Winter 2018-2019

Dear Friends,

Welcome to our Winter 2018-2019 *Quarterly Review* newsletter, edited by our partners Rex Linder and Mark Hansen, covering recent Illinois state and federal court decisions of interest to insurers.

Favorable Evidentiary Ruling

One of the many interesting topics in this Quarter's issue is the Illinois Supreme Court case *Peach v. McGovern*. In this case, the Supreme Court overruled the Appellate Court's ruling that it was error to admit post-accident photographs of the vehicle without expert testimony. This is a welcomed development, as it will aid in the efficient disposition of many low impact cases, without the expense of expert testimony. While cases of more significant exposure will often benefit from expert testimony, this ruling by the Supreme Court will be especially effective in smaller cases, and perhaps be of benefit to you in negotiating cases even prior to suit. We hope you find it helpful and if you need further information regarding this or any of the other cases outlined in this issue of the *Quarterly Review*, please do not hesitate to contact me or any of our attorneys.

New Heyl Royster Offices

As we announced in 2018, we opened our first office outside the state of Illinois in St. Louis, Missouri. Since that time, we have expanded significantly in that office, adding two attorneys, and handling an ever-increasing case load for you, our valued clients. We look forward to continuing to assist you throughout the state of Missouri from that office.

We are now pleased to inform you of Heyl Royster's newest office in Jackson, Mississippi. We have been practicing on behalf of our clients out of that office since mid-January and take this opportunity to formally announce our presence in the state of Mississippi. This opportunity developed for our firm due to our association with Garner Berry, who now heads the Heyl Royster office in Jackson. Garner joins us with extensive experience in many areas of civil litigation, with a primary focus in transportation and trucking defense. Joining Garner is attorney Benjamin Mathis. Please visit our website for more detailed information on Garner and Benjamin. We are currently practicing out of offices located in Ridgeland, Mississippi – a suburb adjacent to Jackson. We are excited about this opportunity for both our firm and our clients. If you have any need for our services in the state of Mississippi, please do not hesitate to contact Garner, myself, or our Firm Managing Partner, Craig Young.


M. Garner Berry


Benjamin T. Mathis

All Newsletters Changing to E-Versions

We also want to announce that moving forward after this edition of the *Quarterly Review*, all future issues will be sent electronically rather than through the U.S. Mail. This is at the request of the vast majority of you, our clients, and also in an effort to continue our commitment to sustainability. If there are any questions on any of this, please let me know.

Seminar Update and Educational Opportunities

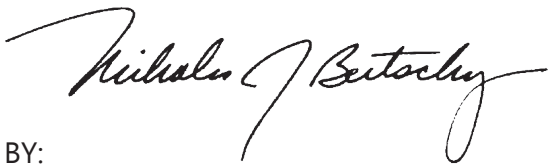
If you are reading this, you may have previously attended one of our Annual Claims Handling Seminars. We know this has been popular with many of you, so I wanted to let you know we have decided to take a year off, and will not be providing the full stand-alone seminar in 2019. We will be working this year on updating the seminar to give it a fresh look when we bring it back in 2020. In the meantime, we would also like to use 2019 to spend more time with you, on a face-to-face basis at your workplace. We would be glad to present to you and your team on topics which are pertinent to you, if that would be of help to you in your claims handling efforts. If you have interest in this type of visit, please contact me directly.

We look forward to serving you from all of our locations throughout 2019 and beyond. If there is anything we can do to help you, please do not hesitate to let us know.

HEYL ROYSTER

Very Truly yours,

HEYL, ROYSTER, VOELKER & ALLEN, P.C.



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A Regional Midwest Law Firm

Quarterly Review Of Recent Decisions

HEYL ROYSTER

Winter 2018-2019

INSURANCE

When Insured Had Opportunity To Read And Understand Insurance Policy The Cause Of Action For Failing To Procure Appropriate Coverage Accrued When Insured Received Policy

American Family filed a declaratory judgment action asserting it had no coverage for an underlying lawsuit alleging defamation. The insured filed a counterclaim against American Family and a third party action against the insurance agent. The third party complaint alleged the agent promised to provide the insured with coverage equal or better than a previous policy issued by another carrier. The original American Family policy was issued on March 21, 2012 and was renewed for the next three years. Coverage was denied on August 20, 2014. The agent asserted that the third party action was untimely because it was filed more than two years after the cause of action accrued. The trial held that the suit was untimely but the Appellate Court reversed, holding the limitation period did not begin to run when the policy was issued but rather when the claim was denied.

