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BIPA Game Changer: Seventh Circuit Caps Damages and Resets the Playing Field for Defendants

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The Seventh Circuit has dramatically limited damages exposure for companies sued under Illinois's Biometric Information Privacy Act (BIPA). In a landmark win for corporate defendants, the court in *Clay v. Union Pacific Railroad Co.*, No. 25-2185 (7th Cir. Apr. 1, 2026) held that a 2024 BIPA amendment-capping damages at a single recovery per person per violation type-applies retroactively to all pending cases, including those filed before the amendment took effect.

The *Cothron* Decision

The amendment was a direct legislative response to the Supreme Court of Illinois's 2023 decision in *Cothron v. White Castle System, Inc.*, 216 N.E.3d 918 (Ill. 2023). In *Cothron*, the court held that a new BIPA claim accrues "with every scan or transmission" of biometric information-meaning that each time an employee scanned a fingerprint, for example, the employer faced a separate claim. The court acknowledged that this per-scan theory of accrual, combined with BIPA's liquidated damages provisions, could expose businesses to "annihilative liability." Rather than resolve the damages question itself, the Illinois General Assembly took up that invitation less than a year and a half later, passing the amendment to Section 20 that is now at the center of the *Clay* decision.

What the Amendment Does

The amendment provides that every instance of collecting the same biometric data such as a fingerprint or face scan from the same person using the same method counts as only one violation-not a separate violation for every scan. If it collects only one type of data, a company owes, at most, one recovery per person.

Why It Matters

The *Clay* decision fundamentally resets the financial exposure BIPA creates for large companies.

Using the prior per-scan framework, exposure could scale rapidly to staggering amounts. Under the old per-scan theory, one plaintiff alone alleged roughly 1,500 scans, translating to $7.5 million in potential individual damages, and to billions of dollars in aggregate across the consolidated class. The amendment's per-person cap collapses that liability model, converting what were once massive, open-ended damages theories into fixed, predictable per-claimant recoveries.

For companies, this shift fundamentally resets the risk landscape, and potential ramifications are already apparent:

- Litigation reserves built around worst-case (per scan) scenarios may now be substantially overstated.

- Settlement leverage that plaintiffs once wielded through astronomical damages figures is significantly diminished.

- The overall financial burden of defending BIPA claims-whether through settlement or trial-is materially reduced.

- Settlement values will likely drop, class-wide damages must be recalculated and more defendants may choose trial over settlement.

- With aggregate damages reduced, some BIPA class actions may no longer satisfy the Class Action Fairness Act's $5 million threshold for federal jurisdiction, potentially meaning that new cases go forward in state courts.

Without per-scan damages leverage, plaintiffs' attorneys will likely find BIPA cases less economically attractive-likely resulting in fewer new filings going forward.

The *Clay* decision does not affect a plaintiff's right to bring suit under the various substantive provisions of BIPA. The court emphasized that the amendment changed only Section 20-the damages provision-and left Section 15, which sets forth the substantive standards governing the collection, retention and disclosure of biometric data, entirely untouched.

For guidance on compliance with biometric state laws and assistance with threatened litigation, please contact Laura Kogan and Mark Eisen.