



BIPA Timing Decision Underscores Debate Over Claim Accrual, Law 360, quote from Jean Liu, Sept, 22, 2021

By Lauraann Wood

Law360 (September 21, 2021, 9:15 PM EDT) — When an Illinois state court ruled that some biometric privacy lawsuits have a five-year time limit depending on the nature of the alleged wrongdoing, it added fuel to an ongoing dispute over when those claims accrue and what kind of damages they can bring.

The First District Illinois Appellate Court on Friday gave litigators highly anticipated guidance on the timing of claims under the Illinois Biometric Information Privacy Act, breaking through a long-cloudy question about when those cases can be brought. In Tims et al. v. Black Horse Carriers, a state appellate panel said only those BIPA claims rooted in unlawful profiting or disclosure are subject to Illinois' one-year privacy claim limit, while retention policy, informed consent and safeguarding claims have a five-year limit.

The decision was heartily welcomed as the first to answer the long-pending question of BIPA time limits, though it won't be the last word on the issue as other cases working their way through the Illinois courts tee up similar legal issues, and the Illinois Supreme Court has yet to weigh in. Because the Tims ruling recognized a five-year time limit that has already been advocated by the plaintiffs bar as the appropriate timeframe for these cases, experts say it's unlikely to slow new BIPA lawsuits even if it narrows the type of claims that are brought...

The court didn't elaborate past that single sentence, but the language stood out to attorneys who frequently advise clients regarding Illinois' landmark biometric privacy statute...

For example, Jean Liu, an attorney at Kaufman Dolowich & Voluck LLP whose practice involves counseling businesses on data privacy, called the language "terrifying" in the context that many BIPA defendants are smaller businesses that lack the financial stability to survive that type of potential liability.

Liu also posited that the court chose to include the line to bolster its view "that this is an important privacy issue, and people need to pay attention to it."

Yet experts caution against interpreting the language as a definitive nod toward courts signing off on a recovery of damages for each