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A Monthly Legal Newsletter from
Querrey & Harrow

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Querrey & Harrow Appellate Victory Cited in New Illinois Pattern Jury Instruction on Employer Liability


Previously, we wrote on Q&H's successful defense of the Cook County Sheriff before the Illinois Supreme Court in *Adames v. Sheahan et al.*, 2009 WL 711297 (Ill. 2009) In the case, plaintiffs sought recovery against the Sheriff following the tragic accidental shooting of a child by the son of a Sheriff's Correctional Lieutenant, asserting that the officer's failure to safely store the gun in his home was within the course and scope of the officer's employment with the Sheriff's office, such that the Sheriff should be held liable under *Respondeat Superior* theories.

In defense, shareholders **Dan Gallagher** and **Terrence Guolee** argued that the storage of the gun in the officer's home was not within the scope of employment as it was done when he was off-duty, that the officer did not - and actually was prevented from - taking the weapon to his work at the jail, and that any negligent storage of the gun was not done with a purpose to serve the Sheriff. Indeed, extensive evidence regarding the detailed training and general orders of the Sheriff mandating that any guns be stored such that they are rendered inaccessible to others was placed in evidence. This evidence showed that there was no expectation by the Sheriff or his officer that the gun would be maintained in any open or accessible manner. Thus, it was argued that it would be bad public policy to, in effect, find the Sheriff liable based on the fact that the Sheriff properly trained his officers on safe gun storage.

The trial court entered summary judgment in favor of the Sheriff. The First District Appellate Court then reversed, finding that the training by the Sheriff demonstrated control over the officer, such that his failure to store the gun properly could be attributed to the Sheriff as his employer. Dan and Terrence, with the assistance of **Jennifer Medenwald**, then sought leave to appeal to the Illinois Supreme Court.

Following acceptance of the case, extensive briefing and oral argument, the Illinois Supreme Court, in a unanimous decision released on March 19, 2009, reversed the appellate court, finding that the evidence developed by Q&H documented that the storage of the gun was not within the course and scope of the officer's employment.

Most recently, the court released a new Illinois Pattern Jury Instruction, number "**50.06.01 Employee – Issue as to Scope of Employment**," which reads as follows:

> One question for you to determine is whether or not ____(alleged employee name)___ was acting within the scope of his /her employment.
>
> An employee is acting within the scope of his/her employment if each of the following is shown by the evidence:
>
> a. The employee's conduct is of a kind he/she is employed to perform or reasonably could be said to have been contemplated as part of his/her employment; and
>
> b. The employee's conduct occurs substantially within the authorized time and space limits of his/her employment; and
>
> c. The employee's conduct is motivated, at least in part, by a purpose to serve the employer.

IPI 50.06.01, Sept. 2009.

The comments to the new IPI then cite to the *Adames* decision as an example of the type of case where there would not be *Respondiat Superior* liability, because the actions of the employee were not the kind of conduct the

employee was employed to perform, nor was such conduct motivated to serve the employer.

Compared to many prior decisions and readings of the law finding even illegal actions of employees leading to employer liability, the new jury instruction should act to properly have juries consider whether there was any advantage to the employer based on the employee's actions before holding the employer liable. This revision to the instructions provided to juries in Illinois should be a huge benefit to employers throughout the state.

Congrats once again to Dan, Terrence and Jennifer on their important win!

A copy of the decision can be obtained at: http://www.state.il.us/court/OPINIONS/SupremeCourt/2009/March/105789.pdf.

The jury instruction is available at: http://www.state.il.us/court/CircuitCourt/JuryInstructions/50.06.01.pdf.

Construction Update: Green Construction Primer: Expedited Permitting

By: Ari J. Scharg – Chicago office

Chicago now officially tops the country in green building and construction. The U.S. Green Building Council has recently acknowledged that 88 projects in Chicago have earned Leadership in Energy and Environmental Design (LEED) certification. Portland was in second place with 73. The overwhelming number of new LEED certified buildings in Chicago is a call to arms for builders and developers that are hesitant to enter the green arena. LEED is not a passing fad. Now is the time to learn more about LEED certification and its corresponding incentives, such as expedited permitting.

