ILLINOIS

STATE LAW SUMMARY
Table of Contents

Submitted: December 20, 2012
Name of Preparer: James A. Foster
Firm/Main Office: Cassiday Schade LLP
20 N. Wacker Drive
#1000
Chicago, IL 60606

Satellite Offices: 2056 Westings Avenue
Suite 250
Naperville, IL 60563

120 W. State Street
Suite 401
Rockford, IL 61101

1870 W. Winchester Road
Suite 148
Libertyville, IL 60048

830 E. Sidewalk Road
Chesterton, IN 46304

111 E. Wisconsin Avenue
Suite 2100
Milwaukee, WI 53202

Overview of the Illinois Court System

A. Trial Courts

Illinois has a system of small claims courts, a mandatory arbitration system in most counties, and a "law division." Small claims courts handle cases involving claims of $10,000 or less. In Cook County and most suburban counties, the Circuit Courts also maintain a mandatory arbitration system. Generally in these systems, cases with a value of less than $50,000 are placed on a "fast track." Discovery is limited. At the end of the limited discovery process, the case is heard by a panel of three arbitrators – generally attorneys trained to participate in this process. Under Supreme Court Rule 90(c), prior to the arbitration, the parties may submit bills, deposition transcripts and other writings produced during discovery without additional foundation. Upon payment of $200, any party may reject the award of the arbitrators and proceed to a trial. Discovery closes, however, at the time of the arbitration, unless further discovery is permitted by the trial court. Any cases with a claimed value in excess of $50,000 will be heard in the "law division" of the Circuit.

The reputation of venues within the state varies widely. Cook, Madison and St. Clair Counties are generally considered plaintiff-friendly venues. The "collar" counties,

including DuPage, Kane, Will and Lake Counties are considered more defense-oriented. The "downstate" counties (with the exception of Madison and St. Clair Counties) are generally conservative, as well.

Illinois Courts have no statutory authority to mandate mediation. Mediation is strongly encouraged. Law division cases, and arbitration cases coming to trial after the rejection of an arbitration award, may be heard by a jury of six persons or 12 persons. Illinois Court of Civil Procedure Section 735 ILCS 5/2-1005, notes that all jury cases in which the claimant's damages are $50,000 or less shall be tried by a jury of six unless either party demands a jury of 12. In general, parties prefer a 12 person panel, and six person juries are rare. Note that a defendant must demand a jury at the time that an appearance is filed. Failure to make a jury demand at that time will waive the ability to make such a demand at a later date.

B. Appellate Courts

Illinois has five intermediate appellate districts. The First District encompasses only Cook County. The Second through Fifth Districts run from north to south, generally. The Fifth District, in southern Illinois, includes Madison and St. Clair Counties. Seven justices sit on the Illinois Supreme Court. Under very limited circumstances, the Illinois Supreme Court may hear direct appeals (Illinois Supreme Court Rule 302), all other appeals shall be heard in the applicable Appellate District. Appeals from the Appellate Courts to the Illinois Supreme Court are discretionary. Where a suit involves multiple parties, and where a trial court enters a final judgment as to fewer than all parties or all claims, appeal is only permitted if the trial court enters an order containing express language that there is no just reason for delaying either enforcement or appeal or both (Illinois Supreme Court Rule 304).

If an appeal is from a judgment for money, a bond or other form of security must be posted, unless excused by the Court (Illinois Supreme Court Rule 305(g)). Post-judgment interest is 9% "from the date of the judgment until satisfied" (if the judgment debtor is a unit of local government the interest to be charged is 6%) (735 ILCS 5/2-1303).

Procedural

A. Venue

In Illinois, every action must be commenced in the county of residence of any defendant, or in a county in which the transaction or some part, thereof, occurred. Note that a defendant may not be joined simply to fix venue in the county of that defendant's residence (735 ILCS 5/2-101). Defendants may file intrastate *forum non conveniens* motions to transfer venue to a more appropriate jurisdiction even where venue is technically proper.

B. Statute of Limitations

The key statute of limitations periods in cases in which trucking companies or trucking industry members may be involved are as follows: actions against municipalities one year; personal injuries/survival actions two years; wrongful death two years; contribution claims and third party actions two years; improvements to reality (construction) four years; property damage five years; nonspecified actions five years; and breach of contract 10 years. The individual statutes of limitations and the cases interpreting them should be consulted for any particular case. (See 735 ILCS 5/13-101, *et seq*.). Contribution actions and third party actions must be bought within the pendency of a

lawsuit and within two years after the contribution plaintiff has been served in the underlying case. (See 735 ILCS 5/13-204).

C. Time for Filing an Answer
If the summons requires an appearance within 30 days after service, the appearance and answer shall be filed within that 30 day period unless the time for the appearance and answer are otherwise extended by the Court. Where a summons does not require an appearance on a specified day, a Defendant may appear in person or in writing. If appearing in person, a written appearance and answer are due within 10 days after the appearance is made in Court, or as otherwise extended by the Court (Illinois Supreme Court Rule 181).

D. Dismissal/Re-Filing of Suit
Under the Illinois Code of Civil Procedure, a Plaintiff may, at any time before trial or hearing begins, voluntarily dismiss the action or any part of that action without prejudice. (735 ILCS 5/2-1009) The Plaintiff may voluntarily dismiss a case even after a trial or hearing begins if the Defendant agrees, or the motion is supported by an affidavit of other proof. Where a defendant has filed a dispositive motion before the plaintiff files a motion for a voluntary dismissal, it is within the Court's discretion to hear the dispositive motion first; if the dispositive motion is granted, the case will be dismissed with prejudice. A plaintiff may reinstate a voluntarily dismissed case/defendant within a year of the dismissal upon payment of costs to the defendant.

Liability

A. Negligence
Negligence is the failure to exercise ordinary care. To recover under a negligence theory, a plaintiff must prove a duty on the part of the defendant to protect the plaintiff from injury, a breach of that duty, that the plaintiff suffered any injury and that the defendant's breach of its duty was a proximate cause of that injury.

Negligence *per se,* defined as a violation of a statute, ordinance or administrative ruling, regulation or order designed for the protection of human life or property, is *prima facie* evidence of negligence. Where it is shown that a party has violated a statute, this *prima facie* evidence of negligence may be rebutted by proof that the party acted reasonably under the circumstances of the case, despite the violation. *French v. City of Springfield,* 65 Ill.2d 380 (1976).

