

Illinois Supreme Court Issues Ruling On What “Aggrieved” Means Under The Biometric Information Privacy Act

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The Illinois Supreme Court in [*Rosenbach v. Six Flags Entertainment Corporation, et al.*](#) just held that under the [Illinois Biometric Information Privacy Act](#) (BIPA) “an individual need not allege some actual injury or adverse effect, beyond violation of his or her rights under the Act, in order to qualify as an ‘aggrieved’ person and be entitled to seek liquidated damages and injunctive relief.”

Rosenbach claimed Six Flags violated BIPA when it scanned her son’s thumbprint for his season pass without written consent. The Illinois Appellate Court held that a plaintiff must demonstrate more than a technical violation of BIPA in order to state a claim. There have been conflicting decisions about whether actual harm is required since “person aggrieved” is not defined in the statute.

During oral arguments before the Illinois Supreme Court, both parties heavily relied on legislative intent and statutory interpretations to support their definitions of the term “aggrieved party.” Rosenbach contended the plain meaning of “aggrieved party” should be broadly construed to mean the infringement of a legal right, such as a legal right created by BIPA. In response, Six Flags argued Rosenbach was not an “aggrieved party” because neither she nor her son suffered an injury from this technical violation.

BIPA provides that a prevailing party may recover liquidated damages of \$1,000 for each negligent violation, and \$5,000 for each willful violation. BIPA also allows a prevailing plaintiff to recover litigation costs and expenses, including attorneys’ fees.

Illinois has seen a surge of BIPA cases filed as class actions. Most of the filed lawsuits have arisen in the employer/employee context. However, BIPA acts more like a consumer protection statute rather than a labor law. There are obvious differences in defending a consumer class action as compared to an employment class action.

With that said, Hinshaw has a large number of attorneys in its consumer class action defense practice and its employment group. Hinshaw is currently representing clients in defense of pending BIPA class actions.

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