



25th Annual Claims Handling Seminars

FIGHTING THE STRATEGIC BATTLE TO WIN THE WAR

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# WHAT'S ON THE HORIZON? CASES PENDING IN THE ILLINOIS SUPREME COURT

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**WHAT'S ON THE HORIZON?  
CASES PENDING IN THE ILLINOIS SUPREME COURT**

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**WHAT'S ON THE HORIZON?  
CASES PENDING IN THE ILLINOIS SUPREME COURT**

**Petitions for Leave to Appeal Allowed  
by the Illinois Supreme Court  
at the March 2010 Term**

***Ries v. City of Chicago***

***S. Ct. Docket No.:*** 109541

***Appellate Citation:*** 396 Ill. App. 3d 418, 919 N.E.2d 465, 335 Ill. Dec. 746 (1st Dist. 2009)

***Topic:*** Immunity

***Issue Presented:***

Whether the trial court properly denied the defendant-city's motion seeking judgment notwithstanding the jury's \$4.2 million verdict in an action by the plaintiffs for personal injuries incurred when a squad car that had been stolen by a third party collided with the plaintiffs' vehicle during a car chase, under circumstances where the police had previously placed the unrestrained third party in the back seat of the car with the keys still in the car while the police were investigating the accident involving the third party.

***Appellate Court Decision:***

The Appellate Court reversed the judgment of the trial court, finding that the city was entitled to immunity under section 2-109 of the Tort Immunity Act where the trial court had previously found that the officer who placed the third party in the squad car was entitled to immunity under section 4-107 of the Tort Immunity Act. The Appellate Court also found that the city was immune under section 4-106(b) of the Tort Immunity Act for conduct of the officers who had pursued the third party during the car chase and that the willful and wanton conduct exception contained in section 2-202 of the Tort Immunity Act did not apply.

***Kaufmann v. Jersey Community Hospital***

***S. Ct. Docket No.:*** 109738

***Appellate Citation:*** 396 Ill. App. 3d 729, 919 N.E.2d 1077, 336 Ill. Dec. 152 (4th Dist. 2009)

***Topic:*** Statute of Limitations

***Issue Presented:***

Whether the trial court properly dismissed plaintiff's claims of negligent hiring, negligent supervision, and negligent infliction of emotional distress arising out of allegations that the doctor employed by the defendant-municipal hospital committed unwanted sex on the plaintiff where the dismissal was based on the expiration of the one-year statute of limitations period found in section 8-101(a) of the Tort Immunity Act.

***Appellate Court Decision:***

The Appellate Court affirmed the dismissal, finding that section 8-101(a) of the Tort Immunity Act applied since the doctor's actions were unrelated to providing patient care and the patient's injuries otherwise did not result from her patient care. The plaintiff had argued that the applicable limitations period should have been the two-year period found in section 8-101(b) of the Tort Immunity Act. One justice dissented.

**Petitions for Leave to Appeal Allowed  
by the Illinois Supreme Court  
at the January 2010 Term**

***Cookson v. Price***

***S. Ct. Docket No.:*** 109321

***Appellate Citation:*** 393 Ill. App. 3d 549, 914 N.E.2d 229, 333 Ill. Dec. 22 (3d Dist. 2009)

***Topic:*** Medical Malpractice

***Issue Presented:***

Whether the trial court properly dismissed plaintiff's medical malpractice claim for failure to provide a sufficient physician's report as required under 735 ILCS 5/2-622 where the plaintiff attempted to amend an insufficient report with a second report authored by a different medical professional.

***Appellate Court Decision:***

The Appellate Court reversed the trial court and found that the plaintiff could amend the initial report, ruling that there was no statutory bar to substituting a report by a new author. The trial court had ruled that the plaintiff was not seeking to amend a consultation report but was seeking to substitute a wholly new report which was not timely since it had been tendered after the 90-day extension of time which had previously been granted to the plaintiff under section 2-622.

***Carr v. Gateway, Inc.***

***S. Ct. Docket No.:*** 109485

***Appellate Citation:*** 395 Ill. App. 3d 1079, 918 N.E.2d 598, 335 Ill. Dec. 253 (5th Dist. 2009)

***Topic:*** Arbitration

***Issue Presented:***

Whether the trial court properly denied the defendant's motion to compel arbitration of the claims contained in the plaintiff's class action based on language in computer purchase agreements waiving the right to litigate disputes in court and agreeing to resolve disputes through binding arbitration.

