BACH LAW

Illinois Tort Law Update

2017 Case Summaries

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SUBSTANTIVE LAW

I. GOVERNMENTAL LIABILITY

a. *Cohen v. Chicago Park District*, 2017 IL 121800: Bicyclist was injured while riding on a trail along Lake Shore Drive. Bicyclist filed suit alleging willful and wanton conduct on the part of the Defendant for failing to repair the trail. Defendant argued that it was entitled to immunity under the Local Governmental and Governmental Employees Tort Immunity Act. Circuit Court granted motion to dismiss. Appellate Court reversed (see below). Supreme Court held that Defendant was immune from suit because the trail that Plaintiff was riding on when the accident occurred was not open to the public or motorized traffic and was not a road. It further found that the Defendant's actions were not willful or wanton because cracks in paved surfaces are unavoidable in climates such as Chicago's. Justice Kilbride dissented, writing that a jury should determine whether the Defendant's conduct was willful and wanton.

b. *Cohen v. Chicago Park District*, 2016 IL App (1st) 152889: Bicyclist was injured when he fell after his bicycle hit a crack on a Lakefront Trail. He filed suit against park district alleging willful and wanton conduct for failing to repair the trail. Defendant argued that it was immune under the Local Governmental and Governmental Employees Tort Immunity Act which grants absolute immunity to local public entities for injuries occurring on roads that provide access to primitive camping, recreational, or scenic areas. Trial court granted summary judgment. Appellate Court reversed, finding that a lakefront trail in a developed area did not fall under that provision. It remanded to the trial court to determine if the park district's conduct was willful and wanton.

c. *Corbett v. County of Lake*, 2017 IL 121536: Bicyclist was injured while riding on a bike path. Bicyclist brought action against the county and the city alleging that they were liable for defects in the bike path. Circuit Court granted summary judgment in favor of Defendants on ground that they were entitled to immunity under the Local Governmental and Governmental Employees Tort Immunity Act. The Appellate Court reviewed the case law and determined that to qualify for immunity under the act, the trail must pass through a natural area. It found that since the trail passed through areas that were mostly developed it did not qualify as a riding trail within the meaning of the statute and reversed. The Supreme Court unanimously upheld the judgment of the Appellate Court, finding that since section 3-107(b) of the Local Governmental and Governmental Employees Tort Immunity Act included the words "hiking," "fishing," and "hunting" in the same sentence as "riding" when referring to trails, the legislature intended to apply blanket immunity only to primitive, rustic, or unimproved trails.

d. *Corbett v. County of Lake*, 2016 IL App (2d) 160035: Bicyclist was injured while riding on a bike path. Bicyclist brought action against the county and the city alleging that they were liable for defects in the bike path. Circuit Court granted summary judgment in favor of Defendants on grounds that they had immunity under the Local Governmental and Governmental Employees Tort Immunity Act. The Appellate Court reviewed the case law and determined that to qualify for immunity under the act, the trail must pass through a natural area. It found that since the trail passed through areas that were mostly developed it did not qualify as a riding trail within the meaning of the statute and reversed.

e. *Foust v. Forest Preserve District of Cook County*, 2016 IL App (1st) 160873: Estate of deceased bicyclist brought wrongful death action against the forest preserve district where bicyclist was killed, alleging negligence and willful and wanton conduct. The evidence showed that a tree limb fell and struck the bicyclist, eventually causing her death. The trial court certified questions to the Appellate Court regarding whether the forest preserve was intended to be used for recreational purposes and whether the tree, and the limb that had broken off of it, was a condition of the trail. The Appellate Court held that the forest preserve was intended to be used for recreational purposes thus immunity under the Local Governmental and Governmental Employees Tort Immunity act applied, but the tree was not a condition of the trail and immunity did not apply.

f. *Perez v. Chicago Park District*, 2016 IL App (1st) 153101: A park visitor was injured by fireworks illegally set off by another visitor. Subsequently, the injured visitor brought action against the park district. Park district filed a motion to dismiss, which was granted by the trial court. The Appellate Court affirmed, finding that the fireworks were an activity on the property, not a condition, and that the park district had no duty to supervise park visitors who set off fireworks.

g. *Freeman v. City of Chicago*, 2017 IL App (1st) 153644: Estate brought action against city after decedent's vehicle was struck by another vehicle which was attempting to evade police officers. Following jury trial, the Court entered judgment in favor of the estate. Appellate Court affirmed, finding that the issue of whether the officer's actions in following the vehicle that struck decedent's vehicle, causing decedent's death was a question for the jury. It further discussed whether the trial court properly questioned a dissenting juror who said she gave her verdict under duress, but then subsequently agreed on the verdict following further deliberations.

h. *Krivokuca v. City of Chicago*, 2017 IL App (1st) 152397: Plaintiff was injured when his vehicle fell into a sinkhole. He brought action against the city of Chicago alleging ordinary negligence and *res ipsa loquitur*. Trial court dismissed the negligence count based on *res ipsa loquitur* and granted summary judgment in favor of the city on ordinary negligence. Appellate Court affirmed, finding that the city could not be held liable for negligence on the *res ipsa loquitur* theory because the Local Governmental and Governmental Employees Tort Immunity Act requires that the city must have notice of a dangerous condition, and the two are incompatible. It further held that the Plaintiff failed to establish the city had notice of the dangerous condition.

i. *Monson v. City of Danville*, 2017 IL App (4th) 160593: Plaintiff was injured when she tripped and fell on a crack in the city sidewalk. The trial court granted Defendant's motion for summary judgment on the basis of the Local Governmental and Governmental Employee's Tort Immunity Act. Appellate Court affirmed, finding that the repair of uneven seams between two slabs of a sidewalk was discretionary rather than a ministerial function.

