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A. SUPREME COURT DECISIONS

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Morrison v. Vasquez, 124 N.E.3d 1217 (Ind. 2019)
https://www.in.gov/judiciary/opinions/pdf/06271901sd.pdf

Location of Registered Agent no Longer Determines Preferred Venue

The Supreme Court interpreted the amended venue rule such that the location of a registered agent for an organization is no longer a preferred venue. Instead, venue is preferred in the location of the organization's actual principal office.

Q.D.-A., Inc. v. Ind. Dep't of Workforce Dev., 114 N.E.3d 840 (Ind. 2019)
https://www.in.gov/judiciary/opinions/pdf/01231901msm.pdf

Driver for Driveaway Broker Classified as an Independent Contractor

The Supreme Court overturned the Department of Workforce Development's classification of a truck driver as an employee for purposes of unemployment benefits. The Court found that the driver was not under the employer's control or discretion because he was free to complete work in any manner he saw fit, and work for competitors. Additionally, the Court found that the employer was not engaged in driveaway services as part of their usual course of business, even though they marketed themselves as a provider of such services and registered with the Department of Transportation. Finally, the Supreme Court found that the driver ran an independently established business where he was accepted or declined jobs or work for other brokers.

2. Appellate Court Decisions

a) Insurance Coverage Decisions

Metal Pro Roofing, LLC v. The Cincinnati Insurance Company, 130 N.E.3d 653 (Ind. Ct. App. 2019)
https://www.in.gov/judiciary/opinions/pdf/08091901nhv.pdf

Fraudulent Inducement Claim in Insurance Contract Avoids Summary Judgement When Quotes for Coverage Represented Coverage for Computer Hackers

Two companies appealed the grant of a summary judgement for insurer when they made claims for coverage under insurance policies after the companies' accounts were hacked and over $78,000 was stolen. The trial court granted summary judgement for the insurer after finding that the losses were not covered under the terms of the policies. The companies amended their counterclaim alleging that even if the computer-hacking losses were not covered, language in insurer's quotes led them to believe coverage for computer hacking losses would exist if they purchased the coverage. Even though the representations contained a disclaimer that the complete statement of coverages was in the policy contract, the Court held that the companies' reliance on the description of computer-hacking coverage represented a genuine issue of material fact on whether or not such reliance on the represented language was unreasonable in light of the disclaimer.

Auto-Owners Insurance Co. v. Shroyer, 127 N.E.3d 1200 (Ind. Ct. App. 2019)
https://www.in.gov/judiciary/opinions/pdf/06191901rrp.pdf

Child of Girlfriend Residing with Named Insured Qualifies as Insured Under Policy

The child of the insured's girlfriend living at the insured residence was injured in an accident. The insurer denied coverage under a homeowner's policy finding that child was an insured under the policy, which trigged certain policy exclusions. The Court of Appeals issued summary judgement for insurer after finding that the named insured cared for the child.

Glover v. Allstate Prop. & Cas. Ins. Co., No. 19A-CT-403, 2019 Ind. App. LEXIS 411 (Ct. App. Sep. 16, 2019)
https://www.in.gov/judiciary/opinions/pdf/09161901ebb.pdf

Insured not Entitled to Stacking UIM Benefits When Damages Received Exceeded UIM Coverage

The insured/decedent was a passenger involved in a three-car collision. The insured sought UIM benefits under the insurer's policy claiming that insurer was entitled to reduce UIM recovery by damages paid by liable drivers, but not by amounts paid by other insurance policies. The Appellate Court held that the insurer's policy provided that policy limits were to be reduced by "all amounts paid," not just those obtained by liable parties. Because the insured received amounts in excess of insurer's UIM policy limits, the Court held that insured was entitled to no further recovery under the policy.

b) Other Significant Decisions

G.F. v. St. Catherine Hosp., Inc., 124 N.E.3d 76 (Ind. Ct. App. 2019)
https://www.in.gov/judiciary/opinions/pdf/05061901par.pdf

Doctor's Disclosure of Private Medical Information Falls Outside the Purview of the Medical Malpractice Act

A doctor revealed confidential information about patient's diagnosis while a co-worker of the patient was in the room with him. The Court of Appeals held that the statement was not related to an inaccurate diagnosis or improper treatment. Because patient's suit dealt with the disclosure of the confidential information to the co-worker and the emotional damages that stemmed from such disclosure it was not subject to the limitations of the Medical Malpractice Act. Additionally, the patient's filing of a malpractice action with the Indiana Department of Insurance did not the prevent patient from pursuing a determination in the Circuit Court that the Medical Malpractice Act did not apply to his claims.