The LEED Certification Standard

Chicago's green construction standards are principally based upon the U.S. Green Building Council's Leadership in Energy in Environmental Design (LEED) rating system. The LEED rating system provides nationally accepted benchmarks for the design, construction and operation of green buildings. Presently, LEED offers four levels of certification: "Certified," "Silver," "Gold," and "Platinum." The standards comprising these different levels are considered to promote a healthy environment, provide long term cost benefits through efficient use of energy, optimize building performance and create healthier workplaces for employees. A project can earn points in each of these areas and the number of earned points determines which of the four levels the project will attain.

LEED standards are being used to promote green building in both the public and private sectors. All private projects that receive City assistance must pursue LEED certification. Chicago even requires all new public buildings to achieve, at least, LEED "Silver" status.

Expedited Permitting

In addition to housing the most LEED certified buildings in the country, Chicago also boasts the most LEED registered projects. The City's success in encouraging the pursuit of LEED projects is largely due to its expedited permitting process. The new process significantly benefits developers seeking LEED certification by propelling them through Chicago's building permit process.

Under normal circumstances, the permit application process can be a painstaking procedure. When a developer submits an application, it gets placed in line behind all other applications waiting to be reviewed by the City. The time between the application submission and the review is referred to as "the queue." The queue is often long and can significantly delay the start of construction. Chicago's expedited review process, however, relocates submissions meeting certain requirements to the front of the queue.

The expedited permit program reduces the process for developers and owners who build green to 30 business days, and in some cases,

less than 15 days. The length is determined by the number of green building elements, LEED certification level and project complexity. Developers are afforded significant cost saving benefits by streamlining the permitting process.

To qualify for the expedited permitting program, developers must submit preliminary construction plans reflecting all green strategies that will be included in the project. However, green strategies are often not clearly identified or specified on construction drawings. Therefore, the following must also be included in the preliminary submittal:

- Project registration number from the U.S. Green Building Council.
- LEED Scorecard showing targeted points and point total. Also indicate Green Permit Program menu items selected. The LEED Checklist must reflect the appropriate rating system for the project type.
- A credit-by-credit narrative describing specifically how each of the LEED credits in the checklist will be achieved. The combination of the drawings, narrative and specifications need to clearly demonstrate the projects' ability to meet the credits being sought. Final calculations for LEED submittal do not need to be complete, but the project should illustrate that sufficient analysis has occurred so that it is reasonable to expect that the requirements can be met.
- Division 1 of the project specifications relating to green building requirements, demonstrating that the project has been clearly specified to achieve the targeted level of certification.

Accuracy in submitting the above information is imperative to realize the expedited permitting incentives. The time savings can translate into substantial financial benefit for developers because earlier construction starts mean earlier sales or leasing and reduced interest on construction loans. Moreover, the City will also significantly reduce its city plan review fees by up to $25,000.

Legal Implications

The city of Chicago has enticed many developers to build green through incentive programs like the expedited permit program. While Chicago has done its job by encouraging eco-friendly construction, developers must do theirs. A comprehensive legal strategy must be developed to ensure that all legal hurdles are minimized.

Developers that commit to achieving LEED certification must be wary of the unique risks posed by the LEED certification process. For instance, The Green Building Council provides an online submittal process for projects seeking LEED certification that requires extensive documentation of design and construction activities. Therefore, all contracts must be drafted to clearly reflect each project stakeholder's role in obtaining the certification. These contracts must clarify which parties will be responsible for tracking, collecting, assembling and submitting support documentation and which parties will be responsible if a project fails to meet a desired sustainability rating. Of course, a thorough contract will not solve all problems, but it is a critical starting point.

The Bottom Line

Developers should no longer shy away from building green. Chicago's expedited permit program is only one example of the valuable incentives offered by adapting to the evolving construction industry. Not to mention the fact that more and more consumers are seeking out green buildings because of decreased operating expenses. The key to maximizing profitability is preparation. Experienced legal counsel should be engaged from the very beginning of any

green project. With the proper planning, green developers will thrive and enjoy essential advantages in this economic climate.