The Supreme Court reversed the Appellate Court reinstating dismissal of the claims against American Family and the agent. Absent special circumstances, the cause of action accrued when the insured had an opportunity to read the policy and could reasonably understand its terms. The insured did not claim they did not receive the policy and therefore they were obligated to read and understand its terms. Consequently, the cause of action accrued at the time of delivery of the policy in 2012. *American Family Mut. Ins. Co.* v. *Krop,* 2018 IL 122556.

Defendant Not Entitled To Set Off UIM Benefits Received From Plaintiff's Auto Policy

Plaintiff was injured when another vehicle struck the rear of his antique tractor participating in an annual Halloween parade. He received $20,000 from the adverse driver's insurer and $280,000 from his own insurer for UIM benefits. He then filed suit against the City of Flora and its Chamber of Commerce. The defendants moved to set off the $20,000 received in settlement from the adverse driver and $280,000 in UIM benefits. The jury determined plaintiff suffered damages of $50,000 but found him 10% contributorily negligent reducing the verdict to $45,000. After the verdict, the trial court set off the amounts previously received by plaintiff, and therefore, defendant did not need to pay anything on the verdict.

The Fifth District reversed. The collateral source rule protects payments made to, or for the benefit of, a plaintiff by denying the defendant any corresponding credit or offset. Damages recovered by a plaintiff from a defendant are not decreased by the amount received from insurance proceeds where the defendant did not contribute to the payment of those premiums. It was undisputed that plaintiff received the benefit of his underinsured motorist policy. Therefore, the collateral source rule applied. *Stanford v. City of Flora*, 2018 IL App (5th) 160115.

Ambiguous Declarations Page Allowed Insured To Stack UIM Limits.

The insured was injured in an accident while driving one of his employer's 16 vehicles, all of which were insured by State Farm. Plaintiff settled with the insurer of the at-fault driver for its policy limits of $20,000. He then

sought UIM benefits under all of his employer's 16 policies which when stacked would be $4 million. The parties filed cross-motions for summary judgment. The trial court ruled in favor of the insured.

The Fifth District affirmed. It noted the declarations page repeated coverage 16 times, once for each vehicle. The employer also paid 16 separate premiums for UIM coverage. The court held the declaration page that printed the policy limits more than once could reasonably be interpreted as providing a policy limit that equals the sum of all the printed limits. As the policy was poorly written, it must be construed in favor of the insured. The circuit court finding that $4 million of coverage was available was correct. *Barlow v. State Farm Mut. Auto. Ins. Co.*, 2018 IL App (5th) 170484.

Owner Who Returned To Running His Company Not Entitled To Receive Continued Total Disability Benefits

The insured was the founder and president of an information technology company specializing in customized software to small businesses. In 1998, he was diagnosed with cancer causing him to undergo surgery and treatment preventing him from running the business. However, five years later he was back at work exercising full control of the company, and his total disability benefits were stopped. He filed suit against the carrier for breach of contract and statutory penalties for unreasonable and vexatious conduct. The district court entered summary judgment for the carrier.

The Seventh Circuit affirmed. Although the insured could not perform direct person-to-person business development, he was able to run the business. The policy language defined total disability as the inability "to perform the important duties of Your Occupation." While he continued to have some residual problems as a result of the cancer, the evidence construed most favorably to him would not permit a reasonable juror to conclude that he was unable to meet with potential clients face-to-face. *Fiorentini v. Paul Revere Life Ins. Co*., 893 F.3d 476 (7th Cir. 2018).

LIMITATIONS

Statutes Of Limitation And Repose Begin To Run On The Last Date Of Negligence Even Though Death Occurred Three-and-one-half Years Later

Plaintiff filed a wrongful death action based upon the alleged failure to timely diagnose his wife's breast cancer. Plaintiff alleged the defendants' employees failed to diagnose cancer in 2011. Plaintiff's decedent died in 2015. Plaintiff's claim that the suit was timely filed within two years of death was rejected by the trial court who dismissed the complaint with prejudice.

The First District affirmed. In a wrongful death action, the cause of action is the wrongful conduct and not the death itself. Claims under the Wrongful Death Act must be commenced within two years of a person's death, but there can be no recovery where decedent once had a cause of action but did not timely institute it. *Osten v. Northwestern Memorial Hosp.*, 2018 IL App (1st) 172072.