II. INSURANCE

a. *Pekin Insurance Company v. Designed Equipment Acquisition Corporation*, 2016 IL App (1st) 151689: Liability insurer brought declaratory judgment action against company that leased scaffolding materials to its insured, seeking a determination that the insured did not owe a duty to defend the lessor in the underlying personal injury action. The trial court found that while the contract was clear and unambiguous that the insurance company did owe a duty to defend, the Construction Contract Indemnification for Negligence Act (740 ILCS 35/1) rendered it void.

b. *Illinois Emcaso Insurance Company v. Tufano*, 2016 IL App (1st) 151196: Passenger was riding in a car that collided with another car. As a result, she suffered significant permanent injuries. She received policy limits from both drivers. One had a policy limit of $100,000.00 and the other had a policy limit of $300,000.00. Passenger had underinsured motorist coverage in the amount of $500,000.00. Insurance company argued the passenger was only entitled to recover at $100,000.00, while passenger argued that she could recover $400,000.00 and $200,000.00 since there were two different drivers. Trial court agreed with insurance company. Appellate Court reversed, finding that since there were two different drivers, there were two different claims but holding that the most she could recover was $500,000.00.

c. *Country Preferred Insurance Company v. Groen*, 2017 IL App (4th) 160028: Employee was injured in an automobile accident. She subsequently received medical payments through workers compensation that exceeded the amount of her automobile insurance uninsured motorist policy limits. Her insurance company filed a declaratory judgment alleging that it owed no benefits under her uninsured motorist coverage because she had already received medical payments in excess of the policy limits. Circuit Court granted summary judgment for insurance carrier and Appellate Court affirmed.

d. *Sherrod v. Esurance Insurance Services, Inc.*, 2016 IL App (5th) 150083: Driver and passenger were involved in an automobile accident where their vehicle was struck by a drunk driver. Driver and passenger each recovered the policy limits of $100,000.00 per person from drunk driver's insurance. Driver also had an insurance policy with underinsured motorist coverage of up to $50,000.00 per person. Driver attempted to collect underinsured motorist benefits under her own insurance policy, but her insurance company refused to pay. Trial court held that there was an ambiguity in the insurance policy regarding other insurance and found in favor of the Plaintiff. Appellate Court reversed, finding that the underinsured coverage was limited to $50,000.00.

e. *Country Preferred Insurance Company v. Whitehead*, 2016 IL App (3d) 150080: Uninsured motorist case where the issue was: at what point did the two-year limitations period began with regard to the insurance arbitration demand. Evidence showed that an automobile accident happened on July 21, 2007 and was immediately reported to the insurance company. Subsequently, in October of the same year, the insurance company sent the insured an uninsured motorist claim form. Insurance company received the completed form back on November 28, 2007. The insured did not send a written demand for arbitration until October 6, 2009. Plaintiff filed a motion to compel arbitration. Defendant argued that the demand for arbitration was barred because it was not sent until more than two years after the accident occurred. The Circuit Court granted summary judgment in favor of the insured and Appellate Court affirmed, finding that the two-year limitations was tolled from the date that the insurer received the sworn proof of loss until the date that the insurer rejected arbitration demand.

f. *Smith v. American Heartland Insurance Company*, 2017 IL App (1st) 161144: Plaintiff was the passenger in a vehicle that was involved in an accident with a hit-and-run driver. The driver of the vehicle in which Plaintiff was a passenger had obtained insurance from a broker that provided insurance to her in the form of a split policy with two insurance companies providing different coverage. The uninsured motorist coverage required that the company be notified within 120 days of the accident. Subsequently, Plaintiff failed to report the accident within 120 days. Plaintiff brought an action for benefits under the uninsured motorist policy. Circuit Court entered judgment invalidating the provision which required notice within 120 days of the accident and Appellate Court affirmed, finding that provision was void and unenforceable.

g. *Pekin Insurance Company v. Centex Homes*, 2017 IL App (1st) 153601: Worker was injured on a job site. Insurance company for general contractor filed declaratory judgment action seeking a declaration that the building owner and its managing partner were not additional insureds under the general contractor's policy and the insurer had no duty to defend them in the suit brought by the worker. Trial court entered summary judgment for the insurer. Appellate Court found that the managing partner was not an additional insured under the policy, but the building owner was. It further found that the allegations made by worker supported a negligence claim against the general contractor and that the building owner was potentially vicariously liable for the general contractor's alleged negligence.

h. *Knouse v. Mohamendur*, 2017 IL App (1st) 161856: Plaintiff was injured in an automobile accident. The other driver's insurance was declared insolvent more than 2 years after the accident. Plaintiff's insurance policy contained a provision which indicated that underinsured motorist coverage would only apply if the other insurance became insolvent within two years after the date of the accident. Jury returned a verdict of approximately $70,000.00. Defendant filed a motion to have the judgment declared satisfied based on the underinsured motorist policy limits. Circuit Court granted the motion. Appellate Court reversed, finding that under Indiana law the motorist's uninsured policy did not constitute other insurance that motorist had to exhaust before filing a claim against the Illinois Insurance Guaranty Fund.