* * *

*Chicago office associate **Ari Scharg** concentrates his practice in defense of civil rights claims and general litigation.*

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If you have any questions regarding Querrey & Harrow's construction or municipal law practices, please contact Dan Gallagher at 312-540-7674 or via dgallagher@querrey.com.

RECENT CASE SUCCESSES

Jim Jendryk Scores Defense "Hat Trick"

Wheaton shareholder Jim Jendryk scored his third excellent trial result in the last two months in a case where the plaintiff claimed approximately $1 million in damages based upon $199,735.40 in medical expenses and $247,512.00 in loss of income. Jim obtained a jury verdict in McHenry County for only $22,728.00, despite having to admit liability, where the defendant, a 16-year-old driver, pulled from a stop sign, thinking that the intersection was a four-way stop, but instead failed to yield to the plaintiff on a through street, striking the plaintiff in a t-bone fashion.

The plaintiff put into evidence over $400,000 in specials and asked the jury for one million dollars. Jim countered the plaintiff's testimony of no prior knee problems and the testimony of the surgeon, by demonstrating the delay in complaints after the accident and the surgeon's inconsistency in the surgical records, including a noted procedure that he admitted was never performed.

See our reports at http://www.querrey.com/news-110.html and http://www.querrey.com/news-107.html for details on Jim's two other recent trial victories.

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Jillian Book Obtains Defense Verdict

Wheaton associate Jillian Book continued our suburban offices' success in DuPage County with a motor vehicle v. pedestrian accident on a residential street. The parties to the lawsuit were neighbors and the plaintiff alleged that the defendant backed into her, knocking her down as she was crossing the street one night, directly in front of their homes. The undisputed evidence showed that this was a particularly dark street and that the plaintiff was wearing black sweats and a brown coat. In addition, the plaintiff was crossing the street mid-block, not within a crosswalk, and did not even see defendant's vehicle until she was almost in the middle of the roadway.

Plaintiff claimed an aggravation of her prior chronic neck pain, requiring epidural steroid injections, along with cuts and extensive facial bruising. Plaintiff asked the jury for $42,000 for medical treatment, pain & suffering, loss of a normal life, disfigurement and lost wages. The defense argued that there was no causal connection with the neck pain aggravation based upon a two week gap in time before complaints were made to a medical doctor. In addition, contributory negligence was argued based on the plaintiff wearing dark clothing while crossing a dark street mid-block at night.

Jill was successful in her arguments and the jury assessed 50% negligence against the plaintiff and only awarded the cost of two office visits and two days of lost wages. After reducing her award, the plaintiff only recovered $1,060.50.

Insurance Coverage Law Update:
Illinois Adopts Pro Rata Time on The Risk Standard

By: Michele T. Oshman – Chicago office

The most recent case from the Illinois Court of Appeals for the First District regarding allocation of damages in a multiple claimant, multiyear case unequivocally adopts a *pro rata*, time on the risk allocation for claims that cannot be allocated to a specific policy period.

The case of *Federal Ins. Co. v. Binney & Smith, Inc.*, __ Ill.App.3d __, 2009 WL 1905284 (1st Dist. 2009), involved a class action against Binney & Smith, Inc. ("Binney"), the makers of Crayola crayons, and other crayon manufacturers alleging mislabeling of the crayons as non-toxic and safe for children when some of the crayons actually contained small amounts of asbestos. The underlying class action was settled by Binney prior to trial for $1,013,718, and that settlement was found to be in good faith by the trial court. The coverage case at issue arose when Federal, one of Binney's insurers, filed a declaratory judgment action disputing coverage for the settlement. Binney then filed a counterclaim for breach of contract against Federal and a third party action against Royal, another of its insurers. Binney eventually settled its coverage dispute with Royal.

Federal had insured Binney for three, non-consecutive years of the 30 year period at issue. The Federal policies were commercial general liability policies that agreed to pay "all sums" that the insured was legally obligated to pay as damages. Binney claimed that it was entitled to coverage under advertising liability coverage in the Federal policies. Binney and Federal tried the coverage case before the trial judge, resulting in a verdict in Binney's favor for the amount that Binney paid to settle the underlying claims.