B. Negligence Defenses
The following affirmative defenses must be pled early on in a case and certainly no later than discovery of a basis for such an affirmative defense so as to avoid a claim of surprise by a plaintiff. 735 ILCS 5/2-619 and 735 ILCS 5/2-613

1. Contributory negligence
2. Assumption of risk
3. Failure to mitigate damages
4. Res judicata
5. Estoppel and laches
6. Statutes of limitations
7. Statute of frauds
8. Payment, release, satisfaction, discharge in bankruptcy
9. Fraud
10. Duress
11. Illegality

12. Want/failure of consideration in whole or in part
13. Recovery cannot be had by reason of statute or nondelivery
14. Lack of capacity to sue or be sued
15. Want of subject matter jurisdiction

C. Gross Negligence, Recklessness, Willful and Wanton Conduct

Willful and wanton conduct in Illinois is a course of action which either shows actual or deliberate intention to harm or which, if not intentional, shows an utter indifference to or conscious disregard for a person's safety or the safety of others. To recover under such a theory, the Plaintiff must, as under a negligence theory, prove a duty, a breach of the duty, proximate cause and injury. (See Illinois Pattern Jury Instructions (2011) Section 10.00 *et seq*. and 14.00 *et seq*.)

D. Negligent Hiring and Retention

Illinois follows the rule that when an employer (or other person against whom vicarious liability is sought), admits that it is vicariously liable for the conduct of the allegedly negligent actor, claims of negligent hiring or entrustment are not allowed. *Gant v. L.U. Transport,* 331 Ill. App. 3d 924 (2002).

An employer or principal may be vicariously liable for an employee's torts under the doctrine of respondeat superior. In order for that doctrine to be imposed, the torts must have been committed within the scope of the employment or agency. The burden is on the Plaintiff to show the contemporaneous relationship between tortious acts and scope of employment or agency. A principal is bound by the acts of his or her agent committed or performed within the course and scope of the agency. A principal may be liable for reasons independent of the agency relationship. While an agency relationship may exist between a principal and agent, some phase or aspect of the agency may be in dispute; in this event, a jury will be instructed that if the agent was not acting as an agent of the principal or within the scope of his authority as agent of the principal at the time of the occurrence, then the defendant principal is not liable. (See *Hengels v. Gilski,* 127 Ill.App.3d 894 (1984)).

E. Negligent Entrustment

In order to prove negligent entrustment, a plaintiff must show that a defendant gave another express or implied permission to use or possess a dangerous article or instrumentality which the defendant knew, or should have known, would likely be used in a manner involving an unreasonable risk of harm to others. Although an automobile is not a dangerous instrumentality per se, it may become one if it is operated by someone who is incompetent, inexperienced, or reckless. *Evans v. Shannon,* 201 Ill.2d 424 (2002)

Illinois courts have held that a negligent entrustment count cannot stand against an employer where the employer had admitted responsibility for the conduct of the employee. *Ledesma v. Cannonball, Inc.,* 182 Ill. App. 3d 718 (1989); *Neff v. Davenport Packing Co.*, 131 Ill. App. 2d 791 (1971).

F. Dram Shop

Illinois does recognize a cause of action for "dram shop" liability. Dram shop statutes are found at 235 ILCS 5/6-21. For any provider of alcohol to be liable under the dram shop act, it must be determined that a customer of the bar was intoxicated at the time of the accident, that the bar provided the intoxicating liquor consumed by the customer,

that the liquor provided by the bar caused the intoxication of the customer and that the customer's intoxication was at least one cause of the accident. (See *Mohr v. Jilg*, 223, Ill.App.3d, 217 (1992).

G. Joint and Several Liability

Every defendant is jointly and severally liable for all past and future medical and medically related expenses. 735 ILCS 5/2-1117. Any defendant found to be less than 25% at fault is only severally liable for all damages other than medical and medically related expenses. Where a defendant's fault is determined to be 25% or greater, that defendant is jointly and severally liable for all damages. An employer's fault, by statute, is not considered when assessing the fault of the parties. 735 ILCS 5/2-1117. Further, the Illinois Supreme Court has recently held, in the case of *Ready vs. United/Goedecke Services,* 238 Ill.2nd 582 (Ill. 2010), that the fault of a defendant who settles, in good faith, with a plaintiff before trial shall not be considered in apportioning the fault of the non-settling defendants..

H. Wrongful Death and/or Survival Actions

Illinois has a purely statutory cause of action for wrongful death. It is brought only by a personal representative. (740 ILCS 180/1 *et seq*.) There is only one cause of action and one recovery for wrongful death. That recovery is separate and distinct from an action under the survival statute. (See *Varelis v. Northwestern Memorial Hospital,* 266 Ill.App.3d 578 (1994)). The wrongful death action may be brought whenever "the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain any action and recover damages in respect thereof." 740 ILCS 180/1. A defendant may assert those affirmative defenses against the personal representative that it would have had if the decedent had survived. The purpose of the wrongful death act is to compensate the surviving spouse and/or next of kin for pecuniary injury caused by the death of their family member. *Elliot v. Willis,* 92 Ill.2d 530 (1980). The next of kin referred to in the act refers to those blood relatives of the decedent in existence at the time of his death. *Cruz v. Illinois Masonic Medical Center,* 271 Ill.App.3d 383 (1995). The damages recoverable are the pecuniary damages resulting from the death of the decedent. The legislature has amended the act to also allow for the recovery of grief and sorrow resulting from the decedent's death. Punitive damages are not recoverable in a wrongful death case. *Gardner v. Geraghty,* 98 Ill.App.3d 10 (1981). The Court allocates any wrongful death settlement or judgment among those next of kin who have a pecuniary loss according to the intestate laws and proportion of actual dependency. 740 ILCS 180/2. If the deceased left no next of kin, there can be no recovery for the benefit of anyone except limited recovery for medical bills, funeral bills and fees of the personal representative. 740 ILCS 180/2.

