FOR MORE INFORMATION

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ILLINOIS

1. What are the legal considerations in your State governing the admissibility or preventability in utilizing the self-critical analysis privilege and how successful have those efforts been?

Illinois does not recognize a self-critical analysis privilege like some other jurisdictions. *See Harris v. One Hope United, Inc.,* 2015 IL 117200, 390 Ill.Dec. 151, 28 N.E.3d 804. Internal incident reports are often admissible under the "business record exception" to the hearsay rule or as an admission against a party interest, unless otherwise covered by privilege. For example, if a company creates an incident report every time one of its drivers occurs, the incident report would be admissible assuming the report is created in the ordinary course of business. However, depending on when contacting outside counsel or the insurance company, other privileges may apply. Once an attorney is involved, all statements are protected under the attorney-client privilege.

Evidence of post-accident remedial measures is not admissible to prove prior negligence. Several considerations support this general rule. First a strong public policy favors encouraging improvements to enhance public safety. *See Schaffner v. Chicago & North Western Transportation Co.,* (1989), 129 Ill.2d 1, 133 Ill.Dec. 432, 541 N.E.2d 643. Second, subsequent remedial measures are not considered sufficiently probative of prior negligence, because later carefulness may simply be an attempt to exercise the highest standard of care. Third, is a general concern that a jury may view such conduct as an admission of negligence. *Id., See also Herzog v. Lexington,* 167 Ill.2d 288, 212 Ill.Dec. 581, 657 N.E.2d 926 (1995).

Regarding admissibility at trial, many times if a company finds the accident to be preventable, plaintiff's counsel will try to illicit that testimony at trial as a sign of negligence. Any evidence of this should be excluded at trial. Even assuming the relevance of evidence demonstrating the violation of internal company policies, the Court should still exclude such evidence because its lack of probative value pursuant to Illinois law is far outweighed by a danger of unfair prejudice, confusion of the issues, and misleading the jury, and the presentation of such evidence will inevitably waste time and cause undue delay. Illinois Rules of Evidence Rule 403.

Next, it should be argued that a client's internal rules or findings are not admissible because they imposed a higher standard than that was otherwise set by law (negligence in most cases). Preventability determinations are made internally by a client. "The goal in making these determinations is to maximize safety and prevent future accidents. However, where a company's internal rules require a standard that exceeds the standard imposed by law, a violation of that internal rule cannot be considered as evidence of negligence in subsequent litigation." *Villalba v. Consolidated Freightways Corp. of Delaware,* 2000 U.S. Dist. LEXIS 11773, *18–19 (N.D. Ill. 2000). Finally, the violation of self-imposed rules or internal guidelines does not normally impose legal duty, let alone constitute evidence of negligence, or beyond that, willful and wanton conduct. *Blankenship v. Peoria Park District,* 269

Ill.App. 3d 416, 422-23, 2017 Ill.Dec. 325, 647 N.E.2d 287 (1995). *See also, Mack Industries, Ltd. v. Village of Dolton,* 2015 IL App (1st) 122745 at ¶ 41.

2. Does your State permit discovery of 3rd Party Litigation Funding files and, if so, what are the rules and regulations governing 3rd Party Litigation Funding?

Illinois state courts have not considered the discoverability of third-party litigation funding files, but there is a growing body of federal court decisions on the issue. As a general matter, courts across the country that have addressed the issue have held that litigation funding information is generally irrelevant to proving the claims and defenses in a case. *In re Valsartan N. Nitrosodimethylamine*, 19-2875, 2019 WL 4485702 at *3 (D.N.J. Sept. 18, 2019); *Benitez v. Lopez*, 17-CV-3827-SJ-SJB, 2019 WL 1578167, at *1 (E.D.N.Y. March 14, 2019); *Miller UK Ltd. v. Caterpillar, Inc.*, 17 F.Supp.3d 711, 742 (N.D. Ill. 2014); *Kaplan v. S.A.C. Capital Advisors, L.P.*, S.A.C., No. 12-CV-9350 (VM)(KNF), 2015 WL 5730101, at *5 (S.D.N.Y. Sept. 10, 2015), *aff'd,* 141 F. Supp. 3d 246 (S.D.N.Y. 2015); *Space Data Corp. v. Google LLC*, Case No. 16-cv-03260 BLF, 2018 WL 3054797, at *1 (N.D. Cal. June 11, 2018); *MLC Intellectual Property LLC v. Micron Technology, Inc.*, Case No. 14-cv-3657-SI, 2019 WL 118595, at *2 (N.D. Cal. Jan. 7, 2019); *Yousefi v. Delta Electric Motors, Inc.*, No. 13-CV-1632 RSL, 2015 WL 11217257, at *2 (W.D. Wash. May 11, 2015).