***Appellate Court Decision:***

The Appellate Court found that the enforcement of the arbitration clause was precluded where: (1) the language of the agreement called for arbitration to be conducted in a specific arbitration forum which was no longer in existence; and (2) the identification of the specific forum formed an integral part of the agreement.

**Petitions for Leave to Appeal Allowed  
by the Illinois Supreme Court  
at the November 2009 Term**

***State Building Venture v. O'Donnell***

***S. Ct. Docket No.:*** 108673

***Appellate Citation:*** 391 Ill. App. 3d 554, 909 N.E.2d 894, 330 Ill. Dec. 872 (1st Dist. 2009)

***Topic:*** Sovereign immunity

***Issue Presented:***

Whether the trial court properly granted the plaintiff-leaseholder's motion for judgment on the pleadings seeking a declaration that the Director of Central Management Services (CMS) had no discretion under 20 ILCS 405/405-315(a)(5) to terminate an existing leased space in the Thompson Center where the plaintiff sought to invoke a five-year renewal of the lease.

***Appellate Court Decision:***

The Appellate Court held that the officer suit exception to sovereign immunity applied. It also found that the CMS Director lacked discretion to deny renewal. The defendant argued that the doctrine of sovereign immunity required the plaintiff's case to be dismissed since its claim against the State was founded on terms of contract.

***Ready v. United/Goedecke Services, Inc.***

***S. Ct. Docket No.:*** 108910

***Appellate Citation:*** 393 Ill. App. 3d 56, 911 N.E.2d 1140, 331 Ill. Dec. 910 (1st Dist. 2009)

***Topic:*** Evidence

***Issue Presented:***

Whether the trial court properly excluded evidence of the conduct of settling co-defendants, thereby preventing the defendant from presenting evidence establishing that another entity was the sole proximate cause of the decedent's injury.

***Appellate Court Decision:***

The Appellate Court reversed a \$14 million verdict in favor of the plaintiff, finding that the trial court should not have excluded evidence of the co-defendants' conduct where the instant defendant entered a general denial that the plaintiff's injuries were caused by its conduct. The

plaintiff argued that the disputed evidence was either actually admitted or properly excluded for other reasons and that the Appellate Court failed to comply with the Supreme Court's mandate to decide whether the trial court properly refused the defendant's jury instruction on the issue of sole proximate cause.

***Krywin v. Chicago Transit Authority***

***S. Ct. Docket No.:*** 108888

***Appellate Citation:*** 391 Ill. App. 3d 663, 909 N.E.2d 887, 330 Ill. Dec. 865 (1st Dist. 2009)

***Topic:*** Negligence

***Issue Presented:***

Whether the Transit Authority breached its duty to provide the plaintiff with a safe place to alight when it stopped in front of a natural accumulation of snow and ice upon which the plaintiff fell and sustained personal injuries.

***Appellate Court Decision:***

The Appellate Court reversed the jury verdict in favor of the plaintiff and found that the natural accumulation rule prevailed over the defendant's duty of highest care to the plaintiff and the defendant therefore owed no duty to the plaintiff.

***Hurlbert v. Charles***

***S. Ct. Docket No.:*** 109041

***Appellate Citation:*** 393 Ill. App. 3d 211, 912 N.E.2d 331, 332 Ill. Dec. 145 (4th Dist. 2009)

***Topic:*** Collateral Estoppel

***Issue Presented:***

Whether the plaintiff was collaterally estopped from bringing a malicious-prosecution action where the trial court had previously found the existence of probable cause on plaintiff's prior arrests for driving under the influence of alcohol after a hearing on the plaintiff's petition to rescind his statutory suspension.

***Appellate Court Decision:***

The Appellate Court found that collateral estoppel applied to the trial court's finding and decision in the summary suspension proceeding and rejected the plaintiff's contention that the limited nature of the statutory-suspension hearing was incompatible with the application of the collateral estoppels doctrine.

***K. Miller Construction Co., Inc. v. McGinnis***

***S. Ct. Docket No.:*** 109156

***Appellate Citation:*** 394 Ill. App. 3d 248, 913 N.E.2d 1147, 332 Ill. Dec. 857 (1st Dist. 2009)

**Topic:** Illinois Home Repair and Remodeling Act

**Issue Presented:**

Whether the plaintiff-contractor can maintain a cause of action for unpaid home repairs under a theory of quantum meruit even though the plaintiff had failed to obtain a written contract detailing the charges for said repairs prior to performing the work.