Suit For Damages Caused By Defective Roof Being Blown Off During A Storm Barred By Construction Statute of Limitations

Plaintiff's equipment was damaged by an electrical surge caused when defendant's roof uplifted during a wind storm striking power lines resulting an electrical surge on October 27, 2010. Suit was filed August 14, 2015, and the defendant sought dismissal of the case based upon the four-year limitation of the construction negligence statute of limitations. The trial court held the damage was a sudden traumatic event placing plaintiff on notice at the time of the occurrence. Consequently, the discovery rule would not apply.

The First District affirmed. Plaintiff learned of the damage to its property at the time of the occurrence and that it was caused by high winds which uplifted the defendant's roof and blew it into power lines causing the power surge. Defendant should have suspected possible wrongful causation and been compelled to inquire further about the defendant's roof. Consequently, the statute of limitations began to run on the date of the occurrence, and suit was not timely. *M&S Industrial Co., Inc. v. Allahverdi*, 2018 IL App (1st) 172028.

DAMAGES

Denying Imprisoned Father's Visit To Deceased Son's Remains Prior To Burial Did Not Constitute Extreme Emotional Distress

While plaintiff was in prison for murder, his son died. He made arrangements with the Department of Corrections to visit the funeral home prior to his son's burial. However, his ex-wife directed the funeral home not to allow the visit, and it advised the Department of Corrections that the plaintiff or anyone who came with him would be arrested for criminal trespass. Consequently, plaintiff filed suit alleging defendants intentionally caused him to suffer extreme emotional distress. The trial court dismissed the complaint. The Third District affirmed. To be actionable, the distress inflicted must be so severe that no reasonable person could be expected to endure it. Although arguably insensitive and inconsiderate, the conduct of the defendants did not rise to a level of extreme and outrageous conduct. The court noted plaintiff had no relationship with his son after he went to prison, and apparently, the son wanted nothing to do with him. *Taliani v. Resurreccion*, 2018 IL App (3d) 160327.

CONTRIBUTION

Defendant Found Vicariously Liable Can Seek Contribution From Another Vicariously Liable Defendant

Following a collision in which three people were killed, the estates sued the driver who owned the semi-tractor, which she leased to a federally-licensed motor carrier, as well as the freight broker who contracted the load. In a jury trial, the three estates received a total of $23,775,000 finding the owner-operator negligent and both the freight broker and motor carrier vicariously liable rendering all subject to joint and several liability. The owner-operator was judgment proof and the broker paid the judgment in full totaling more than $28,000,000 including post-judgment interest. It then sought contribution from the freight carrier. A jury determined both parties were equally liable and entered judgment in favor of the freight broker for $14,326,665.54 constituting one-half of the total amount previously paid. The First District reversed. It accepted the motor carrier's argument that there was no basis for comparing relative fault of the parties because both had been found only vicariously liable meaning neither party was "at fault."

The Supreme Court reversed. It noted the statute applies to two or more who are "subject to liability in tort" arising out of the same injury or death. The plain language did not expressly exclude vicariously liable defendants. Therefore, vicariously liable defendants are included within the scope of the Act. *Sperl v. Henry*, 2018 IL 123132.

ARBITRATION

Defendant's Absence From Arbitration Barred His Rejection Of Award

State Farm instituted a subrogation action for monies it paid to its insured for damages resulting from an automobile collision. It was submitted for mandatory arbitration, and while defendant was represented by counsel, defendant was not present during the arbitration. The arbitrators entered an award in favor of State Farm and defendant rejected the

award. State Farm filed a motion to bar the defendant from rejecting the award as a sanction for his absence. As the defendant had been served with a notice to appear at the arbitration, the trial court denied the defendant's motion to reject the arbitration award.

The First District affirmed. It rejected the defendant's argument that State Farm suffered no prejudice because it received an award in its favor. The defense failed to explain the defendant's absence. Further, the attendance of counsel at the arbitration did not preserve the right to reject the award. The failure to participate in an arbitration hearing in good faith and in a meaningful manner provides a basis for barring a party from rejecting arbitration award. *State Farm Mut. Auto. Ins. Co. v. Trujillo*, 2018 IL App (1st) 172927.

