

**CDLB PEOPLE**



**2** Beermann adds divorce and family law associate / Tomasik elected to ABOTA board of trustees

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“ The winter of 1776 was not heroic in the way we later would tell it, though the outcome at the Battle of Trenton was a major one.”



LAWYERS' FORUM, PAGE 3

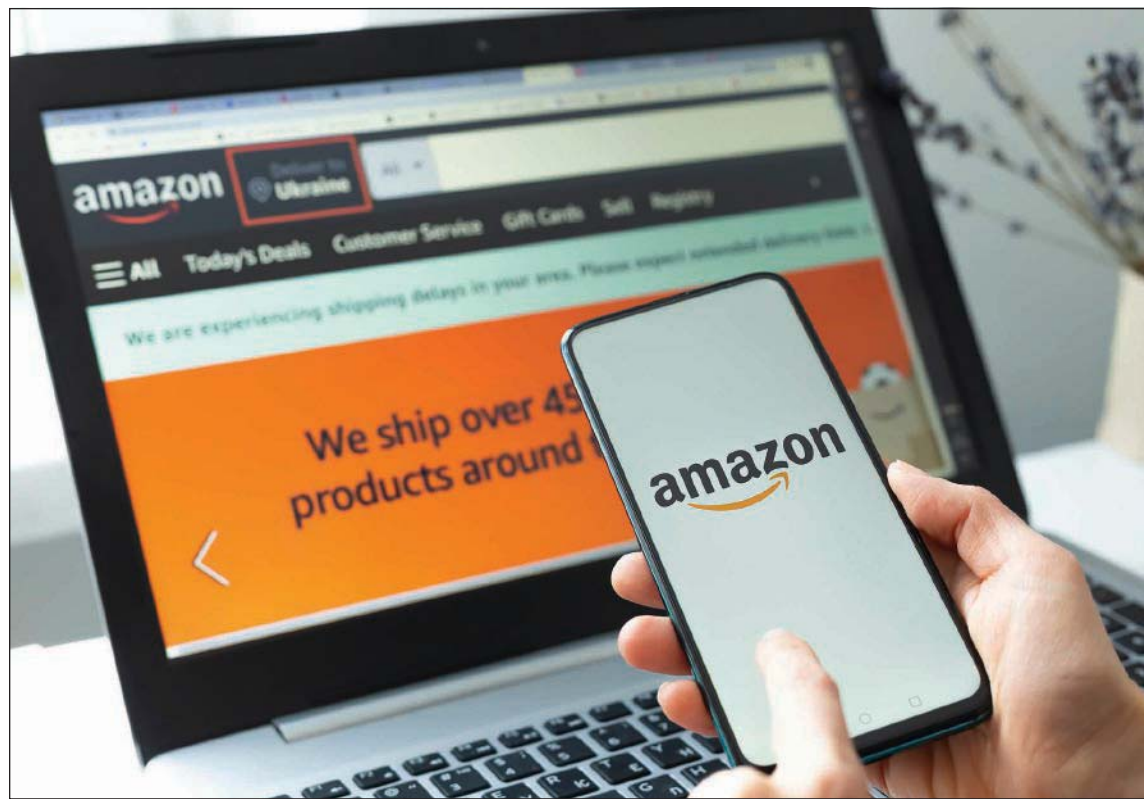
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A federal appeals court will allow customers to pursue a lawsuit accusing Amazon of violating the Illinois Biometric Information Privacy Act. Oleksandr/stock.adobe.com

## Amazon lawsuit moves ahead

Customers can proceed with claims that the company violated BIPA

**PATRICIA MANSON**  
 pmanson@lawbulletinmedia.com

A federal appeals court cleared the way for up to 100,000 Amazon customers to jointly pursue a lawsuit accusing the e-commerce giant of violating the Illinois Biometric Information Privacy Act by collecting their facial geometry without their permission.

The 7th U.S. Circuit Court of Appeals affirmed a trial judge's decision to certify a class of people who tested makeup or eyeglasses through a "Virtual Try-On," or VTO, feature on Amazon's mobile website or app.

The named plaintiffs allege Amazon failed to

comply with BIPA's notice and consent requirements before purportedly capturing, using and storing customers' facial templates and related personal identifying information. The plaintiffs also allege Amazon did not follow BIPA's requirement that it adopt publicly available guidelines for the retention and destruction of biometric data.