i. *Snow v. Power Construction Company, LLC*, 2017 IL App (1st) 151226: Employee of subcontractor brought negligence action against general contractor and other subcontractors after the employee was injured while moving drywall at a construction site. Trial court granted summary judgment. Appellate Court held that the general contractor did not retain sufficient control of subcontractors' work so as to impose liability and it was not reasonably foreseeable that the employee would move stacked drywall. It further held that any danger presented by the stacked drywall was open and obvious.

j. *Direct Auto Insurance Company v. Reed*, 2017 IL App (1st) 162263: Insurance company brought action against its insured, accident victims, and their insurer for declaratory judgment that it had no duty to provide coverage since its insured failed to cooperate. Evidence showed that the insured did not attend a mandatory court-ordered arbitration which resulted in an order preventing her from challenging the award. Trial court found that the lack of cooperation did not prejudice the insurance company. Appellate Court affirmed, finding that the insurance company could not show substantial prejudice from the insured's alleged breach of the cooperation clause.

k. *Pekin Insurance Company v. St. Paul Lutheran Church*, 2016 IL App (4th) 150966: Insurance company issued an insurance policy to church. Subsequently, one of the church's employees was involved in an automobile accident. Insurance company was acting as excess insurer because church and employee were already covered by employee's personal automobile insurance policy. Excess insurer brought declaratory judgment alleging that it had no duty to defend since insured was driving his own car to another job at the time of the accident and his insurance provided a defense. Circuit Court dismissed the action with prejudice and denied permission to file an amended complaint. Appellate Court held that the claim that insured was not out on employer's business was unripe and premature prior to the resolution of the underlying tort claim and insurance company's claim as the excess insurer was moot.

l. *Worley v. Fender*, 2017 IL App (5th) 160110: Plaintiff was injured in an automobile accident while driving a truck for his employer. The at-fault party tendered policy limits of $100,000.00. Plaintiff then attempted to assert an underinsured motorist claim against his employer's insurance. Employer's insurance denied the claim on the basis that the employer had elected underinsured motorist limits of $40,000.00 under the terms of the policy. Plaintiff then filed a declaratory judgment complaint asking that the Court find that the actual amount of underinsured motorist coverage was $1,000,000.00 and to find that the employer's insurance company's failure to acknowledge his claim was vexatious and unreasonable. Trial court granted summary judgment for Plaintiff with regard to the limits of the underinsured motorist coverage and summary judgment to insurance company finding that the delay was not vexatious and unreasonable. Appellate Court affirmed.

m. *American Access Casualty Company v. Alcauter*, 2017 IL App (1st) 160775: Insurance company brought action against its insured and the other driver involved in car accident, seeking a declaration that it was not required to provide coverage because insured failed to cooperate with arbitration. Following a bench trial, the Circuit Court determined that the insurer owed coverage because it was aware that the insured was incarcerated at the time of the arbitration hearing. It granted the other driver's motion for sanctions against the insurer and its counsel. Appellate Court affirmed.

III. MALPRACTICE

a. *Yarborough v. Northwestern Mutual Hospital*, 2017 IL 121367: Plaintiffs brought medical malpractice case against hospital stemming from premature birth of their daughter. Although the Plaintiffs did not receive treatment at Defendant hospital, the clinic that they received treatment from indicated that Plaintiff would eventually deliver her child at Defendant hospital. Trial court certified a question to the Appellate Court regarding apparent agency. Appellate Court held that the hospital could be held vicariously liable under the doctrine of apparent agency for the acts of the employees of an unrelated, independent clinic. Supreme Court reversed, finding that a hospital cannot be held vicariously liable under the doctrine of apparent agency, for the acts of the employees of an unrelated, independent clinic that is not a party to the litigation. It went on to note that the clinic did not utilize the Northwestern name, Northwestern-related branding, or Northwestern's trademark purple color.

Justices Freeman was joined by Justices Burke and Kilbride in dissent. Those justices would have remanded the case back to the trial court for further discovery to determine if Plaintiff could produce evidence to support their claim for apparent agency.

b. *Lawler v. University of Chicago Medical Center*, 2017 IL 10745: Plaintiff initially brought medical malpractice action. After Plaintiff's death, the executor of her estate was substituted as party Plaintiff and additional counts of wrongful death were added. Defense counsel filed a motion to dismiss on the basis that the wrongful death claims were added after the statute of repose expired. Circuit Court granted the motion. Appellate Court held that as a matter of first impression, a lawsuit for wrongful death of a patient related back to the original medical malpractice claim filed by Plaintiff. Supreme Court unanimously agreed with the Appellate Court, finding that if a wrongful death complaint were filed after the expiration of the statute of repose, it would be time-barred. In this case, however, it was filed as a motion to amend the complaint and related back for that purpose.

c. *Logan v. U.S. Bank*, 2016 IL App (1st) 152549: Legal malpractice case. In the underlying case, the estate of a worker that was killed by a truck brought suit against the company. Following a trial, jury returned a $3,000,000.00 verdict in favor of the estate reduced by 50% for the worker's contributory negligence resulting in a net verdict of $1,500,000.00. Both sides appealed, but the estate subsequently dismissed its appeal. Attorneys for the estate were sued for malpractice for dismissing the appeal. Circuit Court entered summary judgment for attorneys. Appellate Court affirmed, finding that the jury's determination that the worker was 50% contributory negligent was not against the manifest weight of the evidence and the dismissal of the appeal did not result in a loss to the estate.

d. *Nelson v. Padgitt*, 2016 IL App (1st) 160571: Former client brought a legal malpractice action against attorney and law firm that negotiated client's employment contract with employer. Circuit Court dismissed the case on the basis that it was time-barred. Appellate Court held that the client's malpractice claim accrued on the day that he filed a breach-of-contract action as he would have been aware that the attorney's poor negotiating was partly responsible for his inability to protect himself under the contract.

