



**Ancel Glink** | DIAMOND BUSH  
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Welcome to **Ancel Glink Defense E-News**, our electronic newsletter. In this newsletter, we focus on the latest court decisions and legislative changes in litigation which may affect you.

**Ancel Glink Defense E-News** is a publication of the defense litigation group of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.

For more information about this edition of the **E-News**, please contact litigation partner, [Lucy Bednarek](#).

Fourth Quarter 2015

## CASES YOU SHOULD KNOW ABOUT

### Standard for Pretrial Detainee Excessive Force Cases

*Kingsley v. Hendrickson*, 135 S. Ct. 2466 (U.S. Supreme Court, June 22, 2015).

The United States Supreme Court held that to prove an excessive force claim under 42 U.S.C. § 1983, a pretrial detainee must show only that the officers' use of that force was objectively unreasonable. The pretrial detainee does not need to show the officers were subjectively aware their use of force was unreasonable.

### Employment Discrimination - Religion

*EEOC v. Abercrombie Fitch Stores, Inc.*, 135 S.Ct. 2028 (U.S. Supreme Court, June 1, 2015).

Retailer Abercrombie and Fitch refused to hire plaintiff Samantha Elauf, a seventeen year old Muslim woman who wore the traditional hijab or head scarf. Abercrombie and Fitch claimed her appearance clashed with its corporate dress code. The United States Supreme Court found that Abercrombie and Fitch at least suspected plaintiff wore the head scarf for religious reasons and the decision not to hire her was motivated by a desire to avoid accommodating her religion. The Court explained it was not a defense that she did not ask for a religious accommodation. To prevail in a disparate-treatment claim under Title VII, an applicant need show only that her need for an accommodation of a religious practice was a motivating factor in an employment decision, not that the employer had knowledge of her need.

### Qualified Immunity

*Mullenix v. Luna*, 2015 WL 6829329 (U.S. Supreme Court, Nov. 9, 2015).

The defendant police officer was involved a high speed chase, resulting in the police officer shooting and killing the fleeing suspect in an attempt to disable the suspect's vehicle. The United States Supreme Court held the Fifth Circuit Court of Appeals erred in denying qualified immunity to the officer. Rather, the officer was entitled to qualified immunity because existing precedent does not clearly establish the officer acted unreasonably in shooting at the car under the circumstances. The officer confronted a reportedly intoxicated suspect who was fleeing police, the suspect twice had threatened to shoot the police officers, and the suspect was moments away from encountering an officer.

### Public Safety Employees Benefits Act - Definition of Catastrophic Injury

*Vernon Hills v. Heelan*, 2015 IL 118170 (IL Supreme Court, Sep. 24, 2015).

The Illinois Supreme Court upheld its previous interpretation of the phrase "catastrophic injury" under the Public Safety Employee Benefits Act (PSEBA) in this case. The Court held that a catastrophic injury under PSEBA is

synonymous with an injury resulting in a receipt of a line-of-duty disability pension under the Pension Code.

#### Defamation - Identity of Anonymous Internet Posters

*Hadley v. Subscriber Doe*, 2015 IL 118000 (IL Supreme Court, June 18, 2015).

Plaintiff filed a defamation suit for comments made on a newspaper website by an anonymous internet poster using the alias "subscriber Doe a/k/a Fuboy." "Fuboy" posted the following comment to the online article: "Hadley is a Sandusky waiting to be exposed. Check out the view he has of Empire (a local grade school) from his front door." As part of the litigation, the newspaper provided plaintiff with the IP address acquired from Comcast from which Fuboy's comments originated. Because the statement compared plaintiff to a well known child molester, the statement was not capable of innocent construction. As a result, the Illinois Supreme Court ordered Comcast to turn over its subscriber's identity to plaintiff, in furtherance of the defamation case and to assist plaintiff in discovering the identity of "Fuboy."

#### School Property is Subject to Municipal Zoning Laws

*Gurba v. Community High School District*, 2015 IL 118332 (IL Supreme Court, Sept. 24, 2015).