**Appellate Court Decision:**

The Appellate Court reversed the trial court's dismissal of the case, finding that quantum meruit remained an equitable remedy available under the Home Repair and Remodeling Act and that the plaintiff could pursue the cause of action against the defendant. One justice dissented.

**People v. Becker**

**S. Ct. Docket No.:** 108986

**Appellate Citation:** No. 3-07-0660 (3d Dist. 2009) Rule 23 Order

**Topic:** Evidence

**Issue Presented:**

Whether the trial court properly excluded testimony of the defendant's forensic psychologist in a trial on predatory criminal sexual assault of a child where the expert had previously testified at the section 115-10 hearing that there was a high probability that the minor-victim's out-of-court statements were unreliable.

**Appellate Court Decision:**

The Appellate Court reversed the defendant's conviction, finding that the expert's proposed testimony regarding proper protocols and techniques used to elicit victims' statements were proper subject matters for expert testimony at trial. In its petition for leave to appeal, the State argued that the exclusion was proper since the expert's proposed testimony would have invaded the jury's province of determining witness credibility. One justice dissented.

**Petitions for Leave to Appeal Allowed  
by the Illinois Supreme Court  
at the September 2009 Term**

**Clark v. Children's Memorial Hospital**

**S. Ct. Docket No.:** 108656

**Appellate Citation:** 391 Ill. App. 3d 321, 907 N.E.2d 49, 329 Ill. Dec. 730 (1st Dist. 2009)

**Topic:** Damages

***Issue Presented:***

Whether in a negligence action the plaintiffs can recover damages for the extraordinary costs of caring for a child beyond the age of maturity when the child is unemancipated and disabled (born with Angelman Syndrome).

***Appellate Court Decision:***

The Appellate Court found that the costs could be recovered throughout the son's adult years where the plaintiffs alleged that the son would be unable to take care of himself and where the plaintiffs stated that they would continue to care for their son throughout his majority. The trial court had ruled that the plaintiffs could only recover for extraordinary costs for caring for their son during his minority.

***Pekin Ins. Co. v. Wilson***

***S. Ct. Docket No.:*** 108799

***Appellate Citation:*** 391 Ill. App. 3d 505, 909 N.E.2d 379, 330 Ill. Dec. 666 (5th Dist. 2009)

***Topic:*** Insurance

***Issue Presented:***

Whether the trial court properly found that the insurance company did not owe the insured a duty to defend the insured in the underlying personal injury lawsuit alleging assault and battery, as well as negligence, arising out of an incident in which the insured allegedly cursed and hit the victim with a steel pipe, and where the relevant policy contained an exclusion for lawsuits containing allegations of intentional conduct on the part of the insured.

***Appellate Court Decision:***

The Appellate Court reversed the trial court and found that the policy's self-defense exception to the exclusion triggered a duty to defend where the insured raised self-defense as an issue in the counterclaim. In its petition for leave to appeal, the insurance company argued that the insurer's duty to defend could only be determined on allegations contained in the underlying complaint and not on allegations contained in the counterclaim filed by the insured.

***Founders Ins. Co. v. Munoz***

***S. Ct. Docket Nos.:*** 108605, 108612 (cons.)

***Appellate Citation:*** 389 Ill. App. 3d 744, 905 N.E.2d 902, 329 Ill. Dec. 64 (1st Dist. 2009)

***Topic:*** Insurance

***Issue Presented:***

Whether the trial court properly granted the insurance company's motions for summary judgment in actions seeking a declaration that the insurance company owed no duty to defend the insureds where the drivers involved in various accidents did not have valid driver's licenses and thus fell within the exclusion in the policies denying coverage for bodily injury or property

damage arising out of the use of a vehicle by a person not having a reasonable belief that he or she was entitled to operate the insured vehicle.

***Appellate Court Decision:***

The Appellate Court reversed the trial court holding that the subject exclusion did not necessarily encompass unlicensed drivers, while the insurance companies argued that the reasonable belief exclusion encompassed unlicensed drivers.

***In re Estate of Wilson***

***S. Ct. Docket No.:*** 108487

***Appellate Citation:*** 389 Ill. App. 3d 771, 905 N.E.2d 957, 329 Ill. Dec. 119 (1st Dist. 2009)

***Topic:*** Substitution of Judge

***Issue Presented:***

Whether the trial court erred in denying the respondent's motion for substitution of judge for cause pursuant to section 2-1001(a)(3)(iii) of the Code of Civil Procedure, rather than transferring the motion to a different judge for disposition.