e. *Crim v. Dietrich*, 2016 IL App (4th) 150843: Medical malpractice case involving informed consent that proceeded to jury trial. At the close of Plaintiff's evidence, the Court entered partially directed verdict on the issue of informed consent in favor of Defendants. The Appellate Court noted that the most important element of an informed consent case was that the Plaintiff proved that there was significant undisclosed information relating to the treatment which would have altered Plaintiff's decision to undergo the treatment. It held that an alternative treatment existed, which created a question of fact for the jury, so it reversed.

f. *Carroll v. Community Health Care Clinic*, *Inc.*, 2017 IL App (4th) 150847: Plaintiff filed medical malpractice action against doctor, nurse, and free medical clinic. Defendant doctor and nurse filed motion to dismiss asserting that they were entitled to immunity under the Good Samaritan and Medical Practices Act. Appellate Court affirmed, finding that the requirement for immunity under the Good Samaritan Act was that the provider did not receive a fee or compensation from the free medical clinic itself. It further found that the compensation that the doctor and nurse received came from the health system and not the free medical clinic. Thus, they upheld the trial court.

g. *Williams v. Athletico, Ltd.*, 2017 IL App (1st) 161902: High School football player who was injured during football game brought negligence action against trainer that treated him, alleging the trainer negligently failed to evaluate him for a concussion. Trial court denied the trainer's motion to dismiss but certified questions to the Appellate Court. Appellate Court held that the Plaintiff's complaint sounded in healing art malpractice rather than ordinary negligence and therefore a certificate of merit was required. It further held that the certificate of merit did not need to be authored by a trainer but rather by a physician licensed to practice medicine in all its branches who was otherwise qualified to author the certificate of merit.

IV. NEGLIGENCE

a. *Murphy-Hylton v. Lieberman Management Services, Inc*., 2016 IL 120394: Plaintiff was injured while walking on the sidewalk outside of a condominium. Plaintiff alleged that the defective condition and negligent maintenance of the property created an unnatural accumulation of ice which caused her fall. Circuit Court granted landowner summary judgment on the basis that it had immunity under the Snow and Ice Removal Act (745 ILCS 75/0.02 *et. seq.*). Appellate Court reversed and remanded. Supreme Court affirmed the Appellate Court, finding that since the pedestrian did not allege negligent snow or ice removal, but instead alleged the Defendants were negligent in failing to properly direct drainage of water and melted snow, failing to repair defective sidewalks, and failing to repair drain spouts, immunity was not proper.

b. *Carney v. Union Pacific Railroad Company*, 2016 IL 118984: A subcontractor's employee was injured during removal of an abandoned railroad bridge. Plaintiff filed a negligence action against railroad that hired independent contractor to remove the bridge. Trial court granted summary judgment to railroad, but Appellate Court reversed and remanded. Supreme Court held that there was no evidence that the railroad retained some degree of control over the manner in which the independent contractor removed the bridge, that the employee was not a third person to whom the railroad could be liable for failing to exercise reasonable care in selecting a contractor, and the railroad was not liable under a premises liability theory.

c. *Jones v. Live Nation Entertainment, Inc.*, 2016 IL App (1st) 152923: Concert attendee brought negligence action against concert promoter for injuries sustained at concert. Trial court granted summary judgment in favor of promoter. Appellate Court reversed, finding that a genuine issue of material fact existed as to whether the promoter owed the attendee a duty of care and whether the attendee's injuries were proximately caused by the promoter's alleged breach of duty. It further found that the rental agreement between the promoter and venue owner had no bearing on the attendee's right to bring a negligence action against the promoter.

d. *Perez v. Heffron*, 2016 Il App (2d) 160015: 3-year-old drowned in landowner's pool after wandering into it while his parents were attending a garage sale. The estate of the child sued the landowner for wrongful death. Circuit Court entered summary judgment in favor of the landowner. Appellate Court affirmed, finding that the swimming pool was an open and obvious condition, that the cover of the pool did not hide an open and obvious condition, and that the distraction exception did not apply. It further found that the failure of the child's father to properly supervise the child was the proximate cause of the child's death.

e. *Atchley v. University of Chicago Medical Center*, 2016 IL App (1st) 152481: Delivery truck driver was injured while making a delivery to Defendant hospital. He brought a negligence and premises liability action against the hospital. Circuit Court granted summary judgment in favor of the hospital. Appellate Court reversed, finding that a genuine issue of material fact existed as to whether the hospital owed the driver a duty of care and whether the condition of the hospital's property proximately caused driver's injury.

f. *Bulduk v. Walgreen Company*, 2015 IL App (1st) 150166-B: Customer who was injured in drugstore after cleaning machine in the aisle of the store fell on her brought action for negligence, negligence spoliation, and *res ipsa loquitur*. Trial court granted store's motion for summary judgment. At the first go-round at the Appellate Court, the case was affirmed in part and reversed in part. Store petitioned to the Supreme Court which vacated the Appellate Court's decision, directing it to reconsider in light of *Bruns v. City of Centralia*, 386 Ill. Dec. 765, 21 N.E. 3d 684. Upon reconsideration, the Appellate Court held that a genuine issue of material fact existed as to whether the cleaning machine in the store's cosmetics aisle was an open and obvious danger, but the store's alleged loss or destruction of surveillance tape did not cause customer to be unable to prove her negligence claim and the store was not liable for negligent spoliation of evidence.

