

Appellate Court Interprets Biometric Information Privacy Act

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On December 21, 2017 the Illinois Appellate Court for the Second District determined that an actual injury is required in order to state a cause of action under the Illinois Biometric Information Privacy Act (740 ILCS 14/1 et seq.). *Rosenbach v. Six Flags Entertainment Corp.* 2017 Illinois Appellate (2nd) 170317.

In the *Rosenbach* case, plaintiff filed a class action lawsuit alleging that Six Flags was liable for violation of the Act because it did not obtain her permission to collect a thumb print of her son when he bought a season pass for the Great America theme park. In her complaint, plaintiff did not allege any actual harm or injury.

The trial court certified questions to the Appellate Court which ultimately held that in order to recover statutory or actual damages under the statute, “person aggrieved” did not include the plaintiff because she failed to allege any actual injury.

The court noted the end of the opinion that if a person alleges only a technical violation of the Act without alleging injuries or adverse effects, that person is not aggrieved under the statute and may not recover.

However, the court indicated that an injury or adverse effect need not be pecuniary, thus leaving the door open for a liberal construction of injuries or adverse effects under the statute.