Plaintiff Tanya N. Svoboda filed a proposed class-action suit against Amazon in Cook County Circuit Court in September 2021. Amazon removed the

BIPA • Page 5

## Jury awards \$13.5M for damaged heart

Amount sets a new record for medical verdict in Will County

**GRACE BARBIC**  
 gbarbic@lawbulletinmedia.com

A Will County jury awarded a \$13.5 million verdict to a man whose heart valve was severely damaged, requiring open heart surgery, as a result of delayed treatment for a blood infection.

According to the Jury Verdict Reporter, it is the largest verdict in a medical malpractice case in Will County. There was a higher medical malpractice settlement in Will County.

John Brightmore, then 20, went to the emergency room at Silver Cross Hospital in New Lenox on Oct. 7, 2021.

During his visit, blood cultures were ordered.

The following day, the blood cultures showed Brightmore had bacteria in his bloodstream, documents stated.

The results allegedly were not reported to the emergency room charge nurse until 10½ hours later.

Another 10 hours elapsed before the result was communicated to emergency room physician, Dr. Blanca Herrera.

Herrera was an employee of EM Strategies Ltd.

The emergency room nurse allegedly told Herrera that the result

was a positive throat culture, rather than a blood culture.

As a result, Brightmore was prescribed oral antibiotics to treat strep throat.

Brightmore took the oral antibiotics as ordered.

Considering oral antibiotics would have no effect for a bloodstream infection, his attorneys said Brightmore essentially went without treatment for another two days.

He returned to the hospital on Oct. 11, 2021, complaining of worsening symptoms.

Brightmore was diagnosed with sepsis. Testing revealed he had a severely damaged mitral valve, which is the valve between the left atrium and the left ventricle of the heart.

He underwent a mitral valve reconstruction surgery, which is an open-heart procedure, on Dec. 2, 2021.

After the surgery, Brightmore developed postoperative recurrent pericarditis, an inflammation of the sac that surrounds the heart, causing chest pain and difficulty breathing.

To treat the recurrent pericarditis, Brightmore will have to undergo another open-heart procedure to remove his pericardium, the membrane enclosing the heart.

According to his attorneys,

VERDICT • Page 5

## Suspend attorney who misused client funds, ARDC says

**EMMA OXNEVAD**  
 eoxnevad@lawbulletinmedia.com

An attorney who misused more than \$41,000 belonging to clients and third parties across multiple real estate transactions should be suspended, according to the Illinois Attorney Registration and Disciplinary Commission hearing board.

The board's recommendation

that Stephen J. Link be suspended for two years and required to pay \$30,000 in restitution modifies the administrator's request that he be suspended for three years and required to pay more than an additional \$217,000 in interest and late fees. It also rejected Link's request to be suspended for six months with a probationary period.

Link was charged with dishonestly converting and commingling more than \$41,000 across five residential real estate transactions, in violation of the Illinois Rules of Professional Conduct.

While representing Perfection Custom Homes LLC (PCH) during a property sale in 2022, Link used more than \$29,800 of the purchasers' \$30,000 earnest payment

without authorization.

The previous year, he used more than \$9,000 belonging to clients or third parties without their permission across three matters.

And in 2023, he stole the entirety of another client's post-closing possession escrow funds, totaling more than \$2,000. He was also charged with failing to

promptly deliver funds related to that transaction because he was delayed five months in returning the escrow funds after they moved out of their property.

Further, Link was also charged with making misrepresentations to the administrator during the investigation of this matter.

ARDC • Page 6

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# Wisconsin Republicans demand Judge Dugan resign

TODD RICHMOND AND  
SCOTT BAUER  
Associated Press

MADISON, Wis. — Wisconsin Republicans threatened Friday to impeach embattled judge Hannah Dugan if she doesn't resign immediately after she was convicted of obstruction for helping an immigrant evade federal officers, saying her time serving the people of the state is over.

Federal prosecutors in April accused the judge of distracting federal officers trying to arrest a Mexican immigrant outside her courtroom and leading the man out through a private door. A jury convicted her of felony obstruction late Thursday after a four-day trial.

Dugan faces up to five years in prison when she's sentenced, though federal judges have discretion to go lower. No sentencing date has been set.

The Wisconsin Constitution bars convicted felons

from holding public office. The state Judicial Commission, which disciplines state judges, and Milwaukee County Chief Judge Carl Ashley, Dugan's boss, haven't responded to questions Friday about when Dugan's office will officially become vacant. Under state law, a vacancy doesn't begin until a convicted office holder is sentenced.