g. *Pilotto v. Urban Outfitters West, LLC*, 2017 IL App (1st) 160844: Plaintiff, who suffered from Crohn's Disease, brought action against retail store alleging that she was denied access to an employee restroom despite being entitled to such access under the Restroom Access Act (410 ILCS 39/1 *et. seq.*). Circuit Court dismissed, finding that the act did not provide for a private right of action. Appellate Court determined that as a matter of first impression, a private right of action was necessary to provide an adequate remedy to individuals injured as a result of violations of the Restroom Access Act. It further found that Plaintiff's complaint alleged sufficient facts to state a claim for intentional infliction of emotional distress.

h. *Hanna v. Creative Designers, Inc.*, 2016 IL App (1st) 143727: Stylist who worked as an independent contractor for beauty salon in retirement community brought action against the salon operator for injuries sustained when a countertop fell on her. Trial court entered summary judgment to operator. Appellate Court affirmed, finding that the operator was not in control of the premises and thus owed no duty and that the operator did not have reasonable notice of a dangerous condition on the premises.

i. *Barr v. Fausto*, 2016 IL App (3d) 150014: Pedestrian was injured when he stepped into a hole on a grass-covered city parkway and fell. Pedestrian filed suit against city and property owner who maintained the grass on the parkway. Trial court granted summary judgment to Defendants on the basis that neither had actual or constructive notice of the hole. Appellate Court affirmed.

j. *Hollenbeck v. City of Tuscola*, 2017 IL App (4th) 160266: Plaintiff was injured when she stepped into a catch basin on a parkway. She brought suit against the city and the individual who owned property next to the parkway. Trial court granted summary judgment. Appellate Court affirmed, finding the condition of the catch basin did not give rise to the duty of care by the city and the neighboring property owner did not appropriate the parkway for his own use.

k. *Mular v. Ingram*, 2016 IL App (1st) 152750: Personal injury action arising out of injuries Plaintiff sustained when she fell in Defendant's backyard pool area. In the first iteration of the case, Circuit Court granted Defendant's motion to dismiss and denied Plaintiff's motion for leave to amend her complaint to assert a construction negligence claim. The Appellate Court affirmed. Plaintiff then filed a construction negligence claim against Defendant, which the trial court dismissed on the basis of *res judicata*. Appellate Court affirmed.

l. *Gerasi v. Gilbane Building Company, Inc.*, 2017 IL App (1st) 133000: Employee of subcontractor brought negligence action against general contractor following an electrical explosion that occurred at a job site. Trial court granted summary judgment in favor of general contractor. Appellate Court held that the general contractor had no duty to the injured worker other than to ensure that subcontractor complied with a safety plan and that the contractor did not have actual or imputed knowledge that work was being done by the subcontractor in an unsafe fashion.

m. *Farrell by Scheel v. Farrell*, 2016 IL App (3d) 160220: Minor child was injured while riding a dirt bike when his bike collided with an all-terrain vehicle. Plaintiff sued landowner. Circuit Court granted summary judgment in favor of landowner. Appellate Court affirmed, holding that the operation of a dirt bike in an area with diminished visibility due to tall corn was an open and obvious danger.

n. *Nourse v. City of Chicago*, 2017 IL App (1st) 160664: Elevator worker was injured during an elevator inspection and sued the City of Chicago. Circuit Court dismissed the action based on the immunity provision of the Local Governmental and Governmental Employees Tort Immunity Act. Appellate Court affirmed, finding that because the worker was conducting a test of the elevator when the injury occurred it fell within the immunity provision.

o. *Peters v. Carlson & Sons, Inc*., 2016 IL App (1st) 153539: Plaintiff was injured when he fell into a hole on an excavated parkway next to the sidewalk. He sued the landowner and the contractor that was working on the property. Circuit Court granted summary judgment in favor of Defendants. Appellate Court affirmed, finding the condition of the parkway was an open and obvious hazard and the distraction exception did not apply.

p. *Falge v. Lindoo Installations, Inc.*, 2017 IL App (2d) 160242: Worker was injured when a bundle of shelving shifted. He brought negligence action against installer of industrial storage shelves. Circuit Court granted summary judgment to Defendant. Appellate Court held that the worker was a borrowed employee of the installer and thus the exclusive remedy provision of the Workers Compensation Act barred the action.

V. PRODUCT LIABILITY

a. *Startley v. Welco Manufacturing Company*, 2017 IL App (1st) 153649: Estate of deceased construction worker brought action against asbestos manufacturer alleging that asbestos contributed to worker contracting mesothelioma. Trial court granted Defendant's motion for directed verdict. Appellate Court reversed, finding that the issue of whether the Plaintiff encountered asbestos with sufficient frequency and whether the manufacturer should have known of the dangers of inhaling asbestos was for the jury.

