the second vehicle, which was carrying the decedent. The driver of the following vehicle was following closely behind the defendant when her vehicle veered off the road, rolled over several times and ejected the decedent. The decedent’s parents brought suit against the defendant alleging that the defendant was liable for wrongful death because he acted “in concert with” the driver of the second vehicle. Specifically, the plaintiffs claimed that the defendant was responsible because he volunteered to lead the other driver to the lake house, he forced the other driver to exceed the speed limit to keep up with him and failed to warn the other driver that the road was narrow and made of gravel. The defendant moved for summary judgment arguing that he was not acting in concert with the other driver and therefore owed no duty to the decedent pursuant to §876. The trial court held that there was no evidence that the defendant expressly encouraged or assisted the second driver to act tortiously such that no duty existed.

The 4th District noted that §876 states that a person is liable for harm resulting to a third person from the tortious conduct of another if he “(a) does a tortious act in concert with the other or pursuant to a common design with him, or (b) knows that the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to a third person.” The Court reviewed the facts of the case under each scenario set forth in §876 and concluded that the defendant and the other driver were not acting in concert with each other. Although he was exceeding the speed limit, they were not racing nor was he encouraging her to speed. Further, “neither had reason to know the other would act tortiously.” Therefore, the defendant owed no duty to the plaintiff under the facts of this case.

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Premises Liability

Statutory Immunity for Personal Injuries Caused by the Snowy or Icy Condition of Residential Sidewalks Resulting from Attempts to Remove Snow or Ice Was not Applied to Residential Driveway.

Gallagher v. Union Square Condominium Homeowner's Ass'n, 922 N.E.2d 1201 (Ill.App. 2d Dist., 2010).

Plaintiff condominium owner sued condominium association for leg fractures sustained when he slipped and fell on his driveway as a result of an unnatural accumulation of ice and snow caused by defendant's attempts to plow. The Second District reversed dismissal of plaintiff's complaint on the grounds of statutory immunity granted to owners, lessors, and persons in charge of any residential property, who attempts to remove snow or ice from sidewalks abutting the property for any personal injuries allegedly caused by the snowy or icy condition of the sidewalk resulting from his or her acts or omissions. 745 ILCS 75/2. In declining to extend the statute to residential driveways, the Court cited the plain language of the statute and the fact that the statute is in derogation of common law. The declined to follow a contrary interpretation of the First District Appellate Court in *Flight v. American Community Management, Inc.*, 384 Ill.App.3d 540, 893 N.E.2d 285 (1st Dist., 2008).

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Workers Compensation

Claimant Was entitled to Continue to Receive TTD after Termination for Conduct Unrelated to the Injury.

Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Com'n, 236 Ill.2d 132, 2010 WL 199914 (Ill., Jan. 22, 2010).

Claimant sustained a work related injury in the course of his employment and was receiving temporary total disability (TTD) benefits under the Act. Subsequently, he was discharged for defacing the employer's property, subsequent misconduct not related to the injury. As a matter of first impression, the Supreme Court held that the claimant was entitled to continue to receive TTD until he reached maximum medical improvement. The Court reasoned that entitlement to benefits is governed solely by the Workers' Compensation Act and that no reasonable construction of the Act suggests "benefits may be denied an employee who remains injured, yet has been discharged by his employer for 'volitional conduct' unrelated to his injury." There are no provisions for the cessation or denial of benefits due to an employee's discharge. Nor are benefits conditioned on whether dismissal was for cause.

Claimant Was not Entitled to TTD Benefits Where During the Time He Was Released to Light Duty, Both He and All of His Co-Workers Were Subject to an Economic Layoff.

Gonzales v. ITT Industries, 17 ILWCLB 205 (Ill. W.C. Comm. 2009)

The Illinois Worker's Compensation Commission ruled that the claimant failed to prove he was entitled to TTD benefits during an economic layoff. The claimant injured his back and was off work for a period of time and was then released to light duty. During the time he was released to light duty, he and his co-workers were subject to an economic layoff. When he was released to full duty, he sought TTD benefits for the time period he was on light duty. However, he and his co-workers were laid off at that same time. The Commission noted that some courts have held that a claimant is entitled to TTD benefits if he is restricted to light duty work after an economic change in his employment situation, with the reasoning being that he is not placed in an equal setting with his co-workers to compete in the job market to return to work. However, in this case, the Commission noted that he and all his co-workers were awaiting the return to employment at the end of the layoff period and not looking for new employment, such that he was not placed at a disadvantage due to any physical disability. Therefore, TTD benefits were denied.

An Injury Incurred While Performing a Voluntary, Unsafe Act, Which Was Unexpected by the Employer and not Incidental to the Employment, Was not Compensable.

Vargas v. Manuel Contractors Ltd., 17 ILWCLB 226 (Ill. W. C. Comm. 2009)

The Illinois Worker's Compensation Commission denied benefits to a laborer due to his improper conduct at a work site. The claimant was installing insulation in a building and after leaving the jobsite, realized he left a tool inside the building. Rather than call the building owner, who could have unlocked the door to let him in, he instead set up a ladder intending to climb to the second floor to gain entry. He fell backward after reaching the last step of the ladder and was injured. The Commission found that the defendant had no knowledge of what the claimant was doing and neither authorized or acquiesced to his conduct. In denying benefits, the Commission reasoned that the claimant was injured while doing something that was voluntary, unexpected by the employer, unsafe and not incidental to the employment. Therefore, his injuries did not arise out of an in the course of his employment.

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