The Illinois Pattern Jury Instructions define pecuniary loss as including loss of money, goods, services, and society. (Illinois Pattern Jury Instructions (2011) 31.01) In addition, the jury may consider what money, goods and services the decedent customarily contributed in the past and may have contributed in the future, as well as the decedent's age, gender, health, physical and mental characteristics, habits of industry, sobriety and thrift, and the decedents occupational abilities and the relationship between the kin and the decedent. (Illinois Pattern Jury Instructions (2011) 31.01) There is a presumption in Illinois that, where the deceased is a minor child, the next of kin has suffered some substantial loss of society, but there is no presumption as to pecuniary loss. (Illinois Pattern Jury Instructions (2011) 31.03) Likewise, a widow is presumed to have a substantial pecuniary loss, but the jury is also instructed that the weight to be given this presumption is its decision. (Illinois Pattern Jury Instructions (2011) 31.04) Future pecuniary losses of money, goods and services must be discounted to present value. (Illinois Pattern Jury Instructions (2011) 31.04)

The state of gestation or development of a human being when an injury is caused or when an injury takes effect, or at death, shall not foreclose an action under the wrongful death act, and parents may maintain a cause of action to recover damages for loss of a stillborn child's society as an unborn fetus is recognized as a "person" under the Wrongful Death Act. 740 ILCS 180/2. This was recently limited by the Illinois Appellate Court for the First District in *Miller v. American Infertility Group of Illinois,* 386 Ill.App.3d 141 (2008). In *Miller* the Court held that the wrongful death act does not allow a cause of action or recovery under the act for loss of an embryo created by in vitro fertilization that has not been implanted in the mother.

Survival actions in Illinois are statutory, arising out of the Survival Act (755 ILCS 5/27-6). Courts have found that the Survival Act does not create a cause of action but rather permits a representative of the estate to maintain statutory or common law actions that had accrued to the decedent before his or her death that otherwise would have abated under the common law at the time of death. Illinois law has limited recovery under the Survival Act to compensatory damages. Punitive damages are not recoverable. (See *Vincent v. Alden-Park Strathmoor*, 339 Ill.App.3d 1102 (2010).

I. Vicarious Liability

Respondeat Superior

In order for a plaintiff to invoke the doctrine *of respondeat superior*, a relationship of principal and agent, master and servant, or employer and employee must be established. The plaintiff must also show that the wrongdoer was either the employee, the agent or the servant. A presumption of agency may arise from an employer-employee relationship. Regardless of whether the relationship is that of "employer-employee" or "principal-agent," the doctrine of *respondeat superior* applies only to impute tort liability if there is an employment relationship in which the master, employer or principal exerts control over the conduct of the servant, employee or agent. *Williams v. Ingalls Memorial Hospital,* 408 Ill.App.3d 360 (2011). For an employer to be vicariously liable for an employee's tort under the doctrine of *respondeat superior*, the torts must have been committed within the scope of employment. Illinois courts apply the Restatement (Second) of Agency factors to determine whether an employee's acts are within the scope of employment. Those factors are: (a) the act is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the master. id. Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master. (id.)

Independent Contractor

In general, one who hires an independent contractor is generally not liable for the negligent or intentional acts or omissions of that contractor. *Lang v. Silva,* 306 Ill.App.3d 960 (1999). However, liability based on apparent agency may be imposed where the alleged negligence is committed by an independent contractor. Apparent agency is rooted in the doctrine of equitable estoppel and is based on the idea that "if a principal creates the appearance that someone is his agent, he should not then be permitted to deny the agency if an innocent third-party reasonably relies on the apparent agency and is harmed as a result." *Oliveira-Brooks v. Re/Max International, Inc*. 372 Ill.App.3d 127 (2007). A principal is vicariously liable for the conduct of his agent, but not for the conduct of an independent contractor. The difference is defined by the level of control over the manner of work performance. An agency relationship is a consensual relationship in which a principal has the right to control an agent's conduct

and an agent has the power to affect a principal's legal relations. An independent contractor relationship is one in which an independent contractor undertakes to produce a given result but, in the actual execution of the work, is not under the control of the person for whom he does the work. In determining whether a person is an agent or independent contractor, the court's cardinal consideration is the right to control the manner of work performance, regardless of whether that right was actually exercised. Another significant factor is the nature of work performed in relation to the general business of the employer. In the context of whether a broker was liable to the plaintiff, the Court enunciated other factors to consider in determining independent contractor status. Those factors are: (1) the right to discharge; (2) the method of payment; (3) the provision of necessary tools, materials and equipment; (4) whether taxes are deducted from the payment; and (5) the level of skill required. "No single factor is determinative and the significance of each may change depending on the work involved." *Sperl v. C.H. Robinson Worldwide, Inc*. 408 Ill.App.3d 1051 (2011).

Placard Liability

If a carrier-lessee does not comply with ICC Regulations concerning the giving of a receipt and the concealment of the carrier's name and permit number upon the surrender of the leased equipment, then the carrier-lessee is vicariously responsible to the public for the negligent operation of the leased vehicle without regard to whether, at the time in question, the equipment was being used in the business of the carrier-lessee. 49 C.F.R. 376.12 and *Schedler v. Rowley Interstate Transportation Co.,* 68 Ill.2d 7 (1977). The same rule applies even if, at the time of the accident, the equipment is being used by the owner-lessor for his own use in purely intrastate hauling. *Kreider Truck Service, Inc. v. Augustine,* 67 Ill.2d 535 (1979).

However, in a case where a driver employed by a motor carrier allegedly assaulted the plaintiff in a transport terminal, and the plaintiff sought to hold the lessee-carrier vicariously liable under the provisions of the ICC Regulatory scheme discussed above, the Illinois Appellate Court has held that under the ICC Regulatory schemes, although a licensed carrier might be held liable for intentional torts of a driver of a leased vehicle, the conduct of the driver giving rise to the injury must nevertheless have some nexus to the commercial activity which the ICC sought to regulate by imposing responsibility on the carrier. *Herschberger v. Home Transport Company,* 103 Ill.App.3d 348 (1982)

The Illinois Supreme Court has also noted that rather than resolve troublesome agency questions such as employee or independent contractor, scope of employment, frolic or detour, or borrowed employees in determining liability, it is only necessary to consider the simple question of whether the lease has been terminated and possession surrendered in the manner provided in the regulations. *Schedler v. Rowley Interstate Transportation Co.,* 68 Ill.2d 7 (1977). When the lessee takes possession in the lease and places the identification on the equipment as required by federal regulations the lessee will have exclusive possession and complete responsibility of the vehicle which remain until possession is surrendered and the identification legend of the lessee-carrier is removed.