VI. MISCELLANEOUS ACTIONS

a. *Manago v. County of Cook*, 2017 IL 121078: Minor was injured in an accident and parents sued for damages. After Plaintiffs prevailed at a bench trial, they moved to strike the hospital's lien against the judgment. The Circuit Court granted Plaintiff's motion to strike, finding that the hospital had not intervened to protect its lien at trial. The Appellate Court found that the technical deficiencies in the hospital's lien did not defeat the lien and that the hospital was not required to intervene in the lawsuit. However, it further found that the lien could not be enforced against the minor because the parents brought suit under the family expenses statute, and pursuant to that statute only the parents could recover for the minor child's expenses. Since they had not assigned the cause of action to the child, the Appellate Court held that the lien was unenforceable. The Supreme Court unanimously reversed, holding that nothing in the Lien Act precludes a lien from attaching to a damage award recovered by or on behalf of a minor or limits the lien's potential funding sources to sums earmarked for medical expenses.

b. *Coe v. Lewsader*, 2016 IL App (4th) 150841: Motorcycle driver and passenger brought action against owner of dog that motorcycle driver struck while dog was lying in the middle of the road. Trial court certified the following question to the Appellate Court "Does a dog lying in the middle of the road constitute an 'overt action' toward the Plaintiff for purposes of the Animal Control Act?" The Appellate Court held that a dog lying in the middle of the road did not constitute an overt action.

PROCEDURAL LAW

I. EVIDENCE

a. *Berk v. Manilow*, 2016 IL App (1st) 150397: Guest who was injured while exiting apartment building brought premises liability claim against building owner and management company. Guest was rendered quadriplegic as a result of the fall, and thus had no memory of the fall itself. Defendants moved for summary judgment on the basis that there was no evidence of proximate cause. Plaintiff filed affidavits of three experts. In the first, an accident-reconstructionist stated that the guest was likely looking forward when he fell. The second affidavit was from an architect that stated the guest might have caught his foot on the threshold as the door was closing, and the last was from a doctor that stated that the guest's fall was not caused by medical condition. The trial court held that even taken together, the affidavits did not establish proximate cause and granted summary judgment in favor of the Defendants. Appellate Court affirmed, finding that the opinions were too speculative and summary judgment was appropriate.

b. *Morrisroe v. Pantano*, 2016 IL App (1st) 143605: Medical malpractice case that went to jury trial where the verdict was returned for the Defendant. At issue was whether the Plaintiff's expert's proferred trial testimony included a new basis for his opinion or a logical corollary to his original opinion disclosed prior to trial. Appellate Court held that the proffer was a new opinion that was not disclosed and thus was justifiably excluded. The Court also discussed whether an objection made during closing argument was proper.

c. *Carlson v. Jerousek*, 2016 IL App (2d) 151248: Auto accident case involving Plaintiff that was rear-ended by a bus. During discovery, Defendants requested to make a forensic image of Plaintiff's personal computers. Trial judge ordered Plaintiff to turn over computers but Plaintiff refused and was held in friendly contempt. The Appellate Court held that the discovery requests lacked adequate definitions and parameters and that the trial court abused its discretion in failing to conduct the balancing test when it ordered the Plaintiff to turn over his computers.

d. *Aguilar-Santos v. Briner*, 2016 IL App (1st) 153593: Automobile accident case that proceeded to jury trial. Jury returned a verdict in favor of Plaintiff. The Defendant argued on appeal that Plaintiff's expert testified to previously undisclosed opinions on redirect examination and that Plaintiff's experts should not have been allowed to testify to the permanency of Plaintiffs injuries because Plaintiff's last visit to expert was more than 15 months before the expert's evidence deposition. Appellate Court affirmed.

e. *Gapinski v. Gujrati*, 2017 IL App (3d) 150502: Plaintiff brought medical malpractice case against pathologist and pathologist's employer on the basis that pathologist diagnosed Plaintiff's tumor as benign meningioma, not renal cell carcinoma. Case proceeded to jury trial and the jury returned a verdict for Plaintiff. The Appellate Court affirmed the case and discussed issues regarding expert testimony, dual representation, and the statute of limitations.

f. *Yanello v. Family Park Dental*, 2017 IL App (3d) 140926: Plaintiff filed medical malpractice action against dentist alleging that dentist negligently placed dental implants in Plaintiff's mouth which caused permanent damage. Case proceeded to jury trial and verdict was entered in favor of dentist. Appellate Court discussed issues regarding expert testimony and discovery sanctions. It reversed the trial court on the basis that it allowed Defendant's expert to testify to evidence that should not have been admitted.

g. *Spencer v. Wayne*, 2017 IL App (2d) 160801: Passenger brought negligence action against driver, alleging she was injured when she slipped and fell on a garage mat while exiting vehicle. Subsequently, the driver died, and a special representative of driver's estate was then appointed. Special representative brought motion for summary judgment, arguing that the Dead Man's Act prevented Plaintiff from testifying to the cause of her fall. Trial court granted summary judgment and Appellate Court affirmed.

h. *Phifer v. Gingher*, 2017 IL App (3d) 160170: Automobile accident where Plaintiff claimed psychiatric and psychological injuries. Plaintiff's initial discovery disclosures indicated that her expert witnesses would testify regarding treatment she received for anxiety, lower professional confidence, panic attacks, and depression. Judge ordered production of Plaintiff's past mental health records. Plaintiff refused and was held in friendly contempt. Appellate Court held that Plaintiff had placed her mental health at issue and thus waived her privilege for mental health records.

i. *Nielson v. Swedishamerican Hospital*, 2017 IL App (2d) 160743: Medical malpractice case. Discovery dispute arose as to whether Defendants had to produce quality control reports prepared by nurses involved in surgery that was the basis for the action. Circuit Court ordered hospital to produce reports and hospital appealed. Appellate Court affirmed the trial court, finding that the reports were not privileged.

j. *Meeks v. Great America, LLC*, 2017 IL App (2d) 160655: Plaintiff was injured while riding a water slide at Defendant amusement park. Case proceeded to discovery and Defendant failed to disclose the identities of certain occurrence witnesses and to produce written incident reports that the witnesses were believed to have completed. As a sanction for failure to comply with discovery, trial court gave a modified pattern jury instruction on missing witnesses and evidence. Jury subsequently returned a verdict for Plaintiff. Appellate Court affirmed, finding that it was not an abuse of discretion to give the modified pattern jury instruction.

k. *Lindsey v. Butterfield Health Care II*, 2017 IL App (2d) 160042: Nursing home patient was injured as a result of fall she suffered while in nursing home. Suit was filed and the case proceeded to discovery. Plaintiff filed motion to compel production of investigation reports, which Court granted. Defendant failed to disclose reports and was held in contempt. Appellate Court held that the nursing home's investigation reports were not privileged under the Quality Assurance Act but that the failure to disclose the reports did not warrant a contempt finding.