On appeal, Federal argued that Binney had settled the underlying class action without a reasonable expectation of liability for a covered loss, that the trial court erred in refusing to allocate the settlement amount between the claimants' claim under the Illinois Consumer Fraud and Deceptive Practices Act and the breach of express and implied warranties claim, and that the trial court erred by allocating the loss on a joint and several "all sums" theory rather than by allocating the claims on a *pro rata*, time on the risk basis. Binney argued on appeal that the trial court had erred in refusing to award it prejudgment interest.

The first general issue discussed in the opinion is the reasonableness of the underlying settlement and, specifically, whether the trial court was in error in finding that Binney had established that it entered into the settlement in reasonable anticipation of personal liability. The court gave an overview of Illinois law regarding an insurer's obligation to pay for its insured's settlement of an underlying claim. The court noted that the insured must show that it settled an otherwise covered claim in reasonable anticipation of liability. However, the insured need not establish that it was actually liable in the underlying case, so long as a potential liability is shown, resulting in a settlement amount that is reasonable in light of the size of the possible recovery and the probability of success in the claim against the insured.

The key to determining whether the insured's anticipation of liability was reasonable is the quality and quantity of proof which would be offered against the insured. Binney offered evidence on the basis and rationale for entering into the settlement through the testimony of its in-house and outside counsel. This testimony indicated that, while counsel believed that the underlying claim was without merit, they recognized the risk inherent with any litigation proceeding to a jury, including the potential that the claimants' counsel would craft arguments based on certain testing done by the Consumer Products Safety Commission ("CPSC") as well as emotional arguments based on the mere presence of asbestos fibers in the crayons.

Federal also argued that Binney could not have reasonably anticipated liability under the claim based on the Illinois Consumer Fraud and Deceptive Practices Act ("Consumer Fraud Act") because Binney's compliance with federal law provided it with an absolute defense to that claim. The court discussed Illinois cases regarding whether compliance with federal law is a bar to civil liability. The court then determined that the finding by the CPSC that Binney had complied with the federal labeling law would not have been an absolute defense for Binney because the underlying claim relied on the claim that the crayons were non-toxic, which was not the label language at issue in the federal statute.

Federal's third contention that Binney could not have reasonably anticipated liability in settling the case was that Binney had not shown that it intended the public to rely on its false labeling of the product as non-toxic and safe for use by children. The court rejected that argument out of hand, referring to the underlying allegations against Binney that it knew or should have known the crayons contained asbestos and that members of the class would not have purchased the crayons had they known the connected risks. The court noted that the Consumer Fraud Act claims were premised on the allegedly fraudulent or deceptive conduct in the form of advertising that Binney engaged in, and not on challenges to the manufacture of the actual crayons.

The second general issue the *Binney* court discussed was allocation of the claims among the 30 years of coverage at issue, including the 3 years the Federal policies were in effect. The court began its analysis by talking about two cases holding that insurance policies that paid "all sums" were jointly and several liable for injury occurring across several policy periods, and explaining why a *pro rata* allocation approach was not adopted in those cases.

The court stated that in the asbestos bodily injury coverage dispute in *Zurich Ins. Co. v. Raymark Industries, Inc.*, 118 Ill.2d 23 (1987), the policy language did not provide for proration. The court also noted that, having rejected the exposure trigger theory that underlined *pro rata* allocation, the Illinois Supreme Court declined to order such allocation in that case.

The court also discussed *Benoy Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 287 Ill.App.3d 942 (1st Dist. 1997), a pollution property damage coverage case, and stated that it was not asked to specifically address the issue of *pro rata* allocation in that case. Apparently, all the insurance companies needed to do was ask, as the rest of the decision develops the rationale for the court's ultimate adoption of a *pro rata* allocation rule for cases where the insured is unable to allocate individual claims to specific policy periods.