Once the lessee-carrier has entered into a lease with an owner and placed its identification on the vehicle, it has vested the owner-lessor with authority to transport commodities in that vehicle in interstate commerce. The responsibility of the lessee who vested the owner-lessor with this authority remains until possession is surrendered in the manner provided in the regulations. 49 C.F.R. 376.12 and *Schedler v. Rowley Interstate Transportation Co.,* 68 Ill.2d 7 (1977) and *Kreider Truck Service, Inc. v. Augustine,* 67 Ill.2d 535 (1979). No matter what activity is being provided at the time of

an accident whether interstate or intrastate if the ICC identification legend is on the vehicle the lessee-carrier will be liable. id.

J. Exclusivity of Workers' Compensation
The Illinois' Worker's Compensation statute is the exclusive remedy for injured workers as against employers. 820 ILCS 305/5(a). The statute does not preclude a civil action against third parties that may be liable for damages. 805 ILCS 305/5(b). In general, co-workers may not sue each other. 820 ILCS 305/5(a) and *Oakes v. Gaines,* 107 Ill.App.3d 212 (1982).

Damages

A. Statutory Caps on Damages
Illinois efforts at tort reform have been declared unconstitutional. Tort reform was passed in 1995, which included statutory caps on damages. The entirety of that Act was declared unconstitutional in the case of *Best v. Taylor Machineworks*, 179 Ill.2d 367 (Ill. 1997)

B. Compensatory Damages for Bodily Injury
Illinois has Pattern Jury Instructions for the following elements of damages:

a. Economic Damages
i. Past and future medical expenses
ii. Loss of income or other wages
iii. Other property loss
b. Non-economic Damages
i. Pain and suffering
ii. Aggravation of a pre-existing ailment or condition
iii. Reduced life expectancy
iv. Disability/loss of a normal life
v. Disfigurement
vi. Increased risk of harm
vii. Loss of consortium
viii. Emotional damages (assuming cause of action is allowed)
c. Punitive damages
(See Illinois Pattern Jury Instructions (2011) 30.01, et seq.)

Damages recoverable in a wrongful death action include economic damages of lost income or other wages and other property loss and non-economic damages of loss of society and more recently included element, grief, sorrow, and mental suffering of the next of kin. (See Illinois Pattern Jury Instructions (2011) 31.01 et seq).

C. Collateral Source
Under the Collateral Source Rule, benefits received by the injured party from a source wholly independent of, and collateral to, the tort feasor will not diminish damages otherwise recoverable from the tort feasor. The rule provides that payments made to or benefits conferred on the injured party from other sources are not credited against the tort feasor's liability, although they cover all or part of the harm for which the tort feasor is liable.

In 2008, the Supreme Court decided *Wills v. Foster,* 229 Ill.2nd 393 (Ill. 2008), holding that plaintiffs are entitled to seek recovery of the full value of their medical expenses. The defendant does not benefit from any reduction in the actual amount of payment for

the medical services due to Medicare or Medicaid deductions or discounts negotiated by health insurers.

D. Pre-Judgment / Post-Judgment Interest

Plaintiffs are not entitled to pre-judgment interest. Post-judgment interest in the amount of 9% per year shall accrue upon any award, report or verdict from the time the report, judgment or verdict was made until the time the payment is made. (See 735 ILCS 5/2-1303). The judgment debtor may, by tender of payment of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment. *id*.

E. Damages for Emotional Distress

As noted above, recent changes to the law permit plaintiffs in wrongful death action to seek compensation for the non-economic damages of grief, sorrow and mental suffering.

Claims for intentional infliction of emotional distress are permitted in Illinois. In order to state a claim for this cause of action, a plaintiff must plead facts indicating (1) that the defendant's conduct was truly extreme and outrageous; (2) that the defendant intended to inflict, or knew that there was a high probability that his conduct would inflict, severe emotional distress upon the plaintiff and; (3) that the defendant's conduct in fact caused the plaintiff severe emotional distress. *McGrath v. Fahey*, 126 Ill.2d 78 (1988).

In the case of *Rickey v. Chicago Transit Authority*, 98 Ill.2d 546 (1983) the Illinois Supreme Court established that persons in the "zone of physical danger" may recover damages for negligent infliction of emotional distress. Pursuant to this cause of action, a bystander, located in the zone of physical danger and because of the defendant's negligence has reasonable fear for his or her own safety, has a right of action for physical injury or illness resulting from emotional distress. Plaintiffs suffering a physical injury may also recover for negligent infliction of emotional distress where the defendants are negligent and where an emotional injury results. Unlike other jurisdictions, Illinois courts do not require the plaintiff to allege or prove severe emotional injury. An Illinois court will allow all direct victims to plead negligent infliction of emotional distress.

F. Wrongful Death and/or Survival Action Damages - See "Liability" Section H, above.

G. Punitive Damages

The purpose of punitive damages is to punish the defendant so as to deter the plaintiff from repeating his intentional, deliberate and outrageous conduct. *See Morrow v. L.A. Goldschmidt Associates, Inc..* 126 Ill.App.3d 1089 (1984). There must be actual damages to support an award of punitive damages. Punitive damages cannot be awarded in a breach of contract case unless there is a separate independent willful tort that would be sufficient to support punitive damage. *Scullin Steel Company v. Evans Products Co*., 563 F.Supp. 825 (S.D. Ill. 1983).

Punitive damages are 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. *See Loitz v. Remington Arms Co*., 138 Ill.2d 404 (1990). Only when the conduct at issue approaches the degree of moral blame attached to intentional wrong is an award of punitive damages appropriate. *id*. A punitive damages award should not go beyond deterrence and become a windfall.

Under the U.S. Supreme Court case of *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996) punitive damages in excess of four times the amount of the compensatory damages may "be close to the line of constitutional impropriety." In *State Farm v. Campbell*, 538 U.S. 425, the U.S. Supreme Court cautioned that "in practice, few awards exceeding a single digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." However, Illinois courts have demonstrated a willingness to exceed the single digit ratio where the defendant's conduct is significantly reprehensible. (See *Leyshon v. Diehl Controls of North America*, 407 Ill.App.3d 1 (2010)). This decision was echoed in the 7th Circuit case of *Mathias v. Accor Economy Lodging,* 347 F3d 672 (2003) where the plaintiffs suffered bed bug bites at the defendant's hotel. The Court upheld a punitive damages award of 37 times the compensatory award, noting that the defendant had knowingly exposed guests to the infestation over the span of several years and that the victims' compensatory damages may be insufficient to punish the defendant.

