

February 15, 2023

Illinois Supreme Court Rules That 5-Year Statute Of Limitations Applies To Claims Under Illinois' Biometric Information Privacy Act ("BIPA")

BY: Jason Taylor

In *Tims v. Black Horse Carriers, Inc.*, 2023 IL 127801, the Illinois Supreme Court addressed the applicable statute of limitations period for claims brought under Illinois' Biometric Information Privacy Act (the "BIPA"), namely, whether a one-year or five-year limitations period applied to a putative class action lawsuit alleging violations of the BIPA.

As previously written in this blog, the Illinois BIPA imposes restrictions on how private entities collect, retain, disclose, and destroy biometric identifiers, including retina or iris scans, fingerprints, voiceprints, scans of hand or face geometry, or biometric information. Under the BIPA, any person "aggrieved" by a violation of its provisions "shall have a right of action [. . .] against an offending party" and "may recover for each violation" the greater of liquidated damages or actual damages, reasonable attorney fees and costs, and any other relief, including an injunction, that the court deems appropriate. Notably, the statute itself does not specify a statute of limitations on claims under the act.

In *Tims*, Plaintiff Jorome Tims filed a class action lawsuit against his former employer, Black Horse Carriers, Inc. ("Black Horse"), alleging that Black Horse required its employees to use a fingerprint identification time clock. The complaint alleged the scanning of Tims's fingerprints amounted to violations of section 15(a) of the BIPA, providing for the retention and deletion of biometric information, and sections 15(b) and 15(d) of the act, providing for the consensual collection and disclosure of biometric identifiers and biometric information.

Black Horse initially moved to dismiss the complaint, arguing Tims's claims were barred by the one-year statute of limitations set forth in section 13-201 of the Illinois Code of Civil Procedure (the "Code"). Section 13-201 of the Code applies to actions for slander, libel, or publication of matter violating the right of privacy. According to Black Horse, Tims's claims concerned violations of privacy, such that the one-year limitation of section 13-201 should apply. Conversely, Tims maintained the five-year catchall limitation period codified in section 13-205 should apply to claims under the BIPA. Section 13-205 of the Code provides, in pertinent part, "actions on unwritten contracts, expressed or implied, [. . .] and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." Tims argued that section 13-201 applies to privacy claims where "publication" is an element of the cause of action, and that claims under BIPA do not necessarily involve publication of biometric data, nor was the BIPA intended to "regulate the publication of biometric data."

The circuit court initially denied Black Horse's motion to dismiss, holding the one-year limitations period of section 13-201 did not apply. Black Horse appealed, and the circuit court certified the following question to the appellate court: "[w]hether the limitations periods set forth in 735 ILCS 5/13-201 ('Defamation – Privacy') or 735 ILCS 5/13-205 apply to claims brought under the Biometric Privacy Act, 740 ILCS 14/1, *et seq.*" The Appellate Court held that a cause of action under the Act was governed by *two* statutes of limitations—the one-year limitations period pursuant to section 13-201 of the Code applies to claims based on sections 15(c) and 15(d) of BIPA where "publication or disclosure of biometric data is clearly an element" of the claim; and a five-year limitations period of section 13-205 applied to sections 15(a), 15(b), and 15(e) of the act because there is no element of publication in those claims.

On appeal, both parties argued the appellate court erred in applying two different limitations periods to BIPA claims, mirroring their arguments made to the circuit court. The Illinois Supreme Court agreed that the Appellate Court erred in applying two different statutes of limitations to the BIPA, and ultimately held that the five-year limitations period contained in section 13-205 of the Code governs claims under the BIPA.

To resolve the statute of limitations question, the Illinois Supreme Court interpreted the language in Section 15 of the BIPA to ascertain and give effect to the intent and meaning exposed by the legislature in enacting the BIPA. The Court reasoned that the most reliable indicator of legislative intent is the plain and ordinary meaning of the statutory language. Section 15 of the BIPA imposes on private entities, such as Black Horse, various obligations with which they are required to comply regarding the collection, retention, disclosure, and destruction of biometric identifiers and biometric information. While there are five subsections to Section 15 that all regulate slightly different subject matter, all five sections prescribe rules to regulate the collection, retention, disclosure and destruction of biometric identifiers and biometric information.

The Appellate Court determined section 15(a), 15(b), and 15(e) did not contain any words involving publication and would not come in the purview of the one-year limitations period in section 13-201, with which the Illinois Supreme Court agreed. The Illinois Supreme Court also agreed an argument could be made that the words "sell," "lease," "trade," "disclose," "redisclose," and "disseminate," in subsections 15(c) and 15(d) might also be defined as involving a publication. Nevertheless, the Illinois Supreme Court rejected a one-year limitation period: "However, when we consider not just the plain language of section 15 but also the intent of the legislature, the purposes to be achieved by the statute, and the fact that there is no limitations period in the Act, we find that it would be best apply the five-year catchall limitations period codified in section 13-205 of the Code." This conclusion was bolstered by the Court's recognition that the BIPA does not contain a limitations period, and that Illinois courts have routinely applied the five-year limitations period to statutes that do not include a specific limitations period within their language.

The Illinois Supreme Court ended its analysis by addressing the policy concerns of the General Assembly stated in the BIPA statute. In section 5 of the BIPA, the General Assembly expressed a desire to secure the public welfare, security, and safety of the public by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information. The Illinois Supreme Court concluded it would thwart the legislative intent to both shorten the amount of time an aggrieved party would have to seek redress for a private entity's noncompliance with the BIPA, and shorten the amount of time a private entity would be held liable for noncompliance with the act. In this way, the *Tims* case ensures certainty and predictability in the administration of limitations periods that apply to causes of actions under the BIPA by applying a single, five-year statute of limitations period. To do so, the Illinois Supreme Court heavily relied on the legislature's "intent" and perceived purpose of the act to provide the broadest possible protections to an aggrieved party under the BIPA.

Other Blog Articles on the BIPA:

- Illinois District Court Rules that Employment-Related Practices and Recording and Distribution Exclusions Do Not Preclude Coverage for BIPA Class Action (March 10, 2022)

- District Court Finds “Violation of Laws” Exclusion Precludes Coverage for Illinois BIPA Suit Under Insurer’s EPL Coverage (August 22, 2022)