One of the most significant issues with obtaining such correspondence is to determine the exchanges between counsel and the funding company regarding the merits of the case. Another way to put it is that it would be supremely helpful for litigants to see how their opponents discuss the strengths and weaknesses of their cases. This seems to be the area where courts draw the line.

Courts that have examined this issue have generally held that litigation funding documents are protected by the work product doctrine. *See e.g. Viamedia, Inc. v. Comcast Corp.*, No. 16-cv-5486, 2017 WL 2834535, at *1 (Jun. 30, 2017); *In re Int'l Oil Trading Co., LLC*, 548 B.R. 825, 835–39 (Bankr. S.D. Fla. 2016); *Doe v. Society of Missionaries,* No. 11-cv-02158, 2014 WL 1715376 at *4 (N.D. Ill. May 1, 2014); *United States v. Homeward Residential, Inc.*, CASE NO. 4:12-CV-461, 2016 WL 1031154, at *6 (E.D. Tex. Mar. 15, 2016); *United States v. Ocwen Loan Serv., LLC*, 4:12-CV-543, 2016 WL 1031157, at *6 (E.D. Tex. Mar. 15, 2016); *Mondis Tech., Ltd. v. LG Elecs., Inc.*, Civil Action Nos. 2:07–CV–565–TJW–CE, 2:08–CV–478–TJW, 2011 WL 1714304, at *3 (E.D. Tex. May 4, 2011).

This is true even when mental impressions are shared with a third-party because the privilege is only waived when that disclosure substantially increases the opportunities for potential adversaries to obtain that information. *Doe,* 2014 WL 1715376, at *4. When counsel submits materials to secure funding for a litigation matter, that production does not substantially increase the chance that opposing counsel would obtain the information.

Another consideration courts have made is that if litigation funding companies are required turn over documents to an inquiring opposing counsel, it will impact the company's ability to do business and attract future customers. Litigation funding communications are designed to be confidential. Otherwise, no counsel would ever memorialize on paper the relative merits and the chances of success of a piece of litigation and apply for litigation funding. *Miller UK Ltd. v. Caterpillar, Inc.*, 17 F.Supp.3d 711, 738 (N.D. Ill. 2014). Similarly, if litigation funding companies did not maintain confidentiality of documents provided by attorneys about their evaluation of the case, these companies would run out of clients fairly quickly. *Doe*, 2014 WL 1715376, at *4.

3. Who travels in your State with respect to a Rule 30(b)(6) witness deposition; the witness or the attorney and why?

Prior to the experience of a global pandemic, it was frequently the case that Rule 30(b)(6) depositions proceeded at the location chosen by the deposing party – often the venue where litigation was pending. In

other words, the deponent is the one traveling. However, save for a few months in 2020, litigants far and wide have made the relatively seamless transition to conducting all depositions remotely. It seems this option will be one of many changes the coronavirus leaves on the civil litigation community. From this perspective, it seems exorbitantly wasteful to imagine traveling for a single deposition in the future given its enormous inefficiencies. There is of course great value in deposing someone in person, so a blanket option of allowing *all* depositions to proceed remotely into perpetuity will be unlikely. The advantages of keeping a 30(b)(6) witness away from a skilled questioner may not be absolute. But, it may change the calculation about who travels for the deposition. The taker may no longer be permitted to choose the location, but then could be permitted to choose the method. In other words, the taker will the one traveling. These disputes will no doubt rage long after the coronavirus subsides.

