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CASES YOU SHOULD KNOW ABOUT

Welcome to *Ancel Glink Defense E-News*, our electronic newsletter. In this newsletter, we focus on the latest court decisions and legislative changes in litigation which may affect you.

Ancel Glink Defense E-News is a publication of the defense litigation group of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.

For more information about this edition of the *E-News*, please contact litigation partner, [Lucy Bednarek](#).

Fourth Amendment - Dog Sniffs

Rodriguez v. United States, 2015 WL 1780927 (April 21, 2015)

The United States Supreme Court recently held that police may not extend an otherwise completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff. In the case, a K-9 officer stopped motorist Rodriguez for driving on a highway shoulder, in violation of Nebraska law. After the officer checked his license and issued a traffic warning, he asked Rodriguez for permission to walk his dog around the car. When Rodriguez refused, the K-9 officer detained him until a second officer arrived, and then retrieved his dog, who alerted for the presence of drugs. Rodriguez attempted to suppress the drug evidence. The Supreme Court held that although a routine traffic stop is not an arrest, the extension of that routine stop beyond the time needed to handle the underlying traffic violation would violate the Constitution's shield against unreasonable seizures, absent reasonable suspicion justifying the delay. The Supreme Court remanded the case to determine whether reasonable suspicion was present.

Pregnancy Discrimination

Young v. United Parcel Service, 135 S. Ct. 1338 (March 25, 2015)

The plaintiff, a female delivery driver, alleged her employer UPS discriminated against her when it refused to lighten her work duties while she was pregnant. Specifically, the plaintiff argued that UPS acted unlawfully under the Pregnancy Discrimination Act when it refused to accommodate her pregnancy-related lifting restriction. UPS responded that it only accommodated persons who were (1) drivers who had become disabled on the job, (2) those who had lost their Department of Transportation certification and (3) those who suffered from a disability covered by the ADA. UPS claimed the plaintiff did not fit in any of those categories and did not need to accommodate her. The United States Supreme Court remanded the case to determine whether a genuine material issue of material fact exists as to whether the reasons UPS gave for having treated the plaintiff less favorably than it treated nonpregnant employees were pretextual. The Supreme Court noted, however, that amendments made to the ADA after the time of the plaintiff's pregnancy may limit the future significance of the Pregnancy Discrimination Act because those amendments expanded the definition of disability and requires employers to accommodate employees whose temporary lifting restrictions originate off the job.

Tort Immunity- Discretionary Immunity for Hiring and Firing Decisions

Brooks v. Daley, 2015 IL App (1st) 140392 (1st Dist. March 18, 2015)

John Brooks, the former fire commissioner of the City of Chicago, filed a lawsuit against the City's former mayor and former chief of staff, claiming that ever since he was appointed fire commissioner in 2008, the mayor wanted to oust him and replace him with the mayor's preferred candidate for the position. To that end, when a fire department employee made allegations of sexual harassment against Brooks in 2010, the defendants allegedly forced Brooks to resign before an official investigation could clear Brooks' name. Brooks sought damages for intentional infliction of emotional distress and tortious interference with a business relationship. The Illinois Appellate Court affirmed the dismissal of the complaint, holding the defendants were immune from suit under Section 2-201 of the Tort Immunity Act because hiring and firing decisions are considered policy determinations within the meaning of the Act. The Court explained that defendants' actions in forcing Brooks to resign by threatening to fire him if he refused were analogous to a firing decision for purposes of a Section 2-201 analysis.

Tort Immunity- Discretionary Immunity for Public Improvements

Nichols v. City of Chicago Heights, 2015 IL (1st) 122944-U (1st Dist. March 12, 2015)

The plaintiffs were a group of individuals whose homes were damaged in a two-day rainstorm. The plaintiffs argued the City was responsible for the damage to their homes because the City's sewage system flooded their homes with raw sewage. The plaintiffs' expert opined that the flooding could have been avoided if the City had done appropriate preventative maintenance of the sewer system. In an unpublished opinion, the Illinois Appellate Court held the City was immune from liability under Section 2-201 of the Tort Immunity Act, which provides immunity for discretionary decisions. Here, the City was clearly acting in a discretionary capacity in planning its municipal-wide sewer system improvement program and establishing priorities for constructing those improvements within the City's limited budget. As a result, the City was subject to immunity under the Tort Immunity Act.

Qualified Immunity

Doe v. Village of Arlington Heights, 2015 WL 1621398 (7th Cir. April 13, 2015)

The plaintiff filed a lawsuit against the Village and a Village police officer claiming the officer, when responding to a 911 that involved the plaintiff and three males, improperly left the plaintiff, who was intoxicated, with the males and she was sexually assaulted by one of the males. The Seventh Circuit affirmed the dismissal of the complaint, finding first that the plaintiff failed to identify any existing case law that would have required the officer to protect her against private violence under the allegations of the complaint. Further, her due process claim failed because the failure to protect a person against private violence does not generally establish a due process claim, any state-created danger exception did not apply, and the officer's decision to leave the plaintiff with the males placed her in no worse position than that in which she would have been placed had the officer not acted at all. The fact that the dismissal occurred before any discovery took place did not change the result.