VENUE

Forum Non Conveniens
Required Transfer From Cook County To Kane County Where Accident Occurred And All Parties Resided

Plaintiff's son died as a result of alleged negligence by the defendant truck driver in an accident in Kane County one mile from the Cook County line. Plaintiff, defendant and defendant's employer were all located in Kane County along with most witnesses. The trial court denied a motion to transfer venue holding private factors such a convenience of the parties was neutral. While most of the public interest factored favored transfer, it held defendant did not meet the high standard for transfer.

The First District reversed. *Forum non conveniens* is an equitable doctrine applied when trial in another forum with proper jurisdiction and venue would better serve the ends of justice. While a plaintiff's choice of forum is to be given great weight, it would receive less deference because the present plaintiff was not a Cook County resident nor did the accident occur in Cook County. Witness convenience and related matters strongly favor transfer to Kane County. It also held all public interest factors favored transfers such as having localized controversy decided locally, the unfairness of imposing the expense of a trial on a county to little connection to the litigation and the administrative difficulties of adding litigation to a congested court docket. *Hale* v. *Odman,* 2018 IL App (1st) 180280.

AUTOMOBILE

Photos Showing Little Vehicle Damage Properly Admitted Without Expert Testimony

Plaintiff was stopped at a stop sign. The defendant pulled her vehicle behind plaintiff and stopped. However, her foot slipped off the brake, and her vehicle tapped the back of plaintiff's pickup truck. At trial, plaintiff testified that his back bumper was dented, and it looked like the defendant's front end was cracked a little bit. The defendant testified that the only damage was that her license plate was bent. Photos of the vehicle were admitted into evidence over plaintiff's objection. With respect to damages, plaintiff claimed that he continued to have neck pain once or twice every other day and had medical testimony supporting a diagnosis of whiplash syndrome and chronic neck pain. However, the jury returned a defense verdict. The Fifth District vacated the verdict stating it was error to admit post-accident photographs of the vehicle without expert testimony.

The Supreme Court reversed the Appellate Court, reinstating judgment for the defendant. The question whether vehicle photographs are admissible is if the jury can properly relate the vehicular damage to the injury without the aid of an expert. If the jury is allowed to consider testimony about speed and impact forces, it should also be permitted photographs depicting the damage, or lack thereof, to the vehicles. The court noted requiring expert physician or an auto reconstruction engineer to testify and explain evidence that is understood by the

jurors imposes financial burdens on an already expensive discovery and trial process. *Peach v. McGovern*, 2019 IL 123156.

PRODUCT LIABILITY

No Duty To Warn Where Defendant Manufacturer Had No Knowledge Of Danger

Plaintiff contracted mesothelioma from inhaling asbestos fibers using welding rods manufactured by the defendant in the early 1960's. He claimed the defendant failed to warn him of the dangerousness of asbestos containing welding rods. The defendant claimed it had no knowledge of the danger when plaintiff was exposed to the rods. However, the trial judge allowed the case to go to a jury who returned a verdict in plaintiff's favor.

The Fourth District reversed. It was incumbent upon the plaintiff to establish that the defendant knew of the propensity of its welding rods to release some capsulated asbestos fibers if they were rubbed together or stepped on. However, the record contained no evidence of such contemporaneous knowledge in the industry. Therefore, defendant had no duty to warn. Further, there was no evidence the welding rods were a substantial cause of plaintiff's mesothelioma. *McKinney* v. *Hobart Brothers Co.*, 2018 IL App (4th) 170333.

Federal Pre-emption Barred Claim For Alleged Inadequate Drug Label Warning

In 2010, a doctor described Paxil to treat plaintiff's husband for depression and anxiety. Six days later he committed suicide at age 57. Labels for the drug warned that it was associated with suicide in patients under the age of 24 and did not warn about an increased risk of suicide in older adults. The defendant manufacturer argued that federal law preempted Illinois law from requiring the warnings advanced by plaintiff. The trial judge disagreed and eventually plaintiff obtained a verdict of $3 million.

The Seventh Circuit reversed. It stated the claim would be preempted if the defendant could not have added the adult suicide warning due to FDA regulations. It held as a matter of law there was clear evidence the FDA would have rejected the warning in 2007. Further, the defendant lacked new information that would have allowed it to add the adult suicide warning. *Dolin* v. *GlaxoSmithKline, LLC*, 901 F.3d 803 (7th Cir. 2018)

Forklift Maintenance Contractor Had No Duty To Warn Plaintiff's Employer To Install Backup Alarm

A forklift backed over plaintiff's foot while loading product onto his tractor-trailer. His employer owned the forklift and hired the defendant to perform maintenance on it. Plaintiff alleged defendant was negligent in failing to warn his employer to install a backup alarm on the forklift. The district court granted defendant's motion for summary judgment.

