

Hinshaw's Gretchen Harris Sperry Reviews Illinois' Biggest Decisions of 2018 and Illinois Cases to Watch in 2019

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Hinshaw Partner Gretchen Harris Sperry—the chair of the firm's Appellate practice—headlined *Law360*'s reporting on the biggest Illinois court decisions in 2018, along with the most important cases to watch in the state in 2019. Sperry considered the implications for distributors following the *Cassidy v. China Vitamins LLC* decision, and also reviewed *McIntosh v. Walgreens*, a current Illinois Supreme Court case, that considers application of the state's voluntary payment doctrine. A summary of her analysis follows below.

4 Biggest Illinois Decisions Of 2018

In *Cassidy v. China Vitamins LLC*, Illinois' highest court set what some are calling a “low threshold for strict product liability plaintiffs to be able to recover judgments against nonmanufacturers” under Illinois law. In deciding that plaintiffs don't need to prove a manufacturer went bankrupt or folded before seeking to enforce the judgment against a distributor, the court departed from the Illinois Appellate Court's 2014 ruling in *Chraca v. U.S. Battery Manufacturing Co.*

“Under *Chraca* we thought we knew what the standard was for a plaintiff to get a manufacturer back in a case,” said Sperry. “After *China Vitamins*, the Supreme Court's decision leaves open the question of what a plaintiff now has to show. This changes, really, the risk assessment for distributors.” Although the decision is only a few months old, Sperry anticipates that it will impact product liability litigation moving forward.

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Illinois Cases To Watch In 2019

Walgreens' parent company is set to defend its stance that the “state's voluntary payment doctrine blocks consumers from bringing certain allegations of deceptive acts under the state Consumer Fraud Act.” Under the voluntary payment doctrine, consumers can't sue to recover money they voluntarily paid to another merely because they misunderstood their liability for those funds. For retailers that collect sales and use taxes, the voluntary payment doctrine can serve as a protection against claims they wrongly collected sales tax on certain

items. However, the First District Appellate Court recently ruled that the doctrine doesn't apply to deceptive acts alleged under the Act.

"[According to the appellate court,] it didn't matter that Walgreens didn't intend to deceive the plaintiff," Sperry said. However, this holding is at odds with the idea that "in order to plead a successful fraud claim, you have to have a heightened level of pleading [as to] how a fraud occurred," and so, Sperry notes, the Illinois Supreme Court will have to "reconcile these two concepts about how exactly are we treating fraud and fraud pleading" in this context.

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