

# Chapman Client Alert

October 5, 2016

Current Issues Relevant to Our Clients

## From 12 to 6 and Back Again: Illinois Supreme Court Strikes Down Statute Mandating Six-Member Juries in Civil Trials

It is sacrosanct that either party to a civil lawsuit is entitled to a trial by a jury of their peers.<sup>1</sup> The size of the jury, however, has not been deemed so important, with federal courts and many state courts employing six-person juries in civil matters. The Illinois Constitution is clear that the right to a trial by jury “shall remain inviolate” — but does a state law limiting the number of individuals required to serve on a jury interfere with this fundamental right?

The Illinois Supreme Court answered this question with a resounding YES in *Kakos v. Butler*, 2016 IL 120377, holding that Public Act 98-1132 (the “Act”),<sup>2</sup> which limited the size of a civil jury to six persons, unconstitutionally infringed on the right to a jury trial.<sup>3</sup> In *Kakos* the plaintiffs filed a medical malpractice action against the defendants. In response, the defendants filed a motion requesting a 12-person jury and seeking a declaration that the Act was unconstitutional and thus invalid. Both the trial court and intermediary appellate court ruled in favor of the defendants, finding the Act’s provision regarding the size of a jury facially unconstitutional. Plaintiffs then appealed to the Illinois Supreme Court.

In affirming the lower courts’ holding, the Illinois Supreme Court found that Article I, Section 13 of the Illinois Constitution revealed “an intent on the part of the drafters to maintain common-law characteristics of jury trials” — with one of those necessary characteristics being 12 member juries. *Id.* at ¶¶ 13, 28. The Court traced prior decisions that repeatedly referred to the size of a jury when describing the “essential elements” of a “constitutional” jury in civil lawsuits and noted the legislative history of the Illinois Constitution indicated that the drafters intended for 12-person juries to be made available to the public. The Court also referenced recent studies “supporting the conclusion that decreasing the number of jurors corresponds to decreasing diversity of the jury and may impede the deliberative process,” as well as a U.S. Supreme Court case from 1978<sup>4</sup> recognizing that smaller juries “are less likely to foster effective group deliberation and that a positive correlation exists between group size and the quality of both group performance and group productivity.” *Id.* at ¶¶ 19-20.

Defense lawyers likely regard *Kakos* as a victory for their clients. Larger juries are more mixed by age, race, gender, etc., and may deliberate longer, leading to greater consideration of the evidence, whereas a lesser sized group can be more susceptible to “emotional” devices and less prone to share ideas — all of which can benefit a sympathetic plaintiff at the expense of defendant.

### For More Information

If you would like further information concerning the matters discussed in this article, please contact any of the following attorneys or the Chapman attorney with whom you regularly work:

**James P. Sullivan**  
Chicago  
312.845.3445  
jsulliva@chapman.com

**Bryan E. Jacobson**  
Chicago  
312.845.3407  
bjacob@chapman.com

1 Unless unambiguously waived by contract.

2 The Act, which amended 735 ILCS 5/2-1105(b), was passed days after Governor Bruce Rauner defeated former Governor Patrick Quinn and was seen by many as a nod to Quinn’s allies in the Illinois plaintiffs’ bar, given that 12 person juries were considered an advantage for the defense.

- 3 *Kakos* does not prevent the parties to a civil lawsuit from consenting to a jury of less than 12 persons. See *Id.* at ¶ 24.
- 4 *Ballew v. Georgia*, 435 U.S. 223, 232-39 (1978).

## Chapman and Cutler LLP

Attorneys at Law · Focused on Finance®

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

© 2016 Chapman and Cutler LLP. All rights reserved. Attorney Advertising Material.