***Appellate Court Decision:***

The Appellate Court ruled that section 2-1001(a)(3)(iii) did not authorize the trial judge accused of bias to control the disposition of the motion, that the instant trial judge should have transferred the motion to a different judge, and that the respondent was not required to establish a threshold showing of bias stemming from extra-judicial sources prior to the transfer of the motion to another judge. One justice dissented.

***Vancura v. Katris***

***S. Ct. Docket No.:*** 108652

***Appellate Citation:*** 391 Ill. App. 3d 350, 907 N.E.2d 814, 330 Ill. Dec. 1 (1st Dist. 2009)

***Topic:*** Illinois Notary Act

***Issue Presented:***

Whether the trial court properly found that the defendant-employer was liable under the common law for the employee-notary's misconduct in notarizing a forged signature on a mortgage assignment.

***Appellate Court Decision:***

The Appellate Court affirmed the trial court as to common law judgments in view of the evidence that the defendant negligently trained and supervised the employee. In its petition for leave to appeal, the defendant argued that it could not be liable on a common law theory of negligent failure to train where it otherwise complied with the Notary Act.

**Rule 316 Appeal to the Illinois Supreme Court  
August 24, 2009**

***In re Marriage of O'Brien***

**S. Ct. Docket No.:** 109039

**Appellate Citation:** 393 Ill. App. 3d 364, 912 N.E.2d 729, 332 Ill. Dec. 242 (2d Dist. 2009)

**Topic:** Substitution of Judge

***Issue Presented:***

What standard should an Illinois court apply when a motion for substitution of judge for cause has been filed alleging *ex parte* communications and the appearance of impropriety in violation of Rule 62 and 63 of the Code of the Judicial Conduct?

***Appellate Court Decision:***

The Appellate Court ruled that Illinois generally requires the finding of actual prejudice but that recent cases, including the Supreme Court's decision in *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. \_\_\_, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009), requires something less, such as proof that an objective, reasonable person would question the trial judge's ability to rule impartially. While the Appellate Court concluded that nothing in the cases contravened the existing weight of Illinois authority that actual prejudice is required, it determined that it need not resolve the issue because it found the petitioner had failed to meet either standard. In light of the U.S. Supreme Court's decision in *Caperton* and the confused state of the law regarding the standard for obtaining a substitution of judge, the Appellate Court granted a rare certificate of importance pursuant to Supreme Court Rule 316.

**Petitions for Leave to Appeal Allowed  
by the Illinois Supreme Court  
at the May 2009 Term**

***West American Ins. Co. v. Yorkville National Bank***

**S. Ct. Docket No.:** 108285

**Appellate Citation:** 388 Ill. App. 3d 769, 902 N.E.2d 1275, 327 Ill. Dec. 889 (3d Dist. 2009)

**Topic:** Insurance

***Issue Presented:***

Whether the trial court erred in determining that the plaintiff-insurance company owed a duty to provide coverage to the defendant-bank in the underlying defamation action where the plaintiff alleged that the defendant breached a provision in the policy requiring that the defendant give "written notice" of the underlying action as soon as possible where the

defendant waited 2.5 years and less than two months before the trial court to give written notice of the lawsuit.

***Appellate Court Decision:***

The Appellate Court reversed the trial court, finding that the plaintiff owed no duty to provide coverage where the defendant had breached the policy terms by failing to give prompt written notice of the underlying action. The Appellate Court further found that it was unnecessary to reach the question as to whether the defendant's oral notices of the underlying lawsuit uttered prior to giving the written notice of the lawsuit were sufficient to constitute actual notice of the underlying lawsuit. One justice dissented.

***Studt v. Sherman Health Systems***

***S. Ct. Docket No.:*** 108182

***Appellate Citation:*** 387 Ill. App. 3d 401, 900 N.E.2d 1212, 326 Ill. Dec. 965 (2d Dist. 2009)

***Topic:*** Medical Negligence

***Issue Presented:***

Whether the trial court properly gave IPI (Civil) 105.01, which advised the jury that, in determining whether the defendant's emergency room physicians violated the applicable standard of care, the jury could properly consider, among other things, evidence of bylaws, rules, regulations, policies and procedures, and other evidence presented in the case.

***Appellate Court Decision:***

The Appellate Court ruled that IPI (Civil) 105.01 was an accurate statement of law, while the defendant had argued that the instruction improperly eliminated the distinction between professional and institutional negligence.

