If the Dress Fits, You Must Acquit
By: Julia Jensen Smolka

I love trial work. Its why I became a lawyer. However, 90-95% of cases are settled before trial. It makes sense because trials are expensive and the outcome is uncertain. I typically try to settle my cases before trial. But not every case settles. I recently tried a case that I will remember for a long time.

Our client was an upscale women's boutique in Chicago. It sells high end clothing and accessories. It purchased several dresses and shirts from an up and coming young designer. The designs were beautiful and expensive. When they arrived at the store in time for spring, there was a problem. The dresses and shirts were sized improperly. Some ran large, some ran small. And they were not selling. The store complained and tried to return the merchandise. They called, emailed and sent photos to the designer without receiving satisfaction. They had a sales representative come to the store to see the problems. The representative agreed the merchandise was not cut properly, but the designer would not take back the merchandise, and demanded to be paid in full. The store refused to pay for the merchandise. The store struggled to sell it, and slashed the prices. Finally a dozen or so pieces sold from the clearance section for a fraction of what the store was charged for the merchandise. The designer eventually sued the store.

The designer was not interested in settling the dispute, he wanted to be paid in full. We eventually tried the case. The designer came to Chicago from New York. As plaintiff, he testified first, and told the judge what a great designer he was. He told her about his background, his stint on a realty TV design show, and about how popular he is. The designer's attorneys called the shop owner as a witness to try to have her admit that she did not pay the invoice. She admitted it, but claimed the clothing was not cut properly. The shop owner brought the dresses and shirts with her to show the judge how the fit was incorrect. However, the judge stated she could not tell from merely holding up the dress, she said she needed a model to tell. After the designer presented his case, we took a lunch break.

Over lunch, I decided it was not enough to explain why the clothes did not fit. We had to show the judge. We didn't have any models at the ready. So we took matters into our own hands. My client, who was a size 4, put on a dress that was a size 6 and was tight in all of the wrong places. The dress retailed for $495.00. I then put on a dress that was a size 6, but fit my size 10 frame. That dress retailed for $595.00. I put my suit jacket on over it. We returned from lunch. I had my client stand and testify to her true size by showing the label of her skirt to the court. She then showed the judge how tight the dress was on her and explained why it was sized incorrectly. The designer’s counsel became upset and shouted his objections to what we were doing. I reminded the judge of her own words before lunch that she needed a model to show the clothes. The judge smirked a bit and overruled the objection and allowed the demonstration. I then took off my suit jacket,
The Escalating Cost of Toll Violations

By: Peter Follenweider

It has happened to everyone. After driving through either a toll booth or under the Open Road Tolling, we have asked ourselves whether the toll registered and, if not, how will I know? If you have not asked yourself this question, you should have. As all Illinois drivers know, driving in Illinois often, too often, involves the use of the tollway. The more Illinois drivers travel on the tollways, their chances of committing a toll violation increase exponentially.

In order to avoid committing a toll violation, it is important to know the process by which the Illinois State Toll Highway Authority ("Authority") accesses and records violations.

1. The Authority records every time a car passes under the Open Tollway or through a toll booth. If a toll is not paid, you have a seven (7) day grace period ("Grace Period") in which to pay without incurring additional costs and fines (see below). The Authority records the violation and tracks the missed payment;

2. The Authority places the burden on I-Pass account holders to ensure that their account is properly funded and accurate, regardless of emails or other notifications you may receive. The most efficient way to ensure your transponder is working and your account is funded is to visit the Illinois Tollway at www.illinoistollway.com and create an online account;

3. If you have missed a toll, for whatever reason, and do not pay within the Grace Period, the Authority will send you notice of the violation and the balance due: amount of the toll plus $20.00. If you do not pay by the due date, usually 14 days, the Authority adds another $70.00 fine to the $20.00 fine already assessed. As way of illustration: A is heading north on 294. Unbeknownst to A, her transponder malfunctions at the Touhy Toll Plaza and the toll is not paid. On A’s way back through the Toll A’s transponder again malfunctions. 14 days later, A receives notice of the missed tolls. The notice tells her that she owes $42.00 for two missed tolls and needs to remit payment within 14 days. A recently received an email saying her funds are low and her credit card has been charged to replenish her account and ignores the notices. Unfortunately for A, her reasons for missing are immaterial and she now owes $182.00 for two missed tolls;

4. The Authority’s notice of violation is considered received upon mailing. The Authority sends notices to the address that corresponds with the address listed on the vehicle registration or the vehicle owner’s driver’s license. It is not a defense to claim you did not receive notice if the notice was mailed to either of these addresses. If you moved, you should alert the Illinois Secretary of State of your new address. In order to avoid A’s mistakes and to give yourself the best possible chance of avoiding toll violations and the corresponding fines, here are some helpful tips to follow:

1. Periodically check your toll account to ensure that the payment was deducted from your I-Pass account;

2. If your transponder is located in the license plate holder, make sure that it is periodically cleaned and not covered up by dirt or other residue or it may not operate properly;

3. If you believe that you have committed a toll violation, you should immediately go online and check to see if a violation occurred before the Grace Period expires;

4. If you receive notice of a violation, immediately remit payment before the due date expires. If you feel the violation is in error, contact the Authority immediately;

5. Link your I-Pass account to a credit or debit card. That way, whenever the balance drops below a certain amount, the Authority will charge your credit card and replenish your account automatically. After linking your I-Pass account to your credit card, make sure you update your card information.