II. LIMITATIONS

a. *Moon v. Rhode*, 2016 IL 119572: Wrongful death and survival action predicated on medical malpractice. The Supreme Court held that the discovery rule applied to both wrongful death and survival actions alleging medical malpractice, abrogating *Greenock v. Rush Presbyterian St Luke's Medical Center*, 65 Ill.App.3d 266, 382 N.E.2d 321. Specifically, the Court held that the effect of applying the discovery rule was to toll the limitations period until the Plaintiff knew or should have known of the wrongful cause of death. It went on to clarify that wrongfully caused does not mean knowledge of a specific Defendant's negligent conduct or knowledge of the existence of a cause of action, rather it refers to the point in time when the person becomes possessed of sufficient information concerning the injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved.

b. *Owens v. VHS Acquisition Subsidiary Number 3, Inc.*, 2017 IL App (1st) 161709: Plaintiff brought medical malpractice action against hospital and emergency room doctors that treated him. One of the Defendant doctors filed an affidavit indicating that he had never treated Plaintiff and that he was wrongly identified in Plaintiff's medical records. Plaintiff subsequently filed an amended complaint against the emergency room doctor that did treat him. That doctor filed a motion to dismiss on the basis that the action was time-barred. Trial court certified the question to the Appellate Court, which held that the rule governing mistake under the relationship back doctrine applied to the second doctor and that doctor had constructive notice.

c. *Doe v. Boy Scouts of America*, 2016 IL App (1st) 152406: The Plaintiffs were individuals that had been abused by a troop leader for Defendant. Defendant moved for summary judgment on the basis that the claim was time-barred. The trial court denied the motion for summary judgment and certified a question regarding whether the fraudulent concealment statute (735 ILCS 5/13-215) permits a Plaintiff to maintain an action when he testified that he knew before the action was time-barred that he had sustained a physical injury from the abuser's conduct and the abuser had been arrested and tried for similar crimes. The Appellate Court held that as a matter of law, the Plaintiff's knowledge that he had sustained an actual injury and the abuser had been arrested and tried for child sexual abuse was not sufficient to put him on notice that every other potential claim against every other potential party was time-barred. It further affirmed the denial of summary judgment.

d. *Doe v. Carlson*, 2016 IL App (1st) 160536: Former member of church youth group brought an action against the leader of the youth group alleging that the leader had sexually abused the member when she was a minor. Defendant filed a motion to dismiss, arguing that the claim was time-barred. Circuit Court granted the motion to dismiss. Appellate Court affirmed, finding that the knowledge of injury is presumed for limitations purposes when the victim is aware of the sexual abuse as it is occurring.

e. *Barnes v. Lolling*, 2017 IL App (3d) 150157: Plaintiff was involved in an automobile accident and brought suit against the driver who injured her. Prior to the accident, Plaintiff filed for bankruptcy and failed to disclose the personal injury claim as part of the bankruptcy proceedings. Circuit Court granted summary judgment to Defendants, and Appellate Court held that the Plaintiff lacked standing to bring the claim on her own behalf because the claim belonged to the bankruptcy estate. It further held that even if she did not lack standing, she was judicially estopped from asserting the claim.

III. TRIAL ISSUES

a. *Larkin v. George*, 2016 IL App (1st) 152209: Multi-car auto accident case that proceeded to jury trial. Evidence showed that the Defendant's vehicle struck a non-party vehicle which then struck Plaintiff's vehicle. The evidence further showed the Plaintiff did not complain of pain or discomfort at the time of the accident but went to an urgent care center the next day due to pain in his left ankle. Eventually, he had two surgeries to address the pain in his ankle. Judgment was entered on a jury verdict in favor of Defendant. The Appellate Court discussed whether defense counsel violated a motion *in limine* regarding the use of photographs. It determined that the jury verdict was not against the manifest weight of the evidence and affirmed the trial court.

b. *Eid v. Loyola University Medical Center*, 2017 IL App (1st) 143967: Parents of two-year-old child who died following surgery brought suit against Defendant alleging malpractice and reckless infliction of emotional distress. Following jury trial, judgment was entered on a jury verdict in favor of Defendant. Appellate Court discussed whether the Medical Studies Act applied, whether jury instructions were proper, and whether statements made during closing arguments were proper, before affirming the trial court.

c. *Kantner v. Waugh*, 2017 IL App (2d) 160848: Plaintiff filed medical malpractice action alleging claims of informed consent and negligence. Circuit Court granted physician's motion to dismiss informed consent claim. Patient voluntarily dismissed and then re-filed the negligence claim. Circuit Court found the doctrine of *res judicata* applied and granted Defendant's motion to dismiss. Appellate Court held that the agreement in terms exception applied and that Plaintiff's claim was not barred by *res judicata*. This was a very specific set of factual circumstances, see opinion for more detail.