COMMUNITY INVOLVEMENT

Christopher Keleher Presents Appellate Advocacy Seminar at DePaul

Chicago associate **Christopher Keleher** presented a continuing legal education seminar for practicing lawyers on the topic of appellate advocacy on September 18, 2009 at DePaul University School of Law.

Ari Sharg Accepted Into Anti-Defamation League Glass Leadership Institute.

Congrats to Chicago Associate **Ari Sharg** who was recently accepted into the Anti-Defamation League's Glass Leadership Institute. This program introduces a select group of young professionals to the important programmatic work of ADL and the full range of issues on its agenda. The program builds a base of leaders who are knowledgeable about the League's work, are committed to ensuring ADL's vitality and can effectively advocate on its behalf.

Ari has also been asked to join the Civil Rights section of the ADL. In this position, Ari will work closely with the Chicago Police Department on educating the police about hate groups within the Chicago area.

The court in *Binney* next discussed several cases dealing with allocating claims where the alleged injury continued over time. In discussing *AAA Disposal Systems, Inc. v. Aetna Cas. & Sur. Co.*, 355 Ill.App.3d 275 (2nd Dist. 2005), the court pointed out that while the policies at issue covered "all sums," which the insured argued required joint and several liability, the policies also contained specific language limiting coverage to occurrences which take place during the policy period. On this basis, the court noted that the Federal policies, while also agreeing to pay "all sums," also limited "advertising injury" by that term's definition to offenses "committed during the policy period in the course of the named insured's advertising activities." The court stated that although Binney was only required to show that it had settled in reasonable anticipation of liability, it still bore the burden of showing that it settled an "otherwise covered loss" and that advertising injury occurring outside the Federal policy periods would not be covered.

The court then discussed *Illinois Central R.R. Co. v. Accident and Cas. Co. of Winterthur*, 317 Ill.App.3d 737 (1st Dist. 2000), in which the First District found that the underlying discrimination cases involved multiple occurrences and the triggering event was the submission of an employment application. The court there found that in allocating settlement damages, claims where the insured could provide employment applications would be allocated to the policies in effect when the application was submitted. The remaining claims with no applications were allocated on a *pro rata*, time on the risk formula.

Applying the reasoning of the cases above to coverage for Binney, the court ruled that the triggering event was the purchase of crayons in reliance on the labeling as non-toxic during a Federal policy period. On remand, the court directed Binney to define when the class members who were part of the settlement actually purchased Crayola crayons, triggering the advertising injury, which was the purchase price. Federal would then be liable for the portion of settlement damages reflecting injuries that occurred during the Federal policy periods.

The court further overturned the trial court's "all sums" ruling and found that, if Binney is unable to establish which portion of the settlement damages related to class members with injury occurring during the Federal policy periods, then those settlement damages would be allocated using a *pro rata*, time on the risk formula. Since there was a total of 30 years of advertising injury at issue, and Federal provided coverage for 3 of those years, the court found that Federal should not be liable for more than one tenth of the total settlement damages to be allocated on a *pro rata*, time on the risk basis.

Finally, in the last two sections of the opinion, the court found that Federal was entitled to a set-off in the amount of Binney's settlement with Royal to avoid double recovery and that the trial court did not abuse its discretion when it refused to award Binney prejudgment interest.

The Illinois Court of Appeals for the First District has been slow in adopting the *pro rata*, time on the risk method of allocating multiple-years claims that cannot be placed into a specific policy year. Based on this new opinion, the First District has joined other Illinois appellate districts in rejecting, or at least limiting, the "all sums," joint and several liability theory announced by the Illinois Supreme Court over 20 years ago in *Zurich v. Raymark*. This belated adoption of *pro rata*, time on the risk allocation will doubtlessly be met with approval by insurers in most multiple-claimant, long term claims.

