

## **2022 Amicus Program activities**

### ***Cothron v. White Castle System, Inc***

We filed an amicus brief, along with a motion to accept the brief, with the Illinois Supreme Court jointly with the U.S. Chamber of Commerce. As of the preparation of this report, the court has not yet acted on our motion to accept the brief.

This case presents an extremely important question under the Illinois Biometric Privacy Act regarding the meaning of the phrase “violation of this Act”—whether a new claim accrues each time a defendant allegedly collects or discloses the same biometric data from the same individual without consent, or whether multiple collections of the same data or disclosures of the same data to the same party each constitute a single “violation.”

We agree with Defendant-Appellant White Castle System, Inc. that the plain text of the statute and relevant case law demonstrate that collection and disclosure claims involving the same biometric information accrue only once, at the time of the allegedly unauthorized initial collection or disclosure of the particular biometric data. That is when the individual suffers the alleged injury the Act is intended to prevent. That accrual rule is consistent with BIPA’s text and purpose and with the accrual rules governing other privacy-based causes of action in Illinois.

## **2021 Amicus Program activities with 2022 updates**

### ***Firebirds v. Zurich***

We joined an amicus brief filed by the American Property Casualty Insurance Association in support Chamber member Zurich American Insurance Co. in *Firebirds v. Zurich*. Our amicus brief was accepted by the court on January 3, 2022.

The case involves an appeal of a decision from the circuit court of Cook County granting Zurich’s motion to dismiss.

Firebirds International owns more than 50 Wood Fired Grill restaurants in 19 states. According to the list of states in the court decision, Illinois is not one of the states. At issue in the case is whether losses suffered by Firebirds as a result of the Covid-19 pandemic are covered by a commercial insurance policy issued by Zurich. Zurich denied the claim filed by Firebirds on the basis that the losses claimed by Firebirds are not covered losses under the insurance policy.

### ***Doe v. Lyft***

We joined the U.S. Chamber of Commerce as amici in an amicus brief filed with the Illinois Supreme Court in *Doe v. Lyft*. Oral arguments were held before the court on November 10. Plaintiff seeks to hold Lyft, Inc. vicariously liable for criminal conduct of one of its drivers because Lyft provided the ride-referral platform (via the Lyft smartphone app) that connected Plaintiff to McCoy for a ride. Plaintiff contends that Lyft—and all other transportation network companies should be subject to the same kind of vicarious liability as “common carriers” under Illinois law, even though Section 25(e) of the Transportation Network Provider Act plainly declares that TNCs “are not common carriers.” 625 ILCS 57/25(e). Our amicus brief focused solely on whether Section 25(e) of the Transportation Network Provider Act, violates the special legislation provision of the Illinois Constitution, ILL. CONST. (1970) art. IV, § 13. We explain why it does not.

In early January 2022, after oral arguments, but before the Supreme Court issued an opinion, the parties settled the case.

***Walton v. Roosevelt University***

We worked with outside counsel on an amicus brief filed in the appellate court. The case is *Walton v. Roosevelt University*, addressing whether BIPA claims brought by unionized employees must be grieved and arbitrated pursuant to their CBA, rather than brought in court.

The appellate court ruled that BIPA claims of unionized employees are preempted by federal labor law.

***Illinois Road and Transportation Builders Association, et al. v. County of Cook***

We filed an amicus brief with the Illinois Supreme Court in *Illinois Road and Transportation Builders Association, et al. v. County of Cook*.

This case involves the scope of the “lockbox” amendment to the Illinois constitution. Specifically, the case deals with whether the City of Chicago may use locally-imposed motor fuel taxes for purposes other than those authorized under the lockbox amendment. The appellate court ruled that the City of Chicago can use such funds for general purposes.

Oral arguments were held before the Supreme Court on January 12. We await the opinion of the court.