In addition to the heavy fines, after 5 violations, the Authority can petition the Illinois Secretary of State to suspend the violator’s drivers’ license and request an administrative hearing. At that hearing, the violator will be allowed to present evidence and be represented by counsel. If the Authority prevails, it will enter judgment against the violator. If the fines are not paid, the matter will likely be turned over to a private collection agency or a law firm and additional fees and costs may be assessed.

If you are contacted by either the Authority or a law firm representing the Authority in an attempt to collect fines or a judgment for toll violations, there are some basic facts to remember:

1. It is best to use a law firm to negotiate for you. The rules the Authority uses are complex;

2. Make sure that any agreement you reach regarding satisfaction of toll violations is in writing and approved by the Illinois Attorney General;

3. If the Attorney General has not approved of or agreed to your settlement then the settlement could be rejected and all fines and violations reinstated, even if already paid; and

4. If you fail to reach a settlement on your violations, you will be responsible to pay the entire amount and could be listed on the Illinois Scofflaw Registry which lists the companies or persons that have the largest outstanding unpaid balances. That list is public knowledge and can negatively affect you or your business.

If you follow these steps, you can avoid incurring multiple fines which could equate to thousands of dollars. If you do find yourself in a situation where you have been accused of toll violations please feel free to call DiMonte & Lizak at 847-698-9600.

pfollenweider@dimontelaw.com
DiMonte & Lizak - Highlights

D&L Recovers Large Settlement on Eve of Trial

DiMonte & Lizak, LLC's litigation team of Riccardo DiMonte, David Arena, Margherita Albarello and Ryan Van Osdol recently obtained a favorable settlement for their client and against the Village of Mount Prospect. In the lawsuit, various Village employees and the Village of Mount Prospect were alleged to have violated the civil RICO statute and plaintiff's civil rights in an effort to force plaintiff to sell his property for less than fair market value. On the eve of trial, we successfully recovered a $6,500,000 settlement for our client and resolved a dispute that had been pending for approximately six years. We will publish a full article regarding this case in the next edition of the firm newsletter, but until then, see:

1.) www.dailyherald.com/article/20140805/news/140809172/ (The Daily Herald article); and

Jonathan Morton Appointed to New Positions

Jonathan D. Morton was appointed to the Illinois State Bar Association Federal Tax Section Council. The Council's purpose is to inform and advise members of the bar on current developments in federal taxation, to review and comment on pending tax laws, regulations, and court decisions, and to make proposals on additions or changes to existing tax laws and regulations. Jonathan was also appointed to the Young Leaders Board of the Lakeview Food Pantry. The Lakeview Food Pantry is one of the largest and longest-lived food pantries in Chicago, providing on-site food distribution, food delivery to home-bound clients, and helping clients with other services they need to address causes of food insecurity.

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had the client read the label which confirmed it was a size 10, then had the client read the size label in the dress, which was 6. The two dresses were each size 6, each mis-sized.

The designer returned to the stand for rebuttal and stated that his clothes were made in New York under strict quality control. I merely asked him to confirm that this dress fit me properly. He admitted that it did. We won the trial. The judge agreed that the designer, who sued for breach of contract, could not meet his burden by showing he performed his terms of the contract, which was to sell clothing that was made properly.

I will remember this case for a long time. It was fun to be part of the trial evidence as well. And to answer the question you are probably thinking, no, I did not get to keep the dress.

Illinois Enacts Law Impacting Criminal Background Inquiries

policies don't just remove the “box” – they ensure that background checks are used fairly, that the employer makes individualized assessments instead of blanket exclusions, and that the employer considers the age of the offence and its relevance to the job.

The employer can inquire about, consider, and require disclosure of the applicant's criminal record or history after he has been deemed qualified for the position and notified that he has been selected for an interview. If the employer does not conduct interviews, the inquiry cannot take place until after a conditional offer of employment has been made to the applicant. The law exempts certain positions from coverage, including where a federal or state law excludes applicants with certain criminal convictions from working in the position sought; the position requires a standard fidelity bond or equivalent and the conviction would preclude the applicant from obtaining the bond; or the employer employs individuals licensed under the Emergency Medical Services Systems Act. Employers may provide applicants advance notice of specific offenses that would disqualify the applicant under state or federal law.

The Illinois Department of Labor is empowered to investigate violations and impose civil penalties for violations of the law. Multiple violations and failures to remedy violations can lead to heightened or additional penalties.
An experienced, multi-practice law firm working as a team to provide practical counsel and quality services.

What’s Inside...

If the Dress, Fits, You Must Acquit

Employment Law Corner: Illinois Enacts Law Impacting Background Inquiries

The Escalating Cost of Toll Violations

DiMonte & Lizak - Highlights

Page 2 ►

Page 3 ►

PRACTICE AREAS

• Litigation and Appeals • Real Estate Development and Land Use •
• Construction and Mechanic’s Liens • Corporate and Business Governance •
• Estate Planning and Probate • Creditors’ Rights and Bankruptcy •
• Employment and Human Resources • Banking and Finance • Tax •

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