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***Michele Oshman**, an associate in our Chicago office, is a member of the firm's Appellate and Insurance Coverage practice groups. She concentrates her practice in the areas of insurance coverage and complex defense litigation and has represented the interests of insurance companies in state and federal courts throughout the country.*

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School Law Update: Strip Searches and Qualified Immunity in Public Schools

By: R. Scott Rochelle – Chicago office

The Supreme Court of the United States recently addressed a number of key issues surrounding the constitutionality of strip searches in public schools and the qualified immunity afforded to school officials. Although public school students have always been provided constitutional protections, conflict arises out of the disparity in privacy rights afforded to minor children in contrast to those afforded adults. Recently, the Supreme Court established discipline and safety as key issues that schools may take into consideration when limiting the constitutional rights afforded to students. More often than not, the Court has supported school officials' complaints that substance abuse is a major and continuing problem in and around schools.

In *Safford Unified School District #1, et. al., v. April Redding*, 129 S.Ct. 2633 (2009), the Court held that a strip search of student violated a 13-year old female student's constitutional rights under the Fourth Amendment. However, the Court did uphold qualified immunity for the school officials who conducted the search.

In an effort to curtail the use and distribution of prescription drugs, Safford assistant principal Kerry Wilson acted on a tip that alleged that a student named Savana had given Ibuprofen to another student. The school's policies strictly prohibited the nonmedical use, possession, or sale of any drug on school grounds. Wilson began his investigation by inspecting Savana's backpack, which produced no drugs of any kind. Wilson then instructed two female aides to take Savana to the school nurses office, where a strip search requiring her to remove all outer clothing, exposing her breasts and pelvic area commenced. This search uncovered no drugs of any kind.

As a result of this search, Savana's mother, April Redding filed suit against the school and its officials alleging that the search at the principal's behest to the point of making her pull out her underwear was constitutionally unreasonable. A district court judge ruled for the school district and for the school officials, finding that the tip from another student was sufficiently plausible to warrant a justification for the search of Savana's backpack and outer clothing. Requiring her to strip, the district court found, was sufficiently related to the officials' suspicion, and was not "excessively intrusive." That ruling was upheld by a Ninth Circuit Court panel, but the *en banc* Ninth Circuit reversed, ruling that the strip search was unjustified under the Fourth Amendment, and the school officials were not entitled to qualified immunity.

The school district and the individual school officials appealed the Ninth Circuit's ruling to the Supreme Court. At issue was the intrusiveness of the school's search. The Ninth Circuit noted that because of the fact that this was a strip search, it would take a greater justification to allow the school to act in the way that it did. The Ninth Circuit was not persuaded by the amount of information that the school had at the time of the search and deemed the search inappropriate, and moreover, ruled that its scope was too great given the evidence. Furthermore, the Ninth Circuit rejected the school officials' claims that they were entitled to qualified immunity for the strip search, due to the fact that they should have known from the Supreme Court's 1985 ruling in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), that such an intrusive search would fail to pass constitutional muster.

Upon review, the Supreme Court upheld the Ninth Circuit's ruling with regard to the constitutionality of the search. However, it refused to deny qualified immunity for school officials. Relying on *Pearson v. Callahan*, 129 S.Ct. 808 (2009), the court noted that: "A school official searching a student is entitled to qualified immunity where clearly established law does not show that the search violated the Fourth Amendment". However, it asserted that to be established clearly, there is no need that "the very action in question [have] previously been held unlawful." *Citing, Wilson v. Layne*, 526 U.S. 603, 615 (1999). The court then went

on to cite a number of conflicting and inconsistent rulings that led it to reason that the differences of opinion were substantial enough to require immunity for the school officials in this case.

Although a definitive ruling on how to assess qualified immunity for school officials conducting strip searches has yet to be established, the Supreme Court's treatment of the varying interpretations of the issue provides a fair warning that this issue will be revisited. It is safe to say that future challenges to school strip searches will involve parties that are expected to be thoroughly versed in their rights, as set out by the Supreme Court in this matter.

* * *

***R. Scott Rochelle**, an associate in our Chicago office, concentrates his practice in the areas of commercial litigation, construction, and school law.*

In his school law practice, Scott takes a proactive stance on his clients' behalf, uses innovative ideas to move disputes toward resolution, and has dealt with a myriad of issues facing today's education system. His school law practice includes, but is not limited to counseling school districts on labor and conduct issues and compliance with state and federal special education laws. Scott also has a Masters degree in Education.