4. What are the benefits or detriments in your State by admitting a driver was in the "course and scope" of employment for direct negligence claims?

Under Illinois law, "once an employer admits responsibility under *respondeat superior,* a plaintiff may not proceed against the employer on a theory of negligent hiring, negligent retention[,] or negligent entrustment." *Gant v. L.U. Transport, Inc.,* 331 Ill.App. 3d 924 (2002).; *See also, Ledesma v. Cannonball, Inc.,* 538 N.E.2d 655 (Ill. App. Ct. 1989), and *Neff v. Davenport Packing Co.,* 268 N.E.2d 574 (Ill. App. Ct. 1971)).

Following these cases and most other jurisdiction around the country, it has been generally understood and agreed upon that all theories of "derivative liability" fall into the principles from *Neff* and its progeny. Though the subject has not been without ambiguity since not *all* theories of derivative liability are explicitly stated in those cases which are: negligent training and negligent supervision. Plaintiffs will commonly plead such causes of action for the purposes of significantly expanding the scope of discovery.

However, when it comes to trial, once agency is admitted, no allegations can be submitted to the jury that the defendant's employer is independently negligent under any of the theories of "derivative liability." (i.e., negligent entrustment, negligent training, negligent hiring, negligent supervision). See *McQueen v. Green,* 2020 IL App (1st) 190202 (currently being appealed to the Illinois Supreme Court).

On the other hand, admission of agency does not insulate a defendant from the imposition of punitive damages. Defendants may not simply admit agency to end inquiries into other areas of derivative liability. Simply put, there is no duplication of allegations if the defendant employer is being pursued for willful and wanton conduct, yet its agent for only negligence. *See Neuhengen v. Global Experience Specialists, Inc.* 2018 IL App (1st) 160322. Admitting agency does not help a defendant, so the effort can be strategic, but it is no guarantee to minimize damages. Of course, a plaintiff must present sufficient evidence to the trial court which in turn decides whether a jury should be permitted to consider the imposition of punitive damages. 735 ILCS 5/2-604.1 (no complaint shall be filed containing a prayer for relief seeking punitive damages).

5. Please describe any noteworthy nuclear verdicts in your State?

There were relatively few trials held in 2020 given the circumstances with the coronavirus. However, in looking backward, May of 2019, a federal jury awarded $18.6 million ($4,500,000 loss of society; $4,500,000 grief and sorrow; $4,800,000 survival pain & suffering; $4,800,000 emotional distress experienced by the decedent) to the wife of a Canadian truck driver who died after a collision with a tractor trailer in LaSalle County. A brief review of the facts can be found below; however, this verdict is particularly noteworthy because the case was tried in federal court, which is typically a more conservative venue than Cook County, and, despite the price tag, did not include punitive damages. Further, while the defendant truck driver was an independent contractor, Judge Guzman of the Northern District of Illinois rendered the verdict against the freight broker due to its level of control.

Defendant truck driver was driving a tractor-trailer eastbound on Interstate 80 in LaSalle County before dawn on August 10, 2014, when he dozed off and crossed over the median into the oncoming westbound lanes near mile marker 95. After waking up, defendant driver continued driving the wrong way in the westbound lanes for another quarter mile before attempting a U-turn, blocking all westbound lanes. Decedent, also operating a tractor-trailer and traveling westbound, then approached the scene at 65 mph but was unable to see the perpendicular truck in the dark until he was just seconds away. Despite braking, Decedent was unable to avoid crashing into the side of the tractor-trailer. The force of the impact caused 54-year-old Decedent to be pinned in his truck cab with the steering wheel compressed against his chest, leaving him unable to expand his chest and obtain full breaths. He also sustained numerous displaced fractures (arms, legs, ribs) and internal injuries. Due to breathing difficulties caused by his crushed chest, he suffered suffocation, respiratory arrest, and cardiac arrest, leading to his death 48 minutes after the crash while still trapped inside his vehicle. He was survived by his wife and two daughters. At trial, plaintiff argued, and the jury apparently agreed, that freight broker was responsible for defendant driver's conduct because of the level of control the broker had over his work.

