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IL SUPREME COURT WEIGHS IN ON BIPA STATUTE OF LIMITATIONS

Today, the Illinois Supreme Court issued a much-awaited decision in *Tims v. Black Horse Carriers, Inc.*, 2023 IL 127807 (Feb. 2, 2023) **(Click here for PDF)**, interpreting the relevant statute of limitations applicable to the Illinois Biometric Information Privacy Act ("BIPA"). 740 ILCS 14/15, *et seq*. The Illinois court of appeals previously determined that a five-year statute of limitations applies to Section 15(a) of BIPA, which requires companies collecting biometric data to establish a written policy regarding retention and destruction of the data. The court of appeals also held in that decision that a one-year statute of limitations applies to Sections 15 (b) and 15 (d) of BIPA, which govern obtaining informed consent and the dissemination of biometric data to third parties.

The Illinois Supreme Court upheld the five-year period as to Section 15(a), but overturned a portion of the court of appeals' decision, finding that a five-year statute of limitations applies to all sections of BIPA. SCOTIL found that applying two different limitation periods would violate Illinois' principles of statutory interpretation, which presumes that the legislature does not intend "absurd, inconvenient, or unjust consequences."[1] In Illinois, a five-year statute of limitations is the presumed "catch-all" period if a statute is silent on the relevant limitations period. However, Illinois statutes also provide a one-year statute of limitations for actions involving a violation of privacy. 735 ILCS 5/13-201. BIPA cases involving dissemination of an individual's biometric data to a third party unquestionably involve a violation of the right to privacy, as previously found by SCOTIL.[2] Still, SCOTIL found that applying two different limitations period would create an "unclear, inconvenient, inconsistent, and potentially unworkable regime."

This ruling will have a significant impact on many pending cases, including a recent federal court jury trial in which the court certified a six-year class period. *Rogers, et al. v. BNSF Railway Co.*, No. 1:19-cv-03083 (N.D. Ill. Oct. 12, 2022). In theory, the class period reaches beyond the five-year statute of limitations that now applies to such actions. Likewise, pending before SCOTIL is the question of when a cause of action accrues and how many recoveries a single individual is entitled to where repeated exposures are involved. *Cothron v. White Castle System, Inc.*, No. 128004 (Ill.). The *Cothron* case was argued several months before the *Tims* case, and we anticipate SCOTIL will provide guidance on those open issues in short order.

The outcome of *Cothron* will dovetail with the issues presented in *Tims*, informing when a cause of action accrues during the new five-year limitation period, and how many causes of action a single individual can bring for the continued dissemination of the same data. Walker Wilcox will continue to monitor breaking developments.

[1]Decision, p. 6. Citing *In re Marriage of Goesel*, 2017 IL 122046, ¶ 13; *Vine St. Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 282 (2006).

[2] *See West Bend Mutual Insurance Company v. Krishna Schaumburg Tan, Inc.*, 183 N.E.3d 47, 60 (Ill. 2021).