



Legislative Update

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A Better Way: Help IDC Help Illinois

With the mid-term election races in full-swing, Illinois politics is extremely polarized, and the ever-present political ads suggest that room for agreement and a productive legislative session is remote. Nonetheless, as a non-partisan organization of defense lawyers, IDC remains focused on legislative action that could improve civil justice in Illinois. Everyone in the General Assembly ultimately seeks to make Illinois better and solve the problems that plague our state, notwithstanding their monumentally divergent approaches. Common ground may be hard to find, but historically, our legislature has demonstrated an ability to move at least some legislation forward even during periods of significant disagreement on serious issues. This track record gives us hope for IDC's current legislative efforts and the new legislative initiative that IDC is now announcing.

Political discord notwithstanding, the IDC and its Legislative Committee have continued to concentrate on leveling the playing field in civil litigation. In furtherance of these efforts, in early spring, Senate Republican Leader Bill Brady introduced Senate Bill 2449. This bill, which contains provisions that the IDC has previously supported, amends two sections of the Illinois Code of Civil Procedure. First, it amends 735 ILCS 5/2-1107.1, to provide that juries would not be advised of the consequences of finding that the plaintiff's fault was greater than 50% of the total fault. The proposal thus treats defendants and plaintiffs the same, with the proposed statute providing: "the court shall not instruct the jury of the consequence of any findings of fault of any plaintiff or defendant pursuant to Section 2-1116 or 2-1117." Second, SB 2449 amends 735 ILCS 5/2-1117, to provide that in apportioning fault, the jury would be instructed to apportion fault to all parties that proximately caused the plaintiff's injuries, including settling defendants. Keeping all the defendants on the jury form allows the jury to fully and fairly consider the merits of the litigation and who is at fault, and prevents a finding that is influenced by whether or not a settlement occurred.

IDC strongly supports this legislation, which keeps the jury focused on their role—fact finding—and leaves within the province of the court the duty to assess and apply the legal implications and consequences of those facts. The legislation also supports fair and equitable treatment of all defendants, which is consistent with the search for truth that is the express purpose of the jury system. SB 2449 has been referred to the Senate Judiciary Committee, which has in turn referred the bill to its Subcommittee on Tort Reform, which is chaired by Senator John G. Mulroe. The IDC continues to monitor developments relating to this bill.

While we continue our present efforts, the IDC is embarking on a new legislative initiative, and we need the help of our members to undertake it. Nearly a century ago, the U.S. Supreme Court first described the states as laboratories of democracy that, if its citizens choose, could enact laws that are essentially experiments in social and economic structures, and it has more recently reiterated that states are "laboratories for devising solutions to difficult legal problems." *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2673 (2015). Legislatures in Illinois and elsewhere have attempted to work collaboratively to evaluate these legislative experiments and implement the best of them more broadly. These conversations have been frequently organized through bar associations and various



commissions and committees, the best known of which is probably the Uniform Law Commission (also known as the National Conference of Commissions on Uniform State Laws), which promulgates legislation such as the Uniform Commercial Code. These types of efforts are valuable, and the IDC, as a group of more than 850 litigators engaged in varied and multifaceted practices, seeks to enhance its participation in these conversations and help Illinois find a better way forward.

Here is where we need your help. Our membership is uniquely situated to identify solutions that other states have used to solve their own legislative problems, which could be utilized in Illinois. No one misapprehends the major issues that hit the front page of the newspapers every day; opinions and myriad proposed solutions to those issues abound, and the “front page” items are therefore not the focus of this initiative. Rather, we are looking to identify discrete legislative deficiencies (or legal deficiencies that could be addressed via legislation), that merit legislative attention in Illinois. These issues may be cutting edge hot topics, such as legislation involving drones or autonomous vehicles; however, they need not be. For example, if Illinois law addressing certain land uses, or liability for particular activities, or restrictions and regulations on a particular trade or business are wrongheaded or could be better, these matters may be appropriate for IDC’s attention under its new initiative. We need your input to make this a success. IDC is focused on those legislative solutions that have an established track record of working in other states and benefiting those states’ citizens. Our members’ experience and exposure to litigation all over the country will hopefully allow us to identify those legislative experiments that are deserving of the IDC’s support.

The Legislative Committee’s intention is to solicit member input periodically (starting now), and then engage with the IDC’s varied substantive law committees to evaluate a selected number of the member ideas/proposals (please get involved with the committees that mirror your practice areas so you can help evaluate the proposals). The Legislative Committee will then review the proposals and assess which proposals align with the IDC’s mission to ensure civil justice with integrity, civility and professional competence. Those proposals that address issues of significance to the defense bar, that promote the fair, expeditious and equitable resolution of disputes being litigated in Illinois courts, or that may benefit Illinois citizens may be pursued through proposed legislation and other activities of the Legislative Committee and IDC, generally.

We are extremely excited about this initiative, not only because it opens up a new avenue for IDC to increase its advocacy for fair, equitable, and efficient laws in Illinois, but because it gives our members another way to make their voice heard through IDC. We welcome as much or as little input as you wish to give—whether it is a detailed explanation of the ways in which another state’s approach to a legal issue is better, or simply a short email citing some statute that you think represents a better way.

You can direct your proposals and ideas to Pat Eckler (deckler@pretzel-stouffer.com; (312) 578-7653), chair of the IDC Legislative Committee, or the committee vice chairs, Dave Herman (dherman@giffinwinning.com; (217) 525-1571), and me (jeggum@fgppr.com; (312) 863-5053). We look forward to your thoughts and comments, and appreciate your support in this new endeavor.

About the Author

John Eggum is a partner at *Foran Glennon Palandech Ponzi & Rudloff P.C.*, where he concentrates his practice on insurance coverage matters and commercial litigation. He represents insurers, TPAs, brokers, and captive managers in professional liability disputes, and also litigates cyber/technology liability claims. Mr. Eggum’s law degree was obtained,



with distinction, from The University of Iowa College of Law, and following law school, he served as the law clerk to the Hon. Bruce A. Markell in the United States Bankruptcy Court for the District of Nevada, in Las Vegas. Mr. Eggum serves as the Vice-Chair of the IDC Legislative Committee and the Vice-Chair for the IDC's Young Lawyers Division.

About the IDC

The Illinois Association Defense Trial Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.iadtc.org or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, idc@iadtc.org.