In Illinois, before making any claim for punitive damages, a plaintiff must, in all actions on account of bodily injury or physical damage to property based on negligence or strict product liability, file a motion to amend the complaint to add a claim for punitive damages. (735 IICS 5/2-604). The court must conduct either an evidentiary hearing where credibility of witnesses may be assessed, or a nonevidentiary hearing where submissions such as pleadings, deposition testimony and discovery materials are reviewed to determine whether there is a reasonable likelihood that facts would be proven at trial sufficient to support an award of punitive damages. id. The initial determination is interlocutory and is made by the trial judge and is subject to review using an abuse of discretion standard if an evidentiary hearing was conducted, or a *de novo* standard of review if no evidentiary hearing was conducted. See *Stojkovich v. Monadanock Building*, 281 Ill.App.3d 733 (1996). A motion to add a request for punitive damages must be made no later than 30 days after the close of discovery so that there are no last-minute punitive damages claims made before trial. (See 735 ILCS 5/2-604).

In Illinois, it is against public policy to permit insurance coverage for punitive damages assessed for an insured's own misconduct. However, Illinois courts permit employers to claim coverage for punitive damages imposed for the acts of their employees under the theory of vicarious liability. See *Beaver v. Country Mutual Insurance Co*., 95 Ill.App.3d 1122 (1981) and *Warren v. Lemay,* 144 Ill.App.3d 107 (1986).

H. Diminution in Value of Damaged Vehicle

In Illinois diminished value is one of the measures of damages to personal property. Illinois Pattern Jury Instruction 30.10 (2011) states in pertinent part:

> *a.* The measure of damages to property is determined by the lesser of (1) the reasonable expense of necessary repairs to the property or (2) the difference between the fair market value of the property immediately before the occurrence and its fair market value immediately after the occurrence.

Illinois appellate courts have held that an insurer may only be liable to its insured for diminished value if specifically allowed in the insurance policy. *Sims v. Allstate Insurance Company*, 365 Ill.App.3d 997 (2006). In the *Sims* case, a class action suit was brought against Allstate by its insureds for failure to pay for "diminished value" after repairs were paid for by Allstate. The court held that Allstate was not liable for the "diminished value" due to the language in its insurance policies.

I. Loss of Use of Motor Vehicle

In Illinois, a plaintiff may be awarded damages for "loss of use" of personal property. See *Fairchild v. Keene,* 93 Ill.App.3d 23 (1981).

Evidentiary Issues

A. Preventability Determination

There is no affirmative duty in Illinois for a trucking company to perform a post-accident preventability determination. Formerly in Illinois, if the employer had a policy of investigating all accidents, then the conclusions of that investigation were admissible at trial as admissions by the employer. *Pearl v Chicago Transit Authority*, 177 Ill. App. 3d 499, 532 N.E.2d 439 (1st Dist. 1988) (post-accident discharge of employee driver held admissible as an admission by the employer). Also, if the employer's investigation evaluated an employee's knowledge and competency at the time of the accident, rather than addressing new procedures for preventing future accidents, then the investigation was admissible. *Pearl v Chicago Transit Authority*, 177 Ill. App. 3d 499 (1988). However, the *Pearl* case was rejected in *Bulger v Chicago Transit Authority*, 345 Ill. App. 3d 103 (2003). The *Bulger* court stated that *Pearl's* holding that evaluation of driving ability is admissible as an admission is an exception that would swallow the general rule that evidence of post accident remedial measures is inadmissible to prove negligence. However, the *Bulger* court recognized that if a subsequent remedial action is taken pursuant to the requirements of a law, or by the order of a governmental agency, then evidence of this measure will be admissible.

B. Traffic Citation from Accident

A plea of guilty to a traffic and minor criminal offense is admissible in a subsequent civil proceeding as an admission. *Hartigan v. Robertson,* 87 Ill.App.3d 732 (1980). The Supreme Court of Illinois has held that, in subsequent civil actions, traffic convictions are not admissible where the defendant did not plead guilty but was rather found guilty by the traffic court judge. *Thurmond v. Monroe* 159 Ill.2d 240 (1994).

C. Failure to Wear a Seat Belt

The Illinois vehicle code provides that "failure to wear a seat safety belt in violation of this section shall not be considered evidence of negligence." 625 ILCS 5/12-603.1(c). However, Illinois courts have cautioned that this, "does not preclude all seatbelt evidence, but only evidence of non-use in determining whether the person was negligent in failing to utilize the vehicle's seatbelt system." *Bachman v. GMC* 332 Ill.App.3d 760 (2002). Thus, in the Bachman case, the plaintiff was permitted to introduce testimony that she was wearing a seatbelt at the time of the collision.

D. Failure of Motorcyclist to Wear a Helmet

Illinois courts have held that, since Illinois does not require motorcyclists to wear helmets, evidence of the failure of a motorcycle rider to wear a helmet is not admissible with respect to either the question of liability or damages. *Hukill v. DiGregorio* 136 Ill.App.3d 1066 (1985).

E. Evidence of Alcohol or Drug Intoxication

Evidence that a person has consumed alcoholic beverages is not, by itself, admissible. There must also be evidence to show that the drinking resulted in intoxication. *Rice v. Merchants National Bank*, 213 Ill.App.3d 790 (1991). Illinois courts have determined that evidence of an expert toxicologist may even be inadmissible when the expert opined merely that the defendant "may have been under the influence", rather than rendering an opinion that the defendant was, actually, intoxicated at the time of the occurrence. *Reuter v. Korb*, 248 Ill.App.3d 142 (1993).

F. Testimony of Investigating Police Officer

The Illinois Supreme Court has commented that most trial courts are reluctant to accept the testimony of police officers as reconstruction experts based, in part, "on the witnesses' inability to provide expertise in a truly scientific field." *Thurmond v. Monroe*, 235 Ill.App.3d 281 (1992). Where the officer has no superior or truly scientific training, knowledge or expertise to qualify as an expert in the field of accident investigation the court may not qualify the officer to testify regarding the mechanism of the accident. id. Illinois case law holds that an officer may render opinion testimony only where he or she is qualified by superior learning or training to render opinions in such matters as accident reconstruction. In the case of *Loseke v. Mables*, 217 Ill.App.3d 521 (1991), the Appellate Court upheld the trial court's admission of an investigating officer's opinion regarding the point of impact noting that the officer had over 80 hours of training in accident reconstruction and 17 years of law enforcement experience.