d. *Bosman v. Riverside Health System*, 2016 IL App (1st) 150445: Estate brought action against long-term care facility in which decedent resided, alleging the decedent suffered multiple necrotic pressure ulcers while she lived there. Case proceeded to jury trial. During jury deliberations, the jury foreperson indicated the jury was deadlocked. Subsequent to an instruction by the trial judge to keep deliberating, the jury sent another note indicating that one juror was biased. The trial judge substituted an alternate juror for the biased juror and the jury subsequently rendered a verdict in favor of Defendant. The Appellate Court held that the judge should not have substituted the alternate after the jury was deadlocked and that this was prejudicial to Plaintiff, so it reversed the matter.

e. *Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107: Taxicab passenger was injured in a high-speed collision and suffered severe traumatic brain injuries. Passenger brought suit against driver and affiliation. Following jury trial, Court entered jury verdict in favor of Plaintiff. Appellate Court affirmed and discussed various evidentiary issues including apparent agency, jury instructions, special interrogatories, and whether certain testimony should have been permitted.

f. *Grinyov v. 303 Taxi, LLC*, 2017 IL App (1st) 160193: Pedestrian struck by taxi brought action against driver, owner, and dispatch company that was allegedly affiliated with the owner. Case proceeded to trial and jury returned a verdict against all three Defendants on agency theory. Court entered judgment on the verdict and denied the Defendants post-trial motion. Appellate Court affirmed and discussed whether the evidence showed that the owner of the taxi acted as an agent of the dispatch company.

IV. MISCELLANEOUS

a. *Kakos v. Butler*, 2016 IL 120377: Plaintiff filed medical negligence case. Defendants filed a motion requesting 12-person jury and seeking a declaration that the act limiting the size of civil juries to six was unconstitutional. Circuit Court found that the act was unconstitutional. Supreme Court affirmed, finding that the size of the jury was an essential element of the right of trial by jury enjoyed at the time the 1970 Illinois Constitution was drafted, thus it was protected by the Constitution. It further found that the provision of the act which raised the amount paid to each juror could not be severed from the remainder of the act.

b. *McChristian v. Brink*, 2016 IL App (1st) 152674: Patient filed medical malpractice action against podiatrist and a limited liability company the podiatrist belonged to. Patient's treating podiatrist was a managing member of the same limited liability company. Defense counsel made a motion for protective order to allow for ex parte communications between defense counsel and the treating podiatrist, which the trial court granted. The Appellate Court held that the rule prohibiting defense counsel from engaging in ex parte communications with third parties did not apply to the treating podiatrist because he was a managing member of the LLC but that under the unique circumstances the patient was entitled to depose the treating podiatrist and obtain his testimony solely on the nature and extent of the patient's injuries before defense counsel would be permitted to engage in communications.

c. *State Farm Fire and Casualty Company v. Watts Regulator Company*, 2016 IL App (2d) 160275: Insurance company brought products liability action as insured's subrogee against water supply line manufacturer. At issue was whether insurance company was required to arbitrate its claims. Manufacturer and insured signed an arbitration agreement, which was later amended to exclude all product liability claims from mandatory arbitration that were filed after January 1, 2015. Insurance company filed a claim on April 15, 2015. The trial court denied manufacturer's motion to compel arbitration. Appellate Court affirmed, finding that the filing date of the claim rather than the event date or date of loss determined whether the mandatory arbitration applied under the agreement.

d. *Barry v. St. Mary's Hospital Decatur*, 2016 IL App (4th) 150961: Patient was injured in an automobile accident and sought treatment at Defendant hospital. Rather than bill patient's health insurance, hospital asserted a lien against Plaintiff's recovery from the accident. Plaintiff argued that hospital was obligated to bill his health insurance prior to asserting a lien. Circuit Court dismissed the action. Appellate Court affirmed, finding that the agreement between the hospital and the insurance company did not require the hospital to bill Plaintiff's insurance company prior to seeking the lien against the Plaintiff's settlement proceeds and that the Plaintiff was not a third-party beneficiary of the agreement and thus did not have the right to enforce it.

e. *Waterhouse v. Robinson*, 2017 IL App (4th) 160433: Plaintiff was walking in a parking lot when he was struck by Defendant motorist. Plaintiff and Defendant both had State Farm Insurance. Defendant subsequently tendered the full policy limit of $50,000.00 and waived its subrogation interest with regard to its medical payments lien. Plaintiff then filed a Petition to Adjudicate Liens to dispose of a health insurance lien. After ajudicating the health insurance lien, the Circuit Court ruled that the common fund doctrine would not apply to reduce State Farm's medical payments lien on the underinsured motorist claim. The Appellate Court found that because there was no current recovery to which the common fund doctrine could apply the case did not present a justiciable controversy.

f. *Foster v. Hillsboro Area Hospital*, 2016 IL App (1st) 150055: Medical malpractice case where Defendant filed a motion to transfer based on the doctrine of intrastate *forum non conveniens*. Circuit Court denied the motion and Appellate Court affirmed. See decision for more discussion on the factors used.

g. *Morales v. Herrera*, 2016 IL App (2d) 153540: Workers who were employees of temporary employment agency were injured in an automobile accident on their way to a work site. They filed a personal injury action against employer that contracted with temp agency and its supervisor. Circuit Court granted summary judgment in favor of Defendants. Appellate Court affirmed, finding that the workers were borrowed employees and the injuries occurred within the scope of their employment, thus the exclusive remedy provision of the Worker's Compensation Act applied.