Assembly Speaker Robin Vos and Majority Leader Tyler August, both Republicans, on Friday morning threatened to impeach Dugan if she doesn't immediately resign. They cited a legal opinion issued by then-Attorney General Bronson La Follette in 1976 that a state senator lost his seat the moment he was convicted of a felony.

"Wisconsinites deserve to know their judiciary is impartial and that justice is blind," Vos and August said in a joint statement. "Judge Hannah Dugan is neither,

and her privilege of serving the people of Wisconsin has come to an end."

Dugan's defense team has not responded to a message seeking comment.

The case against Dugan played out against a background of political turmoil over President Donald Trump's sweeping immigration crackdown. Democrats insisted the administration was trying to make an example of Dugan to blunt judicial opposition to the operation. Trump's administration branded Dugan an activist judge and posted photos of her being led away in handcuffs.

U.S. Attorney General Pam Bondi posted Friday that "NO ONE IS ABOVE THE LAW"

"No one can obstruct law enforcement as they carry out their basic duties," she said in a social media post. "This Department of Justice will not waver as our agents and law enforcement part-

ners continue to make America Safe Again."

Dugan never took the stand. Steve Biskupic, her lead attorney, said that he didn't understand how the jury could have reached a split verdict since the elements of both charges were so similar. Her team is expected to appeal the verdict.

A coalition of 13 advocacy groups, including Common Cause Wisconsin and the League of Women Voters Wisconsin, said "higher courts must carefully review the serious constitutional questions this case raises about due process, judicial authority, and federal overreach."

The Democracy Defenders Fund, a group that says it works to defend "the foundations of our democracy," sent a fundraising email shortly after the verdicts were handed down to help cover Dugan's legal expenses.

"This case is far from

over," the group's executive chair, Norm Eisen, said in the email. "Higher courts will have the opportunity to determine whether this prosecution crossed the lines that protect the judiciary from executive overreach."

John Vaudreuil, a former U.S. attorney in Madison, said Dugan faces an uphill fight to overturn the verdict. Appellate courts typically view evidence in the light most favorable to the government.

Vaudreuil wasn't surprised to see a split verdict, saying the jury likely felt she intentionally tried to "throw some sand into the gears" but didn't go as far as concealing the immigrant in the general sense of the word, like hiding him in her house.

"The two charges gave them two different ways to look at the evidence," he said.

Vaudreuil said he expects U.S. District Judge Lynn

Adelman to set a sentencing date within the next few days, but sentencing could be months away because the government needs time to examine Dugan's background for a pre-sentencing report.

On April 18, immigration officers went to the Milwaukee County courthouse after learning 31-year-old Eduardo Flores-Ruiz had reentered the country illegally and was scheduled to appear before Dugan for a hearing in a state battery case.

Dugan confronted agents outside her courtroom and directed them to Ashley's office. After the agents left, she led Flores-Ruiz and his attorney out a private jury door. Agents spotted Flores-Ruiz in the corridor, followed him outside and arrested him after a foot chase. The U.S. Department of Homeland Security announced in November he had been deported.

## VERDICT

From page 1

Brightmore will likely require that his reconstructed mitral valve be replaced multiple times throughout his life.

Brightmore sued Silver Cross Hospital and Medical Centers, EM Strategies and Herrera in Will County Circuit Court, alleging medical malpractice.

The complaint alleged they were negligent in failing to timely communicate the positive blood culture re-

sults in violation of hospital policy, failing to provide a timely hospital admission and antibiotic treatment, and allowing a systems failure to exist which resulted in the delay in communication, among other claims.

According to the complaint, Silver Cross' critical value reporting process policy required that a nurse who is informed of a critical result will immediately contact the patient's physician to provide the physician with the information.

The case went to trial Nov. 25 before Will County

Circuit Court Judge Bennett J. Braun.

The jury reached a verdict on Tuesday in favor of Brightmore and against Silver Cross.

The jury also found EM Strategies and Herrera were not guilty.

The award covers disfigurement, loss of a normal life, pain and suffering, shortened life expectancy, emotional distress and medical expenses.

Brightmore was also awarded about \$2.8 million in prejudgment interest, his attorneys said.

Brightmore is represented by David G. Pribyl and Alex Campos of Dudley & Lake LLC.

"We are obviously pleased with the verdict," Pribyl said. "Our client has been through a lot since October 2021, and we are grateful that the jury recognized what had occurred and that he deserved better treatment. We thought the verdict was appropriate."

Silver Cross is represented by Shannon E. Holbrook of Cray Huber Horstman Heil & VanAusdal LLC. He could not be reached for



Alex Campos



David G. Pribyl

comment.