G. Expert Testimony

Illinois follows the *Frye* standard for the admission of novel scientific evidence. Under that standard, scientific evidence is only admissible at trial if the methodology or scientific principle upon which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs. *Frye v. United States,* 293 F. 1013 (1923) and *Snelson v. Kamm*, 204 Ill.2d 1 (2003). In general, witnesses may render opinions if the expert is qualified by knowledge, skill, experience, training or education in a field that has at least a modicum of reliability and the testimony would assist the jury in understanding the evidence. *Kimble v. Earle M. Jorgenson Company*, 358 Ill.App.3d 400 (2005). Whether to admit expert opinion is within the trial court's discretion and hinges upon whether the expert offers knowledge and applications of principles of science beyond the ken of the average juror. Evidence is beyond the ken of the average juror when it involves knowledge or experience that a juror generally lacks. (See *Zavala v. Powermatic, Inc*. 167 Ill.2d 542 (1995).

In Illinois, the party seeking to call an expert witness must disclose the identity of that expert, his opinions, and any bases for those opinions during the discovery process. (See Illinois Supreme Court Rule 213). Courts will not permit a jury to hear any opinions not disclosed in interrogatory answers or in subsequent deposition testimony. Further, improperly disclosing the identity, opinions or bases of an expert opinion may be sanctioned. The disclosure requirements of Rule 213 are "mandatory" and subject to a party's strict compliance. *Sullivan v. Edward Hospital,* 209 Ill.2d 100 (2004).

H. Collateral Source - See above.

I. Recorded Statements

Written or recorded statements of any witness must be produced by the party in possession of the statements. *Monier v. Chamberlin*, 35 Ill.2d 350 (1966). If a defendant has a copy of a statement taken of a plaintiff or co-defendant, it is prudent, notwithstanding the absence of a production request for such a statement, for counsel to produce the statement before the deposition of the witness. Statements of a truck driver's handwritten notes, computer recorded notes of a telephone conversation with a truck driver while on the road, or the handwritten statement of a truck driver given to another employee of the trucking company for whom the truck driver was driving are all discoverable. id. However, if the statement was given to the insurer of the truck driver or an independent claims adjusting representative, then such statements are protected by the attorney-client privilege. *People v. Ryan*, 30 Ill.2d 456 (1964). The written Secretary of State accident report, which motorists are required to send to the Illinois Secretary of State for most accidents, is privileged. 625 ILCS 5/11-412.

J. Prior Convictions

Prior traffic convictions are usually not admissible. (See *Thurmond v. Monroe* 235 Ill.App.3d 281 (1992). Convictions for felonies may be admissible. To determine the admissibility of a prior felony conviction for impeachment purposes, the Illinois Supreme Court has adopted the three-part test derived from Federal Rule of Evidence 609. To be admissible for impeachment purposes, the conviction: (1) must have been for a felony, (2) it must have occurred less than 10 years before the witness' testimony, and (3) the probative value of the conviction must not be substantially outweighed by its potential prejudicial effect. This test for admissibility was extended to civil cases in *Knowles v. Panopoulos,* 66 Ill.2d 585 (1977)

K. Driving History

Illinois courts have held that a driver's driving history may be admitted as evidence of wanton and willful conduct on the part of the driver's employer. *Lockett v. Bi-State Transit Authority*, 94 Ill.2d 66 (2003). The *Lockett* court cautioned, however, that, when admitting evidence of the driving record, the defendant may be entitled to a jury instruction cautioning the jury that "proof of the driving record was not to be considered in determining the nature of the driver's conduct on this occasion." *id.* As with all types of evidence, a driver's history will be admissible only if the Court determines that the probative value of that evidence outweighs the prejudicial effect of it.

L. Fatigue

Illinois has adopted nearly all of Title 49 of the Code of Federal Regulations, including Part 395 regulating drivers' hours of service. 625 ILCS 5/18(b)-105. (Note that Illinois has carved out an exception to Part 395 regarding hours of service of drivers employed by contract carriers transporting employees in the course of their employment. 625 ILCS 5/18(b)-106.1) Evidence of driver fatigue may be admissible. However, Illinois Courts have held that an experienced truck driver is in the best position to assess whether he was too fatigued to drive safely. Accordingly, the Court may decline to find that a legal duty existed on the part of the principal of the independent contractor/driver for which a negligence claim based on driver fatigue can be properly asserted. *Dowe v. Birmingham Steel Corp.,* 963 N.E.2d 344 (2011).

M. Spoliation

Spoliation of evidence is not in an independent tort; rather it is a subspecies of negligence. *Burlington Northern and Santa Fe Railway Company v. ABC-NACO*, 389 Ill.App.3d 691 (2009). A plaintiff must plead and prove the traditional elements of a negligence action – duty, breach, causation and damages. Generally, no duty exists to preserve evidence. *Thornton v. Shah*, 333 Ill.App.3d 1011. However, a duty may arise by virtue of a contract, agreement, statute or some other special circumstance. Additionally, through affirmative conduct, a party may voluntarily assume a duty to preserve evidence. Any of these considerations can establish the requisite relationship between the parties to impose a duty, and they have come to be known as the relationship prong of the inquiry. A plaintiff must also satisfy the foreseeablility prong of that test by showing that it was foreseeable that the evidence in question was material to a potential civil action. If a plaintiff fails to satisfy either prong, no duty exists. *Combs v. Schmidt*, 2012 Ill.App. Lexis 759 (2012).

Settlement

A. Offer of Judgment - The concept of offer of judgment does not exist in Illinois law.

B. Liens

A lien in its broadest sense encompasses all types of charges on property or proceeds in the context of a tort action. Liens on Illinois tort actions arise by statute, contract or common law and in equity. *Sullivan v. Sudiac*, 30 Ill.App.3d 99 (1975). Other than "super liens", like those of Medicare, no lien exists until it is perfected. A lien is perfected when all acts necessary for the creation of the lien has been performed including, in most instances, timely notice. However, even a perfected lien has no real monetary value until it attaches to a fund or asset against which it may be enforced.

In a personal injury action, liens are typically asserted by attorneys, medical providers and a Worker's Compensation carrier/employer. Additionally, governmental entitles such as Medicare, Medicaid and Social Security may assert a lien or interest on a plaintiff's claim and the federal statute and regulations governing these liens/interests preempt Illinois state law. Medicare's (CMS) interests must be protected at time of verdict or settlement regardless of formal notification of that interest.