6. What are the current legal considerations in terms of obtaining discovery of the amounts actually billed or paid?

Obtaining information as to the amount of medical bills actually billed or paid is not the hurdle; although, that is not to say such requests do not go without objection. The real issue will be at trial. During discovery, it is important to draft specific interrogatories to secure the information sought. For example, when asking for total amount of medical bills, also include multiple sub-parts:

a. The total amount of each bill which was paid and the name and address of the individual or entity which made the payment.
b. The total amount of the bill which was written off or otherwise forgiven by each medical care provider.
c. Whether each medical care provider has accepted the payment made by any insurance company or fund for services rendered.

Most plaintiffs fail to answer each subpart as to amounts paid or written off and simply answer the total amounts without more and then refer defendant to the medical records. Neither is responsive and neither is appropriate in state or federal court. *See Singer v. Treat*, 495 N.E. 2d 1264, 1268 (Ill. App. 1986), and *In re Sulfuric Acid Antitrust Litig*., 231 F.R.D. 351, 363 (N.D. Ill. 2005) (*citing Rothman v. Emory Univ*., 123 F.3d 446, 455 (7th Cir. 1997).

Other times plaintiffs object to such requests for information claiming it is inadmissible, irrelevant, or violates the collateral source rule. First, only those bills which have been paid are presumptively admissible, so knowing what has or has not been paid is relevant and discoverable. *Klesowitch v. Smith*, 2016 IL App (1st) 150414. Moreover, under Illinois law, the portion of any judgment plaintiff receives for her alleged injuries must be reduced by the amount of said judgment, in excess of $25,000.00, that is awarded for medical charges that have been paid or have become payable by any insurance company or other fund, except that said reduction is limited by the amount of those charges to which plaintiff's health insurance carrier retains a right of recoupment. 735 ILCS 5/2-1205.1; *Perkey v. Portes-Jarol*, 2013 IL App (2d) 120470, ¶120, 1 N.E.3d 5, 27. However, in a more recent decision from the 4th District Appellate Court, the Perkey analysis was rejected and the Court held that no setoff is allowed even where the bills have been written off and Plaintiff does not have to pay the written off amounts. *Miller v. Sarah Bush Lincoln Health Ctr*., 2016 IL App (4th) 150728. Whether our liberal Supreme Court will allow this interpretation to prevail, especially since it contradicts Wills and Miller, remains to be seen, but I am not optimistic.

Second, collateral source is an evidentiary objection made at trial and is not a valid objection during the course of discovery that abides by the much broader relevancy standard. Citing the relevant case law and statues during discussions with plaintiff's counsel should secure the information, and if not, it is advisable to bring a motion to compel.

7. How successful have efforts been to obtain the amounts actually charged and accepted by a healthcare provider for certain procedures outside of a personal injury? (e.g. insurance contracts with major providers)

Best practices demand an early review of medical records *and bills*. We have been successful in bringing motions to compel, and in some instances serving a request to admit facts. If the totals are astronomical, retain a billing expert; however, our results have not been good, as the amounts found to be unreasonable are generally small in relation to the total bills and generally set a high floor

8. What legal considerations does your State have in determining which jurisdiction applies when an employee is injured in your State?

In Illinois workers' compensation claims, only individuals defined as employees are covered under the Act. The jurisdictional definition is found in Section 1 of the Illinois Workers' Compensation Act. Section 1, in pertinent part, defines employees as:

Every person in the service of another under any contract of hire, express or implied, oral or written, including persons whose employment is outside of the State of Illinois where the contract of hire is made within the State of Illinois, persons whose employment results in fatal or non-fatal injuries within the State of Illinois where the contract of hire is made outside of the State of Illinois, and persons whose employment is principally localized within the State of Illinois, regardless of the place of the accident or the place where the contract of hire was made.

Moreover, the statute goes on to state the following: "An employee…may elect to pursue his remedy in the State where injured or disabled, or in the State where the contract of hire is made, or in the State where the employment is principally localized." 820 ILCS 305 §1(b)(3) (2006)

Based on the plain language of the statute conferring jurisdiction under three scenarios – (1) Contract for hire taking place in Illinois; (2) Accident taking place in Illinois; and (3) Employment principally located in Illinois – an employee injured in Illinois may seek redress under the Illinois Workers Compensation Act.