EM Strategies and Herrera are represented by Daniel P. Slayden of Lewis Brisbois Bisgaard & Smith LLP. Slayden said Herrera

was "satisfied with the not guilty verdict as to her."

The case is *Brightmore v. Silver Cross Hospital and Medical Centers, et al.*, No. 22 LA 383.

## BIPA

From page 1

case to federal court in Chicago the next month. Antonella Ortiz Colosi joined the action as a plaintiff in an amended complaint in May 2022.

In March 2024, U.S. District Judge Jorge L. Alonso of the Northern District of Illinois certified a class in the suit made up of individuals who used Amazon's VTO feature on or after Sept. 7, 2016, while in this state.

Alonso concluded the class met the threshold requirements for certification set out in Federal Rule of Civil Procedure 23(a) — numerosity, commonality, typicality and adequacy of representation — as well as the additional requirements set out in Rule 23(b)(3).

Rule 23(b)(3) states that a suit may be pursued as a class action if Rule 23(a)'s requirements are met and the judge "finds that the

questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

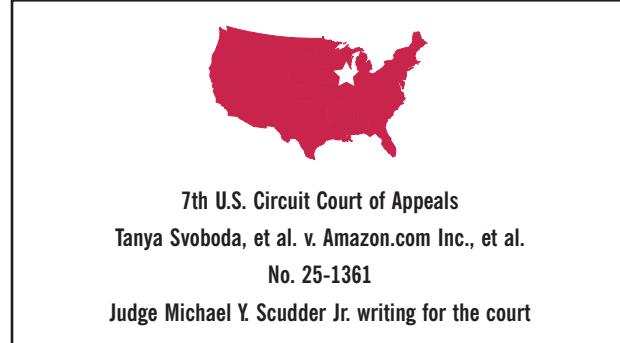
Amazon appealed the certification to the 7th Circuit, arguing that the class did not meet Rule 23(b)(3)'s predominance and superiority requirements.

A panel of the 7th Circuit rejected that argument.

On the issue of predominance, the panel acknowledged individualized inquiries will be needed to determine the location of some class members when they accessed Amazon's VTO feature.

But the question of location is overshadowed by questions common to the class, Judge Michael Y. Scudder Jr. wrote for the panel.

He wrote common questions include "whether the facial data used by the op-



eration of the VTO application constitutes biometric identifiers or information within the meaning of BIPA" and "whether the use of the VTO means Amazon collected, captured, obtained, or possessed it."

If the answer to both questions is "yes," more questions would arise, Scudder wrote, including whether Amazon's purported failure to develop a policy for handling biometric data violated BIPA.

Scudder also noted that Rule 23 does not require all issues of liability to be resolved on a classwide basis for common questions to

predominate over individual questions.

"To the contrary, it is not uncommon for class actions to have a 'final phase' for class members to submit individualized proof of a claim," he wrote, citing *Suchanek v. Sturm Foods Inc.*, 764 F.3d 750 (7th Cir. 2014). "After proving a defendant's actions relevant to liability, each claimant must show that those actions harmed them."

This procedure passes muster under Rule 23 so long as "common questions of law and fact relevant to liability otherwise generate significant efficiencies and the individual

question is manageable," Scudder wrote.

He wrote that determining on a class-wide basis whether Amazon unlawfully used the VTO feature will create efficiencies. So will answering factual questions about the VTO software in a single suit, he wrote.

And Scudder wrote "[c]onsent presents a common question because class members uniformly opt in to the VTO by clicking the 'try on' button."

The panel also rejected Amazon's challenge to Alonso's finding that handling the case as a class action was superior to requiring individuals to file separate suits.

"Even if we credit Amazon's contention that the aggregate damages could extend into the tens of millions of dollars, that observation is not enough to defeat superiority," Scudder wrote. "BIPA reflects a permissible judgment of the Illinois General Assembly that the misuse of biometric data amounts to a pri-



Michael Y. Scudder Jr.

vacy violation warranting the imposition of money damages."

Joining the opinion were Judges Ilana Diamond Rovner and David F. Hamilton.

The case is *Tanya Svoboda, et al. v. Amazon.com Inc., et al.*, No. 25-1361.

Keith J. Keogh of Keough Law Ltd. argued the case before the 7th Circuit on behalf of the plaintiffs. Stephanie Schuster of the Washington, D.C., office of Morgan, Lewis & Bockius LLP, argued the case on behalf of Amazon.

Neither of the attorneys could be reached for comment.