A local high school installed bleachers at the high school without going through the zoning process, arguing it was not subject to local zoning. The Illinois Supreme Court held that under the terms of the Illinois Municipal Code, school property is subject to municipal zoning laws. The Court pointed out that there is no statute which exempts school district property from the exercise of a city's zoning laws. As a result, the school's bleacher construction project was subject to the City's zoning and storm water ordinances.

#### School Bullying

*D.S. v. East Porter County Sch. Corp.*, 799 F.3d 793 (7th Cir. Aug. 24, 2015).

Plaintiff was a middle school student who claimed she was a victim of bullying by fellow students from third through seventh grades. She claimed students threw basketballs at her head, wrote "I hope you die" on her school planner, and called her fat. She also claimed her gym teachers forced her to participate in gym class, and her basketball coaches told her she was not good at basketball. She decided to leave the school, and tried to enroll at a neighboring school district but was denied enrollment. The Seventh Circuit affirmed summary judgment in favor of the School District, finding plaintiff failed to show her teachers and coaches participated in the bullying incidents and recognizing school officials do not have an affirmative duty to protect students. The Court also held she failed to prove her equal protection claim against the neighboring school district because she did not establish she was intentionally treated differently from others when the district refused her enrollment.

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## NEW LAWS THAT MAY AFFECT YOU

#### Calls to Police

**Public Act 99-441**, effective November 19, 2015, prohibits units of local government and counties from penalizing tenants or landlords from contacting police or emergency services if the contact was made for help because of domestic violence, sexual violence, or disability.

#### Guidelines for Body Camera Use by Law Enforcement

**Public Act 99-0352** permits the use of police body cameras and establishes protocols for the cameras, its data, training requirements, adds an additional \$5 charge for traffic tickets to fund the use of body cameras, requires independent investigations of officer-related deaths and establishes a database of officers that have resigned or been fired due to misconduct. Portions of this law are effective immediately and the remainder of the bill will be effective January 1, 2016.

### **Youth Concussion Safety Act Affects Park and School Districts**

**Public Act 99-0245** includes a number of new requirements relating to student concussions, including the establishment of a concussion oversight committee, school-specific emergency action plans, protocols for when a student may return to interscholastic athletics and training requirements for coaches, nurses, physicians and athletic trainers. The law's provisions apply to sponsored youth sports activities beginning or continuing after January 1, 2016.

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## **ANCEL GLINK DEFENSE VICTORIES**

Ancel Glink's litigation team recently defended and won the following notable cases:

### **Excessive Force-Defense Verdict**

#### **Attorneys: Ellen Emery and Liz Barton**

*Ayoubi v. City of Des Plaines, et al.*, Northern District Illinois

Ancel Glink attorneys Ellen Emery and Elizabeth Barton successfully obtained a jury verdict in favor of the City of Des Plaines and a Des Plaines police officer following an investigatory stop. The stop took place as the officer was searching for individuals subject to grand jury subpoenas and the officer thought they might be in the vehicle. The plaintiff claimed the officer made an unconstitutional stop and did so only as part of profiling Hispanic drivers, claiming the officer screamed at the plaintiff driver and two passengers about being Mexicans. The plaintiff asked for \$50,000 compensatory damages and \$1,000,000 punitive damages, but the jury found in favor of the officer.

### **Personal Injury - Defense Verdict**

#### **Attorneys: Thomas DiCianni and Christy Michaelson**

*Kamysz v. Village of Algonquin*, McHenry County Circuit Court

Ancel Glink attorneys Thomas DiCianni and Christy Michaelson successfully obtained a jury verdict in favor of the Village of Algonquin arising out of a fall on an allegedly defective Village sidewalk. Plaintiff claimed the Village had constructive notice of the defective sidewalk because Village employees were in the vicinity at least five times in the year preceding her fall to remove a tree from the parkway directly adjacent to the sidewalk where she fell. The Village argued it lacked notice and that the alleged sidewalk defect was de minimus. The Village refuted negligence because it recently had implemented a complex electronic database to track sidewalk conditions completed through physical sidewalk surveys conducted by its interns. The plaintiff asked for a verdict of \$450,000. A jury found in favor of the Village of Algonquin.