9. What is your State's current position and standard in regards to taking pre-suit depositions?

Absent leave of court, Illinois courts generally do not allow discovery procedures, including depositions, to commence prior to the time all defendants have appeared or are required to appear. Ill. S. Ct. R. 201(d). However, two limited exceptions to this general rule may apply.

First, a plaintiff may file a verified petition for pre-suit discovery where an injury has been sustained, but the identity of potentially responsible parties is unknown. Under Illinois Supreme Court Rule 224, such an action is limited to ascertaining the identity of those potentially responsible for damages and cannot be employed to "delve into any actual details of wrongdoing." *Beale v. EdgeMark Financial Corp*., 279 Ill. App.3d 242, 252-53 (1st Dist. 1996). Thus, a Rule 224 petition cannot be used to engage in pre-suit discovery procedures. *Gaynor v. Burlington Northern and Santa Fe Ry.*, 322 Ill.App.3d 288 (5th Dist. 2001).

Second, a plaintiff may utilize the respondents-in-discovery statute to obtain information from non-parties with information critical to a pending lawsuit. See 735 ILCS 5/2-204. Under the statute, a plaintiff may designate as respondents in discovery individuals or entities (other than named defendants) believed to have information essential to the determination of who should properly be named as additional defendants. A respondent in discovery must be served with the complaint and a summons. A respondent in discovery is

required to respond to discovery in the same manner as a defendant, and may be added as a defendant if the evidence discloses the existence of probable cause or upon motion of the respondent in discovery to be made a defendant. A respondent in discovery may be made a defendant at any time within six months of being named a respondent in discovery, even though the statute of limitations may have expired during that six-month period. Illinois courts generally take a limited view of pre-suit discovery efforts.

10. Does your State have any legal considerations regarding how long a vehicle/tractor-trailer must be held prior to release?

Generally, Illinois courts do not impose a period that a vehicle, tractor-trailer or other equipment must be held or impose a duty to preserve such evidence. *Martin v. Kelley & Sons, Inc*., 2012 IL 113270. However, a requirement to preserve evidence may be imposed upon a showing that both (1) an agreement, statute, special circumstance or voluntary undertaking created a duty to preserve the evidence and (2) "a reasonable person in the defendant's position should have foreseen that the evidence was material to a potential civil action." *Boyd v. Travelers Insurance Co*., 166 Ill.2d 188, 195 (1995).

While Illinois courts do not recognize an independent tort for spoliation of evidence where it is not preserved, a claim for negligent spoliation may nonetheless be maintained under existing negligence principles. *Boyd*, 116 Ill.2d at 192-93. Negligent spoliation of evidence requires proof of (1) the existence of a duty to preserve evidence owed to the plaintiff by the defendant (2) which was breached by the defendant (3) that was the proximate cause of (4) plaintiff's damages. *Martin*, 2012 IL 113270, ¶ 26.

The First District Appellate Court in *Brobbey v. Enterprise Leasing Company of Chicago*, 404Ill. App. 3d 420 (1st Dist. 2010), held that a party in possession of pertinent evidence, in that case a van involved in a vehicle rollover, could be sued for spoliating evidence even though it had sent a letter to the family of the injured party advising that the van would be destroyed if not inspected. The Court found that there is no Illinois authority for the proposition that a party can waive a spoliation defense by failing to respond to an invitation to inspect a vehicle. The duty is imposed, by operation of law, if there is a duty arising from an agreement, a contract, a statute, or another special circumstance. Moreover, a duty may be voluntarily assumed. If one of those conditions exists and if a reasonable person in defendant's position would have foreseen that the evidence was material to a potential civil action, an action lies. The Court further found that because the vehicle owner knew there was a potential issue with the van, there was a special circumstance which required the preservation of the van.

