LEGISLATIVE UPDATE:
THE IMPACT OF A SIX-PERSON JURY

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The cases and materials presented here are in summary and outline form. To be certain of their applicability and use for specific claims, we recommend the entire opinions and statutes be read and counsel consulted.
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I. THE STATUTE

Public Act 098-1132, signed into law December 19, 2014, amends 735 ILCS 5/2-1105 of the Illinois Code of Civil Procedure pertaining to jury demands, reducing the number of jurors in all civil cases from twelve to six. The amendment takes effect on June 1, 2015.

The current version of 735 ILCS 5/2-1105(b) states:

All jury cases where the claim for damages is $50,000 or less shall be tried by a jury of 6, unless either party demands a jury of 12. If a fee in connection with a jury demand is required by statute or rule of court, the fee for a jury of 6 shall be ½ the fee for a jury of 12. A party demanding a jury of 12 after another party has paid the applicable fee for a jury of 6 shall pay the remaining ½ of the fee applicable to a jury of 12.

The amended version of 735 ILCS 5/2-1105(b) effective June 1, 2015, states:

All jury cases shall be tried by a jury of 6. If alternate jurors are requested, an additional fee established by the county shall be charged for each alternate juror requested. For all cases filed prior to the effective date of this amendatory Act of the 98th General Assembly, if a party has paid for a jury of 12, that party may demand a jury of 12 upon proof of payment.

If a party wants an alternate juror, that party will have to pay the fee. The amendment is silent as to when a party must request alternate jurors, when the fee needs to be paid, and how many alternate jurors may be requested. However, under the section of the Illinois Civil Code of Procedure pertaining to preemptory challenges and alternate jurors, which was not amended, the court may direct that one or two jurors in addition to the regular panel be impaneled to serve as alternates. See 735 ILCS 5/2-1106.

II. WHO PAYS?

For cases filed prior to June 1, 2015, defendants could end up with a jury of six in cases where the plaintiff had originally demanded a jury and paid the fee for 12 jurors, but changes his or her mind. Both the current and amended version of 735 ILCS 5/2-1105(a) state that if the plaintiff files a jury demand and thereafter waives a jury, a defendant shall be granted a jury trial upon demand made promptly after being advised of the waiver and payment of proper fees. Defendants have in the past relied on that provision. Under the amended version of 735 ILCS 5/2-1105(b), however, the plaintiff could argue that only the plaintiff is entitled to demand a jury
of 12 after June 1 since it was the plaintiff who paid the jury fee. The amendment specifically states that “if a party has paid for a jury of 12, that party may demand a jury of 12.”

III. IDC VIEWPOINT

Before the Senate voted on the bill pertaining to the reduction of jurors, which was an initiative of the Illinois Trial Lawyers Association, the Illinois Association of Defense Trial Counsel (IDC) wrote a letter to the Senate in strong opposition to the bill. In the letter, the IDC wrote that reducing the number of jurors in civil cases would substantially harm the civil justice system, and any cost savings would be outstripped by increased costs associated with less predictable judgments (caused by fundamentally changing jury deliberations through the loss of juries that accurately reflect the community).

The IDC further wrote that juries with half as many members are substantially inferior to the current jury system for three specific and common sense reasons. First, juries of six members do not have the ability to recall the evidence heard at trial as well as a jury of 12. This failure of recall will substantially affect the result of a trial without the parties even being aware of it. Second, reducing the number of jurors creates a greater chance that one person will dominate the deliberations and that the verdict will not accurately reflect the will of the whole jury. Third, a group of only six jurors increases the possibility that the jury pool will not accurately reflect the diversity of community in which the trial is held.

The position of the IDC is supported by research. Research has been performed for many years to investigate whether there is a difference between six and 12-member juries. This research was performed following the Supreme Court’s decision that Florida’s use of a six-member jury in criminal cases does not violate a defendant’s Sixth Amendment right to a jury trial. See Williams v. Florida, 399 U.S. 78 (1970). In a 1997 meta-analysis, Michael Saks, PhD, MSL, and Mollie Marti, PhD, JD, identified several key findings from the studies. Smaller juries are more likely to contain no members of minority groups. Twelve-member juries spend more time in deliberation. Twelve-member juries deadlock somewhat more often. On the strength of at least two studies, 12-member juries accurately recall more trial testimony. Significantly, the research did not show that there is difference in verdicts (guilty versus not guilty) when there is a reduction in jury size.

IV. CONSTITUTIONAL QUESTIONS

There is a question of whether the jury size change is constitutional in Illinois. The right to “Trial by Jury” is contained in Article I, Section 13 of the Bill of Rights to the 1970 Constitution of the State of Illinois, which provides the “right of trial by jury as heretofore enjoyed shall remain inviolate.” The question is whether the right “as heretofore enjoyed” includes the right to a 12-person jury in civil cases.
The Illinois Supreme Court has interpreted the provision that the “right of trial by jury as heretofore enjoyed, shall remain inviolate” to mean that the right of trial by jury was as it existed at common law and as enjoyed at the adoption of the respective constitutions. *Reese v. Laymon*, 2 Ill. 2d 614, 618, 119 N.E.2d 271, 273 (1954). The Illinois Supreme Court stated in 1976 that the right to trial by jury is guaranteed by the 1970 Illinois Constitution, and that the Court has long determined that a jury is comprised of 12 members. *Hartgraves v. Don Cartage Co.*, 63 Ill. 2d 425, 427, 348 N.E.2d 457, 458 (1976). Thus, the question remains an open one which will likely have to be decided by the Court.
Cheri A. Stuart  
- Partner

Cheri practices in the areas of medical malpractice litigation, hospital liability defense, and long term care facility defense. The scope of her practice also includes representation of health care professionals in proceedings before the Illinois Department of Financial and Professional Regulation. Cheri has extensive trial experience, including recently obtaining a defense verdict in a $5 million medical malpractice wrongful death claim.

Prior to becoming a lawyer, Cheri served as a registered nurse in a hospital setting that included working in the operating room and a psychiatric unit. She also worked as a nurse case manager for health insurance companies, which involved coordinating the care of patients with catastrophic illnesses and injuries. During law school, Cheri worked as a nurse-paralegal. Her 15 years of experience as a nurse enables her to bring a unique and beneficial perspective to a variety of healthcare issues.

Cheri joined the firm’s Urbana office in 2009 and became a partner in 2015. Prior to joining Heyl Royster, Cheri practiced for six years in Chicago and central Illinois representing hospitals, nurses and physicians.

Public Speaking
- “Making or Breaking Your Lawsuit”  
  Rush North Shore Medical Center (2007)
- “How to Avoid Litigation When Communicating With Patients and Documenting”  
  Christie Clinic (2009)

Professional Associations
- Illinois State Bar Association
- Champaign County Bar Association
- Illinois Society Healthcare Risk Management (ISHRM) - (Vice President)

Court Admissions
- State Courts of Illinois
- United States District Court, Northern District of Illinois

Education
- Juris Doctor (with honors), Chicago-Kent College of Law, 2003
- Bachelor of Science – Health Arts, College of St. Francis, 1996
- Diploma in Nursing, Lakeview School of Nursing, 1985

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