### **Termination of Former Police Officer Was Not a First Amendment Violation**

#### **Attorney: Lucy B. Bednarek**

*Lalowski v. City of Des Plaines*, Seventh Circuit

Plaintiff, a former Des Plaines police officer, alleged his First Amendment rights were violated after he was terminated for publicly expressing his disagreement with abortion protestors while off-duty. The Seventh Circuit affirmed summary judgment in favor of the City, finding that none of the officer's speech rights were protected under the First Amendment because most of his statements did not address matters of public concern. Even the few statements that did touch on matters of public concern were outweighed by the City's interest in maintaining discipline and harmony within the police department, and fostering trust with the public. The Court also considered the manner in which he expressed his speech (such as ridiculing the protestors), as well as his history of disciplinary actions.

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## RISK MANAGEMENT PUBLICATIONS & EVENTS

Ellen Emery and Lucy Bednarek received the 2015 Trial Excellence Award for Outstanding Defense Verdict in a Civil Rights Case from the Law Bulletin Publishing Jury Verdict Reporter for their defense verdict against a \$13 million dollar demand in *Altman v. Gurnee*, tried in federal court in Chicago.

Ellen Emery spoke on *Police Use of Deadly Force* at the Illinois Municipal League's Annual Conference in Chicago in September, 2015.

Ancel Glink litigation attorneys will be speaking at the 2016 Illinois Association of Park Districts/Illinois Park and Recreation Association Soaring to New Heights Conference in Chicago on January 30, 2016 on the following topics:

Tom DiCianni and Lucy Bednarek:

*What Commissioners Need to Know about Employment Litigation*

Darcy Proctor, Jim Rock and Erin Baker: *Dealing with Bullying in Your Agency's Programs and Staff*

Tom DiCianni and Lucy Bednarek: *Tort Immunity Tips for Reducing Liability Exposure*

Darcy Proctor and Robert McCabe will be speaking on *Employment and Labor Hot Topics: What You Don't Know Can Hurt You* at the Illinois City/County Management Association Winter Conference on February 5, 2016 in Normal, Illinois.

Darcy Proctor will be speaking on *Governmental Liability - Top 5 Things You Should Know* on March 2, 2016 at the Illinois State Bar Association/Law Ed CLE for Illinois Lawyers in Chicago.

Darcy will also be speaking on *Defending Public School Districts in Section 1983 Litigation* at the 2016 School Law Conference for the National School Boards Association/Council of School Attorneys on April 8, 2016 in Boston, MA.

Liz Barton was named as Chair of the Young Lawyers' Division for the Illinois Association of Defense Trial Counsel (IDC). In that role, she is a columnist for the IDC Quarterly publication and plans charitable, networking, and continuing legal education events.

Liz was also selected by the IDC Board of Directors to attend the 2015 national meeting for the Defense Research Institute (DRI) in October 2015 in Washington D.C., where she acted as Illinois' young lawyer representative.

Tom DiCianni, Lucy Bednarek and Darcy Proctor will be attending the Defense Research Institute's *Civil Rights and Governmental Tort Liability* seminar in Austin, Texas in January, 2016.

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#### ABOUT ANCEL GLINK DEFENSE

The attorneys who comprise Ancel Glink's defense litigation group are dedicated almost exclusively to defending governmental entities in tort, civil rights, employment, business and other claims and lawsuits. In addition to defending municipalities, school districts, park districts, townships and other entities in lawsuits in state and federal courts, Ancel Glink's litigation group handles appeals, administrative hearings, critical incident crisis management, loss control training and seminars, file audits, and special consultation. Visit our web-site at [www.ancelglink.com](http://www.ancelglink.com) or email us at [e-news@ancelglink.com](mailto:e-news@ancelglink.com).

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