Absolute Legislative Immunity

Reeder v. Madigan, 780 F.3d 799 (7th Cir. March 11, 2015)

A reporter who worked for a lobbying organization brought a lawsuit against Illinois legislative officials and their staff under Section 1983, challenging the denial of his press credentials as violating his First Amendment right to freedom of the press, and due process and equal protection rights. The Seventh Circuit affirmed the dismissal of the complaint, finding the denial of the credentials to the

reporter qualified as a legislative activity and defendants were entitled to absolute immunity. The Court explained the Illinois legislature's decision to exclude lobbyists and those associated with lobbying groups from its legislative floor was enacted to prevent interference with the same core legislative activities. As a result, the defendants' decisions to deny press credentials to the plaintiff were inseparable from their core legislative activities.

Public Safety Employees Benefits Act- Responding to an Emergency

Vaughn v. City of Carbondale, 2015 IL App (5th) 140122 (5th Dist. March 25, 2015)

While on duty, a City police officer was stopped by a motorist asking for directions. As the officer was outside his patrol car talking with the motorist, he received a request from a police dispatcher to respond over the radio. The officer suffered a head injury when he reached into his patrol car to retrieve his radio and answer the dispatch call. The City denied him health benefits under the Public Safety Employee Benefits Act (PSEBA), arguing the officer's injury did not occur in response to an emergency. The Illinois Appellate Court disagreed and found the officer was entitled to benefits under PSEBA because a call from dispatch is one means to notify officers of an emergency and it is an officer's duty to respond to dispatch calls in a timely manner and be prepared for any eventuality. As a result, the officer's injury was incurred as a result of his response to what he reasonably believed was an emergency.

PENDING LAWS THAT MAY AFFECT YOU

Proposed Amendment to the Premises Liability Act

We previously reported on **Illinois House Bill 1441**, which seeks to amend the Premises Liability Act, 740 ILCS 130/2, to provide that whether a condition is open and obvious may be considered by the trier of fact only in assessing the degree of comparative fault, if any, and whether a condition is open and obvious shall not be considered with respect to any other issue of law or fact, including duty. This bill was re-referred to the Rules Committee on March 27, 2015.

Proposed Amendment to the Wrongful Death Act

Illinois House Bill 2713 seeks to amend the Wrongful Death Act, 740 ICLS 180/2, to provide that if it has been proven by a preponderance of the evidence that the defendant's intoxication contributed to, or proximately caused, the death of the deceased person, the jury may award punitive damages to the surviving spouse and next of kin of the deceased person. This bill was re-referred to the Rule's Committee on March 27, 2015.

Proposed Amendment to the School Code

Illinois Senate Bill SB0036 seeks to amend the Illinois School Code, 105 ILCS 5/10-22.13a, to clarify that school district property is subject to the local zoning authority. The School Code currently does not expressly subject school district property to local zoning control, but impliedly does so by authorizing school boards to petition local zoning authorities for approval of rezoning, variance and special use requires. The bill was referred to the Rule's Committee on April 14, 2015.

Proposed Amendment to the Code of Civil Procedure

Illinois House Bill 2546 seeks to amend the Illinois Code of Civil Procedure to

authorize the Illinois Supreme Court to adopt rules to promote the prompt, efficient and cost-effective resolution of civil actions in which the amount in controversy is more than \$10,000 but does not exceed \$100,000. If a circuit court grants or denies, in whole or in part, a motion to dismiss because of the absence of a basis in law or fact for the action, then the court may award costs and reasonable and necessary attorney's fees to the prevailing party in amounts that the court determines are equitable and just. The bill would also authorize reasonable deposition fees to be recovered as costs. The bill was re-referred to the Rule's Committee on March 27, 2015.

ANCEL GLINK DEFENSE VICTORIES

Ancel Glink's litigation team recently defended and won the following notable cases:

Excessive Force-Defense Verdict

Attorneys: Ellen Emery and Lucy Bednarek

Altman v. Village of Gurnee, Northern District of Illinois

Ancel Glink attorneys Ellen Emery and Lucy Bednarek successfully obtained a jury verdict in favor of the Village of Gurnee and a Gurnee police officer following a police shooting. The shooting took place after Gurnee police responded to a 911 call at the home of Chaz Altman and his wife. When the police arrived at the house, Altman was outside holding a large knife. Altman refused to drop the knife after repeated orders to do so and after the police fired less than lethal beanbag rounds at him. When Altman began advancing towards the area where his wife was standing behind the defendant officer and refused to stop, the officer shot him. At trial, the jury found that appropriate force was used.