**Petitions for Leave to Appeal Allowed  
by the Illinois Supreme Court  
at the November 2008 Term**

***Slovinski v. Elliott***

***S. Ct. Docket No.:*** 107146

***Appellate Citation:*** No. 1-05-0423 (1st Dist. 2008) Rule 23 Order

***Topic:*** Damages

***Issue Presented:***

Whether the Appellate Court properly reduced the jury's \$2 million punitive damages award in a defamation action to \$81,680 which represented the same amount awarded by the jury as compensatory damages. The basis of the defamation action was the plaintiff's contention that

the defendant had defamed him by stating, among other things, that the plaintiff was not doing his job, was coming in late and leaving early, and was spending his time chasing women all day.

***Appellate Court Decision:***

The jury had originally awarded the plaintiff \$2 million in punitive damages which the trial court reduced to \$1 million. The Appellate Court found that \$1 million in punitive damages was excessive. One justice dissented stating that he would affirm the original remittitur of the trial court.



## Karen L. Kendall

- Partner

Karen is the Chair of our statewide Appellate Practice Group and began her legal career with Heyl Royster in 1984 after serving as law clerk to the Honorable Jay J. Alloy, Presiding Justice, Illinois Appellate Court, Third District. Previously, she served as law clerk to the Honorable Howard C. Ryan, Chief Justice, Illinois Supreme Court, from 1981 to 1982.

With extensive appellate experience, Karen has handled over 600 appeals, 300 of which have resulted in published opinions. Over 40 of the appeals have been in the Illinois Supreme Court. Many have been cases of first impression and have served to develop and interpret the laws of Illinois for not only the firm's clients, but for the entire legal profession. Karen's diverse experience includes appeals of cases tried by our firm in the trial courts, as well as cases tried by others, where her involvement begins at the appellate level. Karen represents clients ranging from Fortune 500 companies to small businesses and individuals who refer cases to her regardless of whether they are the appellant or the appellee, confident that she has total familiarity with the complex appellate rules and procedures. Karen is well skilled in the persuasive analytical writing and speaking so necessary to prevail in the appellate arena.

Karen regularly speaks at national, statewide and local bar seminars on effective appellate practice and tort and insurance coverage issues and presents mock appellate arguments on various issues.

Currently, Karen is President of the American Academy of Appellate Lawyers, an organization that was founded in 1990 to advance the highest standards and practices of appellate advocacy and to recognize outstanding appellate lawyers. She has been designated one of the "Leading Lawyers" in Illinois as a result of a survey of Illinois attorneys conducted by the *Chicago Daily Law Bulletin*; another survey, published recently in *Chicago* magazine listed Karen among the top 100 attorneys and top 50 female attorneys in the State of Illinois.

### Professional Recognition

- Martindale-Hubbell AV Rated
- The Best Lawyers in America (2008-2010)
- Selected as a Leading Lawyer in Illinois. Only five percent of lawyers in the state are named as Leading Lawyers.
- Named to the Illinois *Super Lawyers* list (2005-2010). The *Super Lawyers* selection process is based on peer recognition and professional

achievement. Only five percent of the lawyers in each state earn this designation.

- Top 50 Female Illinois Super Lawyers (2005-present)
- Top 50 Women Business Lawyers in Illinois (2007)
- Top 10 Leading Business Lawyers in Downstate Illinois (2007)
- Named SIU Law School Alumnus of the Year (1996)

### Professional Associations

- American Academy of Appellate Lawyers (President)
- Illinois Appellate Lawyers Association (Past President)
- American Bar Association (Past Chair, Tort and Insurance Practice Section, Appellate Advocacy Committee)
- Illinois Association of Defense Trial Counsel (Member and Past Chair, *Amicus* Committee)
- Illinois Supreme Court Committee on Civil Jury Instructions (Past Associate Member)
- Abraham Lincoln American Inn of Court (Past President)
- Peoria County Bar Association (Past President)
- Association of Defense Trial Attorneys
- DRI Appellate Advocacy Steering Committee
- American Bar Foundation
- Bar Association of the Seventh Federal Circuit
- Bar Association of the Central and Southern Federal Districts of Illinois
- Illinois State Bar Association
- Scribes, the American Society of Writers on Legal Subjects

### Court Admissions

- State Courts of Illinois
- United States District Court, Central, Northern, and Southern Districts of Illinois
- United States Courts of Appeals, Seventh and Eighth Circuits
- United States Court of Appeals, Federal Circuit
- United States Supreme Court

### Education

- Juris Doctor (Cum Laude), Southern Illinois University School of Law, 1981
- Master of Arts-American History, Southern Illinois University, 1976
- Bachelor of Arts-Philosophy, Southern Illinois University, 1967