Weikart v. Whitko Cmty. Sch. Corp., No. 19A-CT-1224 (Ind. Ct. App. October 17, 2019)
https://www.in.gov/judiciary/opinions/pdf/10171902jgb.pdf

No Special Duty Found in Rape Reporting Case

The Court of Appeals found that a lawsuit brought by a student victim and her parents against a school and town alleging a school resource officer failed to report the student's allegation that she had twice been gang raped in violation of Ind. Code §§ 31-33-5-1 and 31-33-5-2(b) was properly dismissed. The student/parents admitted there was no private civil cause of action against a person who failed to report child abuse or neglect. They also failed to allege that the officer breached a special duty. The Court of Appeals found none of the officer's alleged actions narrowed his general public duty into a specific one owed to the student.

Kim v. Vill. at Eagle Creek Homeowners Ass'n, 19A-SC-970, (Ind. Ct. App. October 17, 2019)
https://www.in.gov/judiciary/opinions/pdf/10171901jsk.pdf

Indiana ADR Rules Inapplicable to Small Claims Cases

The Court of Appeals found the Indiana Alternative Dispute Rules were not applicable to small claims cases. Therefore, the small claims court should not have dismissed a dog bite victim's case for refusing to attend mediation. The parties could not be ordered to attend any form of alternative dispute resolution, so the claim was pending in small claims court.

Hercamp v. Pyle, No. 18A-CT-2958, (Ind. Ct. App. October 10, 2019)
https://www.in.gov/judiciary/opinions/pdf/10101901jsk.pdf

No Negligent Entrustment by Rental Car Company to Impaired Renter/Driver

During early morning hours a tortfeasor was arrested for driving while intoxicated. At 7:00 a.m., while in police custody, the tortfeasor admitted to driving while intoxicated and conceded he was not sure if he was too intoxicated to drive at that time. At 11:32 a.m., after having been released from custody, the tortfeasor rented a car from a rental car company and was subsequently involved in an accident in which the plaintiff was injured. Plaintiff then sued the rental car company for negligent entrustment. The rental car company moved for summary judgment. In support of its argument that it could not have negligently entrusted the rental care because it had no actual knowledge of the tortfeasor's alleged intoxication, the rental car company presented evidence of (1) the rental agreement, and (2) request for admission responses from the tortfeasor agreeing he provided his license to the rental car company and asserted he was not intoxicated at the time of rental. The plaintiff/victim presented evidence regarding (1) the prior night's DUI arrest, (2) the statements to the officer about potential intoxication around 7:00 a.m., (3) the officer smelling alcohol around 7:00 a.m., (4) paperwork from the tortfeasor's co-workers about irritational behavior, (5) past citations for driving related offenses, and (6) the irrational behavior resulting in firearms being removed from the tortfeasor. The trial court and Court of Appeals held in favor of the rental car company because it did not have the required actual knowledge of the tortfeasor's intoxication. The Court of Appeals focused on the fact the past evidence presented by the plaintiff did not show actual knowledge of intoxication at the time of the rental at 11:32 a.m.

Glock v. Kennedy, 18A-CT-2486 (Ind. Ct. App. October 10, 2019)
https://www.in.gov/judiciary/opinions/pdf/10101901ebb.pdf

Summary Judgment Denied in Informed Consent Case

In an informed consent matter, the trial court did not err in denying a defendant's motion for judgment on the evidence where, based on the expert testimony, a finding that reasonable persons, if properly informed, would have rejected the proposed treatment was not against the great weight of the evidence, and where the evidence most favorable to the judgment, along with all reasonable inferences to be drawn from the evidence, supported the judgment with regard to this issue.

Henry v. Cmty. Healthcare Sys. Cmty. Hosp., 19A-CT-1256 (Ind. Ct. App. October 8, 2019)
https://www.in.gov/judiciary/opinions/pdf/10081901jgb.pdf

Sufficient Pleading of Medical Privacy Disclosure Cause of Action

The Court of Appeals found it was an error to dismiss a complaint under Indiana's liberal pleading requirements where the complaint included the operative facts necessary to make a negligence-based claim against the hospital by alleging a common law duty to protect the privacy, security, and confidentiality of her health records, a breach of that duty by the employee, and resulting damages.

Strickholm v. Anonymous Nurse Practitioner, No. 19A-MI-696 (Ind. Ct. App. November 21, 2019)
https://www.in.gov/judiciary/opinions/pdf/11211901cjb.pdf

Timeliness of Medical Malpractice Complaint

The following timeline was relevant to whether a plaintiff timely filed a medical malpractice complaint:

> On October 29, 2015, plaintiff/patient first visited the healthcare facility for an "Establish New Patient" visit to establish the provider as a primary-care provider. The patient's blood pressure was taken during the initial visit.
>
> On December 1, 2015, the patient returned to the medical provider for a "Comprehensive Care Visit" and the patient's blood pressure was taken again. The medical provided prescribed a medication to combat the patient's high blood pressure. It was recommended the patient return for a blood pressure check the following week.
>
> On December 8, 2015, the patient again returned to the medical provider for a "Nurse Check" to have his blood pressure checked. The blood pressure check was conducted by an LPN who electronically conveyed the test result to a physician in the office. The physician responded electronically and stated, "systolic much improved but diastolic still high, would recheck in 1-2 weeks and if still elevated then increase the medication."
>
> On December 11, 2015, at the latest, the medical provider electronically reviewed and approved the LPN's report of the "Nurse Check" but did not recommend any further testing or treatment at the time.

