ILLINOIS CASELAW UPDATE—June 19, 2008[1]

Forum Non Conveniens

The First District Appellate Court, in an opinion written by Justice Denise O'Malley, affirmed a ruling by Cook County trial judge, Diane J. Larsen, relative to the denial of a defendant's hospital's motion to transfer a wrongful death lawsuit filed in Cook County to Lake County under the doctrine of intrastate *forum non conveniens.* Advocate Good Shepherd Hospital, located in Barrington, Lake County, IL, sought transfer to Lake County, arguing that plaintiff and his decedent were residents of Lake County, and that there allegedly negligent medical treatment occurred in Lake County. The hospital further argued that 13 of the 15 health care providers who were involved in the case were employees of Good Shepherd in Lake County. Plaintiff argued in response that the motion had has its heart merely avoiding Cook County as a forum. Plaintiff further noted that none of the named defendants were residents of Lake County, and that Cook County had a "substantial interest" in the case because, at the time they treated plaintiff, three of the doctors involved resided in Cook County. Plaintiff also noted that the Advocate corporation operated 8 out of 10 hospitals in Cook County. The trial court denied defendant's motion, finding that the case had significant contacts to Cook County in that several of the individual defendants are residents of Cook County. Further, the trial court noted that there was a "lack of predominance" in any one county and that, on balance, it was more proper that the case be handled in Cook County.

In affirming the trial court, the First District noted that in *forum non conveniens* cases, the burden is on the defendant to prove that the balance of appropriate factors "strongly favors" a transfer. Applying the relevant private and public interest factors, the appellate court found "significant" connections to Cook County because individual defendants resided in Cook County and that a reasonable person could take the view – as the trial court did – that there was a lack of predominance to any one county and that it was logical to conclude that Cook County was the most convenient forum for the majority of the parties. Therefore, the appellate court held that there was no abuse of discretion committed by the trial court, and the ruling denying the hospital's motion was to stand. *Hackl v. Advocate, et al.*

Wrongful Death – Aborted Fetus

The First District Appellate Court, in an opinion written by Justice Robert Cahill, recently held that a patient whose viable pregnancy was misdiagnosed as ectopic could proceed forward with a wrongful-death claim against her obstetrician. The court held, for

---

[1] This update has been prepared by Johnson & Bell, Ltd. for informational purposes only. It does not contain specific legal advice and should not be relied upon as such. No portion of this update, or any content contained therein, should be redistributed without the written permission of Johnson & Bell, Ltd. Readers should not act upon any information contained within this update without first seeking professional counsel. If you have questions about this update, or would like full copies of the opinions cited herein, please contact Matthew L. Johnson, 312/984-0245 or via email at johnsonm@jbltd.com.

the first time, that the meaning of "requisite consent" in the portion of the Illinois Wrongful Death Act (740 ILCS 180/2.2) could be interpreted in such a manner so as to allow an action under the statute notwithstanding the mother's voluntary decision to abort her fetus. The language at issue was as follows: "There shall be no cause of action against a physician or a medical institution for the wrongful death of a fetus caused by an abortion where the abortion was permitted by law and the requisite consent was lawfully given." 740 ILCS 180/2.2. The court held that, because of the misdiagnosis of the pregnancy as being an ectopic one, the plaintiff mother's agreement to terminate her pregnancy was not "consent" because she did not know her pregnancy was viable. Rather, she had agreed to terminate an ectopic pregnancy. *Mercado . Mount Sinai Hospital, et al.*

Premises Liability – Res Ispa Loquitur

The First District Appellate Court, in an opinion written by Justice John Tully, has affirmed a summary judgment in favor of a hospital relative to a premises liability claim wherein plaintiff was injured while entering the hospital through a revolving door when the glass surrounding the door shattered. Plaintiff's theory was that the hospital was negligent vis-à-vis "negligent management" of the hospital door or, in the alternative, that the hospital was liable under a theory of *res ispa loquitur*.

The appellate court rejected both arguments brought forth by plaintiff. First, it held that plaintiff failed to demonstrate the existence of any issue of fact relative to the hospital's breach of any duty owed to plaintiff. There was no evidence of a specific condition under the hospital's control that caused the glass on the door to break. There was no evidence regarding maintenance of the door, and no evidence that the hospital had actual or constructive notice of a defect in the door.

As to the *res ispa loquitur* claim, the appellate court held that in order for liability to attach to the hospital under that theory, plaintiff needed to show that (1) the occurrence was not one that ordinarily occurred absent negligence and (2) the defendant had exclusive control over the instrumentality that caused the injury. Given that the door did not operate itself, and that it was *plaintiff* who had sole control of the door at the time he entered the facility through it, the court held that this theory could not stand to survive summary judgment, while also noting that the *res ispa loquitur* doctrine is "simply a rule of evidence relating to the sufficiency of plaintiff's proof," and that the doctrine's applicability was limited to circumstances when "the facts proved by the plaintiff admit of the single inference that the accident would not have happened unless the defendant was negligent." *Britton v. University of Chicago Hospitals*