The Seventh Circuit affirmed. The forklift was not designed, manufactured or shipped to the original purchaser with a backup alarm, and there were no regulations requiring it to have a backup alarm when the accident occurred. Evidence indicated the employer was aware of the lack of a backup alarm. The court commented the duty to warn does not encompass a duty to recommend optional safety features to an owner who already knows about them. Plaintiff has not pointed to any evidence of unequal knowledge between the employer and defendant giving rise to a duty to warn. *Hutchison v. Fitzgerald Equipment Co., Inc.*, 910 F.3d 1016 (7th Cir. 2018)

Previously Dismissed Distributor Properly Reinstated Where Plaintiff Is Unable To Satisfy A Judgment Against Foreign Manufacturer

Plaintiff was injured when a flexible bulk container of vitamins broke causing a stacked bulk container to fall on him. He filed a strict liability action against the non-manufacturing defendant.

The defendant was dismissed after providing the plaintiff with information about the products' Chinese manufacturers. A default judgment of over $9 million was entered against the manufacturer but plaintiff's efforts to collect on the judgment were unsuccessful. The trial court's denial of reinstating the defendant was reversed by the First District.

The Supreme Court affirmed the Appellate Court holding plaintiff should have been able to reinstate the non-manufacturing defendant. A court retains jurisdiction over a non-manufacturing defendant if the manufacturer is unable to satisfy a judgment as determined by the court. Reinstatement of a non-manufacturing defendant is not solely contingent on the manufacturer being bankrupt or non-existent. If plaintiff can establish other circumstances that effectively bar recovery of the judgment, a non-manufacturer in the chain of distribution may be reinstated. *Cassidy* v. *China Vitamins, LLC,* 2018 IL 122873.

PREMISES LIABILITY

Failure To Establish Actual Or Constructive Knowledge Of Danger Entitles Defendant To Summary Judgment

While plaintiff was working as a telecommunications analyst at defendant's hospital, the flooring in a computer room gave way resulting in his injury. The complaint alleged the hospital was negligent in failing to inspect the flooring. The flooring had been in place for 30 years without problem, and in his deposition, plaintiff said he walked across the flooring immediately prior to the fall without incident. The trial court granted the defendant summary judgment because there was nothing in the record to support plaintiff's claim of actual or constructive notice of the defective condition of the flooring.

The First District affirmed. In order to establish constructive notice, it is incumbent upon a plaintiff to establish the defect was present for a sufficiently long time to constitute constructive notice to the owner. All the evidence suggested that any defect in the raised flooring was not evident until the time of plaintiff's fall. It requires speculation to say that the condition could have been detected and inspected earlier. In the absence of how long the defect existed, there could not be constructive notice. *Milevski v. Ingalls Memorial Hospital*, 2018 IL App (1st) 172898.

Defense Summary Judgment Where Plaintiff Slipped And Fell On A Natural Accumulation Of Ice On Stairs

The complaint alleged plaintiff fell and was injured on March 5, 2014 as a result of an unnatural accumulation of ice on an outside stairwell that formed as a result of faulty gutters. The trial court entered a defense summary judgment based upon plaintiff's failure to establish the gutters were faulty or that the alleged faulty gutters were responsible for the ice which caused her to fall.

The First District affirmed. There was no evidence of faulty gutters resulting in an unnatural accumulation of ice causing plaintiff to fall. The only "evidence" concerning the gutters was plaintiff's allegation in her complaint that the gutters were "faulty." The only factual basis for this allegation were icicles hanging from the roof. While the allegation may have been sufficient to survive a dismissal motion, something more than mere speculation is required to survive a summary judgment motion. *Cole v. Paper Street Group, LLC* 2018 IL App (1st) 180474.

Snow Pile On Sidewalk Was An Open And Obvious Condition Entitling Defendants To Summary Judgment

Plaintiff lived in the defendant's apartment complex. Carrying a laundry basket to the complex laundry facility he saw a cut out through a pile of snow on the sidewalk. He was able to see where he was stepping and knew he was walking on ice and snow. However, walking through the snow pile

he fell and broke his ankle. He acknowledged that he saw the pile of snow before reaching it and visibility was not compromised. Plaintiff argued that co-defendant snow clearing company had pushed snow from a parking lot onto a sidewalk creating an unnatural accumulation. Both defendants obtained summary judgment on the basis that the snow pile was an open and obvious condition.