> On December 15, 2015, the patient arrived at the emergency room with altered mental status and was diagnosed with hyponatremia, or low sodium. The next day he suffered cardiopulmonary arrest in the hospital's intensive-care unit.
>
> On December 4, 2017, the patient filed a proposed complaint against the medical provider with the Indiana Department of Insurance.

The trial court and Court of Appeals addressed the two year statute of limitations for filing an action against a medical provider: "A claim [...] may not be brought against a health care provider based upon professional services or health care that was provided or that should have been provided unless the claim is filed within two (2) years after the date of the alleged act, omission, or neglect[.]" Ind. Code § 34-18-7-1.

The Court of Appeals determined there was genuine issues of material fact and it was an error for the trial court to dismiss the medical malpractice case on 2-year statute of limitation grounds as there was a genuine issue of material fact as to whether the medical provider indeed provided health care to the patient on December 11, 2015, during the medical provider's electronical review and approval of the LPN's report of the "Nurse Check" without any recommended further testing or treatment.

Madison Consol. Sch. v. Thurston, No. 19A-CT-797 (Ind. Ct. App. October 23, 2019)
https://www.in.gov/judiciary/opinions/pdf/10231902par.pdf

Estoppel for Asserting Notice/Timeliness Provisions of Tort Claims Act

The Court of Appeals found the governmental entity was estopped from asserting that victim failed to comply with the notice requirements in Ind. Code §§ 34-13-3-8(a)(1), 34-13-3-10 of the Indiana Tort Claims Act (ITCA) as the victim and her mother attempted to work with the governmental entity's insurer and relied on its instructions, assurances, and advice regarding waiting until medical treatment was completed prior to seeking a settlement and failing to inform the victim and her mother of the ITCA time requirements.

3. Federal Court Decision

Waldon v. Wal-Mart Stores, Inc., No. 19-1529 (7th Cir. 2019)
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D11-26/C:19-1529:J:Brennan:aut:T:fnOp:N:2436321:S:0

No Constructive Knowledge of Dangerous Condition on Premises

In a premises liability action, the Seventh Circuit Court of Appeals, applying Indiana law, found a retail store should have prevailed on summary judgment as no reasonable jury could find the store had constructive knowledge of a hanger on the floor when approximately five to ten minutes before the customer/plaintiff's fall, an employee visually inspected the area where the customer fell and did not observe any hangers, debris, or other potential hazards on the floor.

Stewart v. Parkview Hosp., No. 19-1747 (7th Cir. 2019)
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D11-26/C:19-1529:J:Brennan:aut:T:fnOp:N:2436321:S:0

HIPAA Violation does not Create Private Cause of Action

An Indiana statute – Ind. Code § 9-30-6-6(a) (2016) - requires medical staff who test a person's blood for diagnostic purposes to disclose the results of the test to a law enforcement officer who requests the results as a part of a criminal investigation, regardless of whether the person has consented to or otherwise authorized their release.

The plaintiff sustained serious injuries when he crashed his car while driving under the influence. An emergency room doctor treated the plaintiff and in doing so ordered a blood draw, which confirmed that he had been drinking. The police requested and received the blood-test results from the hospital's medical staff. The plaintiff later sued both officers for violating the Fourth Amendment by obtaining his test results without a warrant and the hospital's medical staff for violating the Health Insurance Portability and Accountability Act by disclosing the results.

The 7th Circuit Court of Appeals found that while the Health Insurance Portability and Accountability Act (HIPAA) prohibits the disclosure of medical records without the patient's consent, nowhere does the statute expressly create a private right of action to enforce this substantive prohibition.

B. SIGNIFICANT CASE PENDING BEFORE THE INDIANA SUPREME COURT

Estabrook v. Mazak Corp., 19S-CQ-00590 (Supreme Court of Indiana 2019)

The United States District Court for the Northern District of Indiana has certified a question of Indiana state law for the Court's consideration, pursuant to Indiana Appellate Rule 64.:

> Can the statute of repose codified in Ind. Code § 34-20-3-1(b) be extended by post-sale repair/refurbishment/reconstruction of the product and, if so, what is the appropriate test to be used to determine whether the seller has done sufficient work to trigger the extension?

These cases were pending at the time this summary was printed. To confirm whether the Supreme Court has issued a decision in any of these cases, we invite you to visit our website at http://www.rolfeshenry.com.