In *Burlington Northern & Santa Fe Ry. Co. v. ABC-NACO*, 389 Ill. App. 3d 691 (1st Dist. 2009), the Court found that after the Plaintiff's representatives inspected the rail car and failed to ask that it be further preserved, there was no duty, under the circumstances of that case, for it to be further preserved.

In 2012, the Illinois Supreme Court again stressed that there is a two pronged analysis in determining whether a spoliation action lies under the facts of a case. Something more than possession and control of the evidence are required, such as a request by the plaintiff to preserve the evidence and/or the defendant's segregation of the evidence for the plaintiff's benefit. Martin v. Keeley and Sons, Inc., 2012 IL 113270. Merely having inspected the evidence before destroying it does not give rise to a duty to preserve the evidence.

What constitutes a "special circumstance" is unclear. A direct request to preserve evidence will trigger the duty. In *Combs v. Schmidt*, 2012 IL App (2d) 110517, the Court found that a Plaintiff's complaints that an electrical system caused the fire was the "functional" equivalent of a request to preserve evidence.

Courts have broader powers when it comes to imposing sanctions for failure to preserve evidence even where a cause of action would not have arisen from the conduct of the spoliating party. In *Jacobeit v. Rich Twnshp High School Dist.* 227, 2011 U.S. Dist. LEXIS 56222 (No. Dist. Ill 2011), the Federal Court explained that

Courts have the inherent power to impose sanctions for abuses of the judicial system, including the failure to preserve documents. *Chambers v. NASCO*, Inc., 501 U.S. 32, 43, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991); Barnhill v. U.S., 11 F.3d 1360, 1367 (7th Cir. 1993); *Danis v. USN Communications, Inc*., No. 98 C 7482, 2000 U.S. Dist. LEXIS 16900, 2000 WL 1694325, at *30 (N.D. Ill. Oct. 23, 2000). The Courts distinguish between actions for spoliation of evidence and a sanction against a potential litigant for failing to preserve evidence. *Martin v. Keeley and Sons, Inc.*, 2012 IL 113270; *Adams v. Bath & Body Works*, 358 Ill. App. 3d 387 (1st Dist. 2005).

As a best practice, the carrier should take the equipment out of service and not make any repairs or remove any parts on the equipment until cleared through counsel or an internal safety representative. If notice of suit or attorney lien is provided by a potential claimant, the equipment should remain out of service and in a secure, protected location. The claimant may be entitled to a reasonable opportunity to inspect the equipment before it is placed into service. Such measures will mitigate the risk of a spoliation claim with respect to the equipment.

11. What is your state's current standard to prove punitive or exemplary damages and is there any cap on same?

In Illinois, punitive damages may be awarded "when torts are committed with fraud, actual malice, deliberate violence or oppression, or when the defendant acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others." *Kelsay v. Motorola, Inc*., 74 Ill.2d 172, 186 (1978). Punitive damages are often compared to criminal sanctions and are intended to punish and deter the defendant's conduct as an expression of moral condemnation. *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 432 (2001) (finding assessment of punitive damages to be a "fact-sensitive" undertaking). Illinois courts look to the specific facts involved in each case to assess the relevant circumstances, including the nature and enormity of the wrong, the financial status of the defendant, and the potential liability of the defendant. *Deal v. Byford*, 127 Ill.2d 192, 204 (1989). The amount of punitive damages awarded should be a reflection of the degree of maliciousness shown by the defendant's conduct. *Id*.

Illinois courts follow a number of steps in determining whether punitive damages are appropriate. *See Franz v. Calaco Development Corp.*, 352 Ill.App.3d 1129 (2d Dist. 2004). First, the court must determine whether punitive damages are available as a matter of law. Second, in a bench trial, the court must determine whether the facts prove willfulness or other aggravating factors. In a jury trial, the court will submit the issue of punitive damages to the jury after making a determination that the evidence will support an award as a matter of law. Third, the court determines whether punitive damages should be awarded. Alternatively, in a jury trial, the jury must find as a matter of fact that the defendant acted willfully or maliciously. Finally, the court (in a bench trial) or the jury computes the punitive damages award, which will not be reversed by an appellate court unless it is so excessive as to indicate that passion, partiality, or corruption influenced the amount of the punitive damages award. *Levy v. Markal Sales Corp.,* 268 Ill.App.3d 355, 379-80 (1st Dist. 1994); *E.J. McKernan Co. v. Gregory*, 252 Ill.App.3d 514, 536 (2d Dist. 1993). Where the jury computes the punitive damages award, the trial court has discretion to determine that the award is excessive, in which case the court may enter a remittitur or order a conditional new trial. *See* 735 ILCS 5/2-1207. Generally, the enormity of the defendant's wrong and the wealth of the defendant are critical factors to be considered in reviewing a punitive damages award. *Deal*, 127 Ill.2d at 204.

