FOR THE RECORD

BY CRAIG SANDBERG

Illinois Appellate Court Analyzes Intoxication in Motor Vehicle Accidents

On March 3rd, the Appellate Court of Illinois, First District (*Petraski v. Thedos*; No. 01-06-2914) gave trial judges renewed authority regarding the admission of intoxication evidence to provide an explanation for a party's otherwise inexplicable conduct. Speaking on behalf of a unanimous court, Justice Warren D. Wolfson took great care to walk readers through the minefield that is blood-alcohol evidence.

The appellate court reversed a $27 million jury verdict in favor of Michael Petraski, as the son and guardian of Margaret Petraski, in his suit against a sheriff's deputy, Deborah Thedos, and Cook County. On May 28, 2001, the sheriff's deputy was responding to a call involving an unwanted subject on the caller's property. The sheriff's deputy collided with Margaret Petraski's car after Petraski made a left turn in front of the oncoming deputy sheriff's car. The squad car was traveling between 70 and 75 miles per hour. Petraski was paralyzed as a result of the accident, and a passenger in the vehicle was killed.

Before the trial, the judge granted plaintiff's motion *in limine* to bar any evidence to suggest that Petraski consumed alcohol or was intoxicated. The defendants intended to present evidence from a board-certified pharmacologist, James O'Donnell, that Petraski's blood-alcohol level at the time of the accident was above .08, or in excess of the legal limit. Defendants' offer of proof included the transcript of O'Donnell's discovery deposition.

The court noted that "[e]vidence of a plaintiff's intoxication is relevant to the extent that it affects the care he takes for his own safety and is therefore admissible as a circumstance to be weighed by the trier of fact in its determination of the issue of due care." The appellate court took pains to explain the bases for O'Donnell's opinion, as well as the method and conversion factor used to convert a blood serum level to a whole blood equivalent. Thereafter, assuming Petraski was in the elimination phase during the entire period of the accident, O'Donnell extrapolated Petraski's blood-alcohol test results at the time of the accident. The appellate court noted that plaintiff's challenges to the opinion's admissibility were really challenges to the factual basis for the opinion and, therefore, "would go to the weight of his opinion, to be challenged on cross-examination."

After concluding that the evidence was relevant, the court conducted a balancing test to determine its admissibility. Recognizing the highly prejudicial nature of evidence of intoxication, the appellate court directed that it must be shown that the intoxication resulted in impairment of mental or physical abilities and a corresponding diminution in the ability to act with ordinary care. With the hindsight of the jury's verdict attributing 25% fault to Petraski in the absence of evidence of intoxication, the appellate court held that Petraski's blood-alcohol level created a presumption of intoxication that was probative.

The court found that the jury should have been permitted to hear the expert's testimony. According to the opinion, "It would have provided the jury with a reason why Petraski turned left in front of an oncoming emergency vehicle, green arrow or not. Instead, plaintiff lawyer was free to argue that the defendants did not 'give any reason' why Petraski would have turned in front of Thedos' car unless she had the green arrow."

Seventh Circuit Holds That Craigslist Not a Publisher Under 47 U.S.C. §230

In a highly-anticipated opinion (*Chicago Lawyers' Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc.*; No. 07-1101),

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the U.S. Court of Appeals for the Seventh Circuit held on March 14th that under 47 U.S.C. §230, Craigslist could not be treated as the "publisher" of third-party postings that allegedly violated the federal Fair Housing Act. In doing so, the Seventh Circuit affirmed the trial court's ruling on the Craigslist's Rule 12(c) motion.

A group of Chicago lawyers had sued the online classifieds site over real-estate ads that stated discriminatory preferences, such as "no minorities" or "no children." The group, the Chicago Lawyers' Committee for Civil Rights Under Law, argued that such ads are prohibited under the Fair Housing Act and that Craigslist should be held liable for allowing them to be posted on its Web site. Chief Judge Frank Easterbrook of the 7th U.S. Circuit Court of Appeals disagreed, likening Craigslist to courier services such as FedEx or UPS, which do not read or screen the messages they deliver. The appellate court noted it would be expensive and problematic for Craigslist to filter messages before they were posted.

Judge Easterbrook authored the opinion, reiterating his prior view that Section 230 has been incorrectly interpreted by other federal courts as a broad grant of immunity, and referencing his prior opinion on that point in *Doe v. GTE Corp.*, 347 F.3d 655 (7th Cir. 2003). Despite the panel's differences with other courts on issues of interpretation, the panel agreed that Craigslist is not liable in this case, because under any interpretation of Section 230, holding the provider liable for housing ads posted by its users would make it liable as a "speaker," a result precluded under the statute. The appellate court stated that "[w]hat §230(c)(1) says is that an online information system must not 'be treated as the publisher or speaker of any information provided by' someone else. Yet only in a capacity as publisher could Craigslist be liable under §3604(c). It is not the author of the ads and could not be treated as the 'speaker' of the posters' words, given §230(a)(1)…Using the remarkably candid postings on Craigslist, the Lawyers' Committee can identify many targets to investigate. It can dispatch testers and collect damages from any landlord or owner who engages in discrimination. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); *Gladstone, Realtors v. Bellwood*, 441 U.S. 91 (1979). It can assemble a list of names to send to the Attorney General for prosecution. But given §230(c)(1) it cannot sue the messenger just because the message reveals a third party's plan to engage in unlawful discrimination." ■

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UPDATE YOUR MEMBER PROFILE

On your May dues statement, your contact information will be listed as it appears in our database. Please take a moment to verify, correct and provide any missing information to us. We plan to do more target mailings and emailing of CBA notices, thus we really need your help in updating this information. If you do not wish to receive any notices from the CBA via fax or email, please request that these numbers be removed from your database record. Thank you!