The Fourth District affirmed. "An open and obvious" condition is where a reasonable person who exercises ordinary perception, intelligence, and judgment, would recognize both a condition and the risk involved. Plaintiff testified his visibility was not obstructed and that he was aware of the pile of snow. He knew he was walking on snow and ice. He also admitted that he was aware of multiple ways to reach the laundry facility and could have avoided his injury by taking an alternative path. *Winters* v. *MIMG LII Arbors at Eastland, LLC,* 2018 IL App (4th) 170669.

Snow Removal Contract Did Not Create Duty To Protect Third Party Customer From Natural Accumulation Of Ice

Plaintiff slipped and fell on black ice walking up an access ramp to the defendant's grocery store. The store had a contract with a service to perform snow and ice removal. However, it had not performed any snow or ice removal during the month prior to plaintiff's accident. Plaintiff contended that the service assumed a duty to her to remove natural accumulations of snow and ice. The trial court noted the only evidence was that it was a natural accumulation entitling the store to summary judgment and that the contract did not create a duty by the service to protect third parties from natural accumulations.

The First District affirmed. Merely entering into a snow removal contract did not create a duty to protect third parties from natural accumulations of ice and snow, at least where those third parties did not personally rely on the contract. The court noted plaintiff did not bring a breach of contract suit but only alleged a tort and could not cite any law for the proposition that she should be a third party beneficiary of the contract. *Jordan v. The Kroger Co.*, 2018 IL App (1st) 180582.

EMPLOYMENT

Worker's Comp Exclusive Remedy Provision Prevented Suing Co-Worker For Negligent Operation Of Employer-Provided Vehicle While Going To Work

Plaintiff was injured in a three-vehicle collision that occurred while a co-worker was driving her and others to work at a restaurant in a van their employer provided for the commute. The trial court held a civil suit against the co-worker was barred by the exclusive remedy provisions of the Workers' Compensation Act.

The First District affirmed. A co-employee acting in the course of employment who accidentally injures an employee is immune from common law negligence. Although an accident occurring while an employee is traveling to or from work is not considered to have arisen out of or in the course of employment, an exception exists where the employer provides the means of transportation. Consequently, plaintiff's sole source of compensation for her injury is under the Workers' Compensation Act as she was traveling in an employer-controlled passenger van when the accident occurred. *Peng v. Nardi*, 2017 IL App (1st) 170155.

Employee Cannot Intervene In Employer's Subrogation Action When The Statute Of Limitations Had Expired

Plaintiff filed a successful workers compensation claim but did not file a timely personal injury action against the third party tortfeasors. Therefore, her employer exercised its rights under the Workers Compensation Act to file a subrogation complaint. The employee later filed her own

personal injury action against the same defendants, but the case was dismissed as untimely. The employee then filed a petition to intervene in the subrogation case. The trial court denied the petition to intervene, but the decision was reversed by the Appellate Court.

The Supreme Court reversed, holding the employee could not intervene in the subrogation case because the statute of limitations had expired. Dismissal of her personal injury claim was *res judicata* barring her intervention in the subrogation case. The employee did not appeal dismissal of her action but instead sought to intervene in the subrogation claim to obtain additional damages for her injuries. *A&R Janitorial v. Pepper Const. Co.*, 2018 IL 123220.

RAILROADS

Railroad Cannot File Counterclaim Against Injured Employees In FELA Case

A locomotive engineer and conductor were injured when the train they were operating struck another train that was stopped ahead on the same track. In their FELA suit against the railroad, the railroad filed a counterclaim seeking property damage to its equipment as well as contribution from the plaintiffs for one another's injuries. The trial court dismissed the counterclaim based upon §55 of the FELA which voids any rule, regulation or device enabling a common carrier to exempt itself from liability.

The First District affirmed. If a railroad employee has an accident operating the company's machinery, the property damage would frequently be more than the cost of the harm suffered by the employee. The nullification of a personal injury claim would therefore obtain even where the injured employee proves negligence on the part of the railroad. The FELA was enacted to protect railroad employees against oppressive maneuvers that could prevent them from getting redress for workplace injuries. *Ammons v. Canadian National Railway Co.,* 2018 IL App (1st) 172648.

We recommend the entire opinion be read and counsel consulted concerning the effect these decisions may have upon your claims —

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