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Law Alert: Seventh Circuit Defers to Illinois Supreme Court on When a Claim Accrues Under the Illinois Biometric Information Privacy Act

Yesterday, the Seventh Circuit published its much-anticipated opinion in Cothron v. White Castle Sys., Inc., No. 20-3202 (7th Cir. 2021) where it asked the Illinois Supreme Court to decide the question of when a claim accrues under the Illinois Biometric Information Privacy Act ("BIPA"). In 2008, the Illinois Legislature enacted BIPA, generally providing that a private entity must obtain written consent and disclose their retention policies prior to taking or obtaining an individual's biometric information (i.e., fingerprints, faceprints, and more). However, BIPA does not expressly state whether a violation of the statute occurs upon the failure of obtaining written consent before collecting biometric information or a violation occurs upon every unconsented-to collection and disclosure of biometric information.

Simply put, the parties in White Castle argued over what BIPA means by "each" violation. The Seventh Circuit decided that this important question of BIPA interpretation, with extensive implications for both sides, is best decided by the Illinois Supreme Court.

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