If you have any questions regarding this article, contact Scott via rrochelle@querrey.com, or via 312-540-7510.

Workers' Compensation Update: Pending Legislation, Employees Beware

By: Patrick G. Connelly – Querrey & Harrow, Ltd. – Chicago, Illinois

The Illinois General Assembly Rules Committee is currently reviewing new legislation amending the Illinois Workers' Compensation Act. If passed, Senate Bill 1594 would have a significant impact on employers in regards to their workers' compensation defense of workplace accidents. The amendment would create a rebuttable presumption that workplace accidents occurring while an employee is under the influence of alcohol or other named substances do not arise out of the scope of employment, effectively cutting off any chance for the employee to recover under the Act.

The amendment would add the following language to Section 11 of 820 ILCS 305:

> Accidental injuries incurred while an employee is under the influence of alcohol or any narcotic drugs, barbiturates, or other stimulants not prescribed by a physician, or by the combined influence of alcohol and any other drug or drugs, in violation of a work rule or applicable provision of an employee policy manual **shall be rebuttably presumed to not arise out of and in the course of the employee's employment and the employee shall not be entitled to benefits pursuant to this Act**. Evidence of the concentration of alcohol or any concentration of a drug or combination thereof in the employee's blood or breath at the time alleged, as determined by analysis of the employee's blood, urine, breath or other bodily substance, **shall be admissible in any hearing to determine compensability and shall serve as prima facie evidence to establish the rebuttable presumption.** SB 1594 (emphasis added).

While its true that this amendment would provide employers more leverage in disputing whether an injury occurred within the scope of employment, the employee has the opportunity to overcome the inference that they were under the influence of a substance when a given accident occurs. With this in mind, it will be important for employers to review their HR polices and manuals to ascertain what type of

alcohol and drug testing is mandated after a workplace accident, because the amendment specifically states that the results of any substance test shall serve as evidence to establish the rebuttable presumption.

This amendment can potentially lead to large savings for the employer as a result of being able to deny workers' compensation claims from the get go, if it can be determined a violation of work rules occurred resulting in an injury while the employee was under the influence of drugs or alcohol.

* * *

***Patrick Connelly**, an associate in our Chicago office, concentrates his practice in municipal defense and general litigation. He has successfully defended a number of §1983 lawsuits for municipalities including the Cook County Sheriff's Office and the City of Aurora. In addition to defending §1983 suits, Mr. Connelly provides counsel to our municipal clients on the issues they encounter daily, including tax issues, ordinance adoption, and allocation of federal funding.*

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UPCOMING SEMINARS

Understanding the Intellectual Property License
Nov. 5 - 6, 2009
University of Chicago - Chicago, IL

Chicago office Of Counsel **E. Leonard Rubin** will be presenting "Rights of Publicity and Entertainment Licensing" at the Understanding the Intellectual Property License seminar presented by the Practising Law Institute.

During the economic downturn, companies are increasingly turning to licensing as an important way of generating new sources of revenue out of existing intellectual property assets, and as a way to gain access to intellectual property at a lower cost than developing or purchasing intellectual property assets. Virtually every business is confronting licensing issues on an increasingly frequent basis. A solid base of knowledge about licensing of intellectual property has never been more important for companies and their counsel.

This introductory course will give an overview of how to negotiate and draft effective license agreements, for both the licensor or licensee. Experts in licensing will discuss different kinds of licensing agreements, and the related business and legal issues.

For more information, or to reserve your place, please visit
http://www.pli.edu/product/seminar_detail.asp?id=48995

Illinois Construction Lien Law - Current Issues and Review
December 11, 2009

Querrey & Harrow Shareholders **Bruce Schoumacher** and **Tim Rabel** will present a 90-minute teleconference in conjunction with Lorman Education Services. The teleconference is designed for contractors, owners, developers, subcontractors, suppliers, architects, engineers, lenders, accountants, and allied construction professionals. Topics will include an overview, the importance of deadlines, priority of liens, and recent developments.

For registration information, please visit www.lorman.com and enter seminar reference #385569.