There are two basic types of attorneys' liens; the general retaining lien and the special or charging lien. The retaining lien is most prevalent and allows the attorney to retain possession of the file until his fees have been paid. *Needham v. Voliva,* 191 Ill.App.256 (1915). This lien can be extinguished by the attorney voluntarily giving up the file or if payment is made for services rendered. *Upgrade v. Michigan Carton Company*, 87 Ill.App.662 (1990). A Worker's Compensation lien attaches by statute to any settlement or judgment from a third-party that compensates the employee for injuries sustained in the same occurrence. 820 ILCS 305/5(b). When the employee retains an attorney, in the absence of any other agreement, the employer shall pay the attorney a fee of 25% of the gross amount of the employer's reimbursement. *Murray v. Linconshire Group, Ltd.*, 167 Ill.App.3d 978 (1988). The requirements for the creation of a hospital lien are the rendering of services to the injured person and the service of notice in accordance with the applicable statute. 770 IlCS 23/1 et seq. After perfection of its lien, the hospital has a continuing duty to furnish records and statements. id. The lien attaches to any recovery made after a proper notice. id. It is proper for a hospital to enforce its lien by filing a separate lawsuit rather than a petition in the underlying action. *Illinois Hospital v. Bates*, 135 Ill.App.3d 732 (1985). The statute of limitations is five years and begins to run when the plaintiff obtains a recovery. *Memedovic v. CTA*, 214 Ill.App.3d 957 (1991). A trial court does not have discretion to reduce hospital liens except as provided by statute. *Illinois Hospital v. Bates,* 135 Ill.App.3d 732 (1985). The only statutory limits to recovery are that charges are reasonable, that the total amount of all hospital liens cannot exceed one third of the patient's recovery and that any attorney lien or public aid lien takes priority over the hospital. *Jackson v. Thatcher*, 80 Ill.App.3d 876 (1980). The requirements of a physician's lien are similar to a hospital lien and are defined under 770 ILCS Section 80/1-6.

A lien in a personal injury case can be enforced at the time the defendant tenders payment to the plaintiff and can be discharged via release or by including the lien holder's name on the settlement draft.

Illinois law reflects the longstanding general rule that the prevailing party in litigation bears the cost of that litigation, unless otherwise provided for in a statute or by agreement between the parties. The common fund doctrine, which is an exception to the general rule, allows an attorney who "creates, preserves or increases the value of a fund in which others have an ownership interest to be reimbursed from that fund for litigation expenses incurred, including counsel fees." *Wajnberg v. Wunglueck*, 963 N.E.2d 1077 (2nd Dist. 2011). To be entitled to fees under the common fund doctrine, an attorney, must show that (1) the fund was created as a result of legal services the

attorney performed; (2) the subrogee eg. (an insurance company) did not participate in the creation of the fund; and (3) the subrogee benefited or will benefit from the fund's creation. *id*. In practice, the common fund doctrine compels lien holders to forfeit a certain percentage of their lien to the plaintiff's attorney/plaintiff in exchange for creating the fund. In practice, the amount forfeited by the lien holder is usually the percentage of the plaintiff's contingency fee.

C. Minor Settlement
Minor settlements are resolved pursuant to local Circuit Court rules. In general, circuit courts exercise authority to approve minor settlements in cases involving minors. The degree of control exerted by the courts depends on the age of the minor and the amount of the proposed settlement. In practice, courts generally look to whether a settlement has been negotiated in good faith and at arms length, whether the minor's estate has been represented by attorneys, and the extent of the minor's injuries as reflected in medical bills and photographs.

D. Negotiating Directly With Attorneys
Claims professionals are permitted to negotiate settlement directly with attorneys.

E. Confidentiality Agreements - Confidentiality agreements are permitted in Illinois.

F. Releases
In Illinois, a general release is restricted to the specific claims contained in the release agreement. However, where both parties were aware of an additional claim at the time of signing the release, the general release will be interpreted to release that claim as well. Where the release is specific, courts have been willing to bar additional claims falling within the scope of that release which did not explicitly appear in the document. *Goodman v. Hanson*, 408 Ill.App3d 285 (2001).

In Illinois, the Illinois Contribution Act (see above) provides that a tort feasor who settles in good faith with a claimant pursuant to that act is discharged from all liability for any contribution to any other tort feasor. (See *Alsup v. Firestone Tire and Rubber Company,* 101 Ill.2d 196 (Ill. 1984). In *Alsup*, the court held that a release does not cover a joint tort feasor not specifically identified in the release. *id*. Illinois courts have found that, as a matter of public policy, the settlement of claims should be encouraged. Where a general release extinguishes claims made by a plaintiff, but not explicitly those actions contained in co-defendants' counterclaims for contribution, courts have extended the releases to include the counterclaims. (See *Rakowski v. Lucente*, 104 Ill.2d 317 (Ill. 1984)

There is no requirement in Illinois to translate a release into the language of the releaser. Likewise, there is no requirement that a notary certify the release.

G. Voidable Releases
Releases may be voidable where one of the parties concealed or withheld material facts when making the settlement and obtaining the release. *See Golden v. McDermott, Will & Emery*, 299 Ill.App.3d 982 (1998). And *Cwikla vs. Sheir*, 345 Ill.App.3d 23 (2003).

Releases may also be voidable where parents sign releases on behalf of an injured minor, if court approval is not obtained for the releases. (See *Villalobos v. Cicero School District 99*, 362 Ill.App.3d 704 (2005).

Transportation Law

A. State DOT Regulatory Requirements
Illinois has adopted the Federal Motor Carrier Safety Regulations into the Illinois Motor Carrier Safety Regulations in the Illinois Vehicle Code. (See *People vs. Blackorby*, 146 Ill.2d 307 (1992). The adoption of the Federal Motor Carrier Safety Regulations in Illinois is codified at 625 ILCS 5/18b.

B. State Speed Limits.
All state speed restrictions are codified at 625 ILCS 5/11-601-612. In general, no vehicle may be driven at a speed greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person or property. The fact that the speed of a vehicle does not exceed the applicable maximum speed limit does not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, approaching and going around a curve, approaching the crest of a hill, when traveling upon any narrow or winding roadway, or when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Speed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway in compliance with legal requirements and the duty of all persons to use due care. 625 ILCS 5/11-601(a).