Reversal of Jury Verdict on Willful and Wanton Claims

Attorneys: Thomas DiCianni and Daniel Bolin

Boehm v. Village of Lansing, Illinois Appellate Court, First District

The plaintiffs filed an action alleging negligence and willful and wanton conduct against the Village and one of its police officers for injuries the minor plaintiff sustained after his car collided with the police car the officer was driving while responding to an emergency domestic dispute. After a jury trial, the minor plaintiff was awarded damages for his injuries on the willful and wanton claims. On February 20, 2015 the Illinois Appellate Court held the circuit court erred when it denied defendants' motion for judgment notwithstanding the verdict on the willful and wanton claims and reversed the judgment of the circuit court. Specifically, the Appellate Court agreed that the jury's verdict finding the officer willful and wanton in his driving to the call was not supported by the evidence.

Americans with Disabilities Act

Attorney: Lucy Bednarek

Libit v. Village of Deerfield, Northern District of Illinois

The plaintiff was a public works employee who injured his back at work and was later terminated. His position was a laborer and required bending, twisting, heavy lifting, etc. On March 25, 2015, the Northern District granted summary judgment in favor of the Village. The Court held the plaintiff was not a qualified individual under the Americans with Disabilities Act because he could not perform the majority of the essential functions of his position as a laborer. The Court further held that, even if he was a qualified individual, the accommodation he was

requesting (performing utility locates full time) was not a reasonable accommodation because performing locates was only one minor part of his position.

Employment Discrimination

Attorneys: Julie Tappendorf and Elizabeth Barton

Eiler v. City of Pana, Central District of Illinois

The plaintiff, a 36-year old white female veteran, applied for the position of water plant operator for the City of Pana. When she did not receive an interview for the position, she filed a pro se complaint alleging the City discriminated against her when it failed to hire her because of her age, disability, race and gender. The Central District granted the City's motion for judgment on the pleadings. First, the Court dismissed the plaintiff's age and race discrimination claims because she failed to allege those claims before the Illinois Department of Human Rights and the Equal Employment Opportunity Commission, and therefore, did not exhaust her administrative remedies with regard to those claims. Second, the Court dismissed the gender and disability discrimination claims because the complaint did not include any facts associated with the alleged sex/gender discrimination or sufficient facts to establish the requirements necessary for a finding of disability discrimination.

Governmental Immunity: School Supervision

Attorneys: Darcy Proctor and Pedro Fregoso, Jr.

Bingham v. Riverdale School District # 148, Circuit Court of Cook County

The minor plaintiff alleged the School District willfully and wantonly created a dangerous condition in its indoor "play room" by placing a cylindrical shaped cushion against the brick wall and creating a fall hazard. The plaintiff fell from the cushion during class and was injured. The circuit court granted the School District's motion for summary judgment, finding the School District was entitled to immunity under Section 3-108 of the Tort Immunity Act because plaintiff failed to establish the School District engaged in willful and wanton misconduct as it provided adequate supervision for its students.

Board of Fire and Police Commissioner Decisions

Attorneys: Thomas DiCianni and Matthew DiCianni

Gomez v. Village of Norridge, Illinois Appellate Court, First District

Lorence v. Village of Norridge, Illinois Appellate Court, First District

In two cases, defended by Ancel Glink and decided in early 2015, the Illinois Appellate Court affirmed the Village's Board of Fire and Police Commission's decision to terminate police officers.

RISK MANAGEMENT PUBLICATIONS & EVENTS

Darcy Proctor co-authored the *Illinois Tort Immunity* chapter in the 2015 supplement to the IICLE publication, *Illinois Municipal Law: Contracts, Litigation, and Home Rule*.

Ellen Emery presented at a Police Deadly Force Training seminar jointly sponsored by Ancel Glink, the Illinois Association of Chiefs of Police, and the Illinois Municipal League on March 5, 2015 in Bloomington, Illinois. Ellen presented on *Accountability and the Law*. Ellen will be presenting again in Lisle, Illinois on May 4, 2015 and in O'Fallon, Illinois on May 8, 2015.

Darcy Proctor is speaking on *School Bullying Litigation- What Claim Professionals and Defense Counsel Need to Know* at CLM 2015 Municipal Law Conference , June 4-5, 2015 in Chicago.

ABOUT ANCEL GLINK DEFENSE

The attorneys who comprise Ancel Glink's defense litigation group are dedicated almost exclusively to defending governmental entities in tort, civil rights, employment, business and other claims and lawsuits. In addition to defending municipalities, school districts, park districts, townships and other entities in lawsuits in state and federal courts, Ancel Glink's litigation group handles appeals, administrative hearings, critical incident crisis management, loss control training and seminars, file audits, and special consultation. Visit our web-site at www.ancelglink.com or email us at e-news@ancelglink.com.

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