There is no statutory cap on punitive damages in Illinois law. The United States Supreme Court has stated that "few awards [of punitive damages] exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 123 S.Ct 1513, 1524 (2003). The Seventh Circuit, in applying Illinois law, has held that "there is a presumption against an award that has a 145-to-1 ratio" and that a punitive damages award in excess of such a ratio is

presumptively prohibited. *Mathias v. Accor Economy Lodging, Inc.*, 347 F.3d 672, 676 (7th Cir. 2003). However, the Seventh Circuit has found that a roughly 37-to-1 ratio of punitive to compensatory damages was not unconstitutional where properly supported by the evidence. *Id.* But see *Doe v. Parrillo*, 2020 IL App (1st) 191286 (reducing punitive damages to 1-to-1 ratio); *Flynn v. Maschmeyer*, 2020 IL App (1st) 190784 (approving 3-to-1 ratio); *Neuhengen v. Global Experience Specialists, Inc.*, 2018 IL App (1st) 160322 (approving $3 million in punitive damages on $12 million in compensatory damages based upon willful and wanton conduct of employer in hiring, retaining and entrusting a vehicle to an unfit employee).

The Illinois Supreme Court has held that a punitive damages award of $325,000 based upon $4,680 in compensatory damages (a ratio of roughly 75 to 1) was unconstitutionally excessive in light of the conduct. *Int'l Union of Operating Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill.2d 456, 490 (2006). In that case, a contractor proved a cause of action for trade libel based upon false statements on union picketing placards. In reducing the punitive damages award to $50,000 (a ratio of approximately 11 to 1) as reasonable and constitutional, the Illinois Supreme Court looked principally to the deterrent purpose of punitive damages. While Illinois courts have placed some limitations on the amount of punitive damages, the constitutionality and reasonableness of any punitive damages award will always be analyzed in light of the defendant's conduct.

12. Has your state mandated Zoom trials? If so, what have the results been and have there been any appeals.

Illinois courts have not mandated Zoom trials. The Illinois Supreme Court has allowed the circuit courts to determine whether it is appropriate and feasible to engage in Zoom trials under the particular circumstances of each jurisdiction. On October 27, 2020, the Illinois Supreme Court issued Order M.R. 30370 to expand Supreme Court Rules 45 and 241 to allow remote jury selection for trials in civil cases upon consent of all parties or after a finding by the court that the case presents a compelling circumstance to proceed absent party consent.

13. Has your state had any noteworthy verdicts premised on punitive damages? If so, what kind of evidence has been used to establish the need for punitive damages? Finally, are any such verdicts currently up on appeal?

In late 2019, a Cook County, Illinois trial court reported a $54 million verdict in a trucking accident personal injury case, consisting of $19 million in compensatory damages and $35 million in punitive damages. The verdict appears to be the highest ever reported total verdict in an automobile personal injury case in Illinois. The verdict included a negligent hiring and retention claim against the corporate employer based upon the employee-driver's driving record (i.e., 9 traffic-related offenses in 7 years prior to hiring) and a prior felony conviction in a road rage incident. The jury apportioned 60 percent of the fault for the accident, which occurred when highway traffic slowed quickly due to a wrong-way driver, to the corporate employer's negligent hiring and retention. The case is *Denton v. Universal Am-Cam Ltd.,* 2019 IL App (1st) 181525, aff'g Cook Co. Cir. Ct. case no. 2015-L-1727 (affirming $35 million punitive damages award).