Unless otherwise established, the maximum speed limit in an urban district is 30 miles per hour. 625 ILCS 5/11-601(c). The speed restriction on highways is 65 miles per hour, unless otherwise designated, for all highways under the jurisdiction of the Illinois State Toll Highway Authority and for highways so designated by the Department of Transportation which have at least four lanes of traffic and in which the directions of traffic are separated. The maximum speed limit for all other highways is 55 miles per hour. 625 IICS 5/11-601(d). Outside urban areas, the maximum speed limit on a divided four-lane highway is 65 miles per hour, except that the maximum speed limit for a bus on all such highways is 55 miles per hour. Speed limits may be altered by the Department of Transportation (625 ILCS 5/11-602), the Toll Highway Authority (625 ILCS 5/11-603) and local authorities. (625 ILCS 5/11-604). However, the maximum speed limit cannot exceed those limits contained at 625 ILCS 5/11-601. There are also special speed limits for school zones (625 ILCS 5/11-605), Highway Construction Zones (625 ILCS 5/11-605.1) and other areas such as parks and recreational areas. (625 ILCS 5/11-605.3).

Minimum speed regulations may be determined by the Department of Transportation, the Toll Highway Authority or local authorities. (625 ILCS 5/11-606). In any event, no person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation of his vehicle or in compliance with law. (625 ILCS 5/11-606(a)).

C. Overview of State CDL Requirements.
Illinois has adopted the Federal CDL standards, requirements and penalties contained within 49 CFR Part 383. 625 ILCS 5/18(b).

Insurance Issues

A. State Minimum Limits of Financial Responsibility: In Illinois, the minimum limits for insurance coverage for private citizens is $20,000 per person, $40,000 per accident, and $15,000 for property damage. 625 ILCS 5/7-203.

B. Uninsured Motorist Coverage: Uninsured and underinsured motorist coverage is mandatory in Illinois with limits of at least $20,000 per person and $40,000 per accident. 215 ILCS 5/143a, 215 ILCS 5/143a-2. The limits for uninsured and underinsured

coverages must be equal to the policy's bodily injury liability limits unless the insured has been offered and specifically rejected in writing limits equal to the bodily injury liability limits. Lee v. John Deere Ins. Co., 208 Ill.2d 38, 802 N.E.2d 774 (2003). Applicable set-offs include the amounts the insured recovers from the at-fault tortfeasor and amounts recovered in workers compensation or disability benefits. Sulser v. Country Mut. Ins. Co., 147 Ill.2d 548, 591 N.E.2d 427 (1992). Anti-stacking clauses in uninsured and underinsured motorists coverage provisions are valid and enforceable. Hobbs v. Hartford Ins. Co. of the Midwest, 214 Ill.2d 11, 823 N.E.2d 561 (2005).

C. No Fault Insurance: Illinois law does not have any provision for no fault insurance such as PIP.

D. Disclosure of Limits and Layers of Coverage: In Illinois, a defendant in a tort lawsuit is required to provide information regarding its insurance policy limits and layers of primary and excess coverage in answers to interrogatories, but a defendant is typically not required to produce copies of the actual insurance policies to the claimant's attorney. Manns v. Briell, 349 Ill.App.3d 358, 811 N.E.2d 349 (4th Dist. 2004).

E. Unfair Claims Practices: Section 155 of the Illinois Insurance Code address unfair claims practices This section preempts an action for bad faith or unfair claims practices, except in cases involving bad faith failure to settle a claim or suit within policy limits resulting in an excess judgment. In Section 155, 215 ILCS 5/155, an insured is entitled to recover statutory penalties from an insurer who unreasonably delays in settling a claim when it appears to the court that such action or delay was vexatious and unreasonable. The amount that a court may award to the insured include attorneys fees, other costs, plus an amount not to exceed any one of the following: (a) 60% of the amount which the court or jury finds such party is entitled to recover against the insurance company, exclusive of costs; (b) $60,000; (c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action. No such penalties will be allowed when there was a bona fide dispute over coverage or the amount owed by the insurer for the claim. Brennan v. Paul Revere Life Ins. Co., 2002 U.S. Dist. LEXIS 446 (N.D. Ill. 2002).

F. Bad Faith Claims: An insurer who in bad faith refuses to settle a third party liability claim can be liable for the full amount of the judgment against its insured, even if the judgment exceeds the policy limits. Adduci v. Viligant Insurance Company, 98 Ill.App.3d 472, 424 N.E.2d 645 (1981). The bad faith rule in Illinois is, "[w]here it appears that the probability of an adverse finding on liability is great and the amount of damages would exceed policy limits, the insurer has a duty to settle within the policy limits, or face an excess liability claim for a breach of a duty owed to the insured." More succinctly stated, there is a duty on the part of an insurer to give its insured's interest at least equal consideration with its own where the insured is a defendant in a suit in which the recovery may exceed its policy limits. Where an insurer fails to settle a case within policy limits through fraud, negligence, or bad faith, this duty is breached. The mere fact of entry of the excess judgment against the insured constitutes damage and harm sufficient to permit recovery if bad faith can be shown. Just as an insurer's bad faith failure to settle a claim against its insured exposes it to excess liability, an insurer who, in bad faith, breaches his duty to defend its insured may also face liability for judgments exceeding the policy limits. LaRotunda v. Royal Globe Ins. Co., 87 Ill.App.3d 446, 408 N.E.2d 928 (1980). However, there must be a showing of bad faith to expose an insurer for an excess judgment in a failure to defend a case. Conway v. Country Cas. Ins. Co., 92 Ill.2d 388, 442 N.E.2d 245 (1982).

G. Coverage - Duty of Insured: In Illinois, cooperation provisions are enforceable where the insurer is providing the insured with a defense to a claim. Waste Mgmt., Inc. v. International Surplus Lines Ins. Co., 144 Ill.2d 178, 579 N.E.2d 322 (1991). The basic purpose of the cooperation clause is to protect the insurer's interests and to prevent collusion between the insured and the injured party. M.F.A. Mut'l Ins. Co. v. Cheek, 66 Ill.2d 492, 496 (1977). An insurer can deny coverage and avoid paying a claim based upon the insured's breach of the cooperation clause only if the insurer sustains substantial prejudice as a result of the insured's breach. Id.

H. Fellow Employee Exclusions: In Illinois, fellow employee exclusions are valid and enforceable. Great Central Ins. Co. v. Wascomat of America, 234 Ill.App.3d 150, 600 N.E.2 51 (1st Dist. 1992). Therefore, an action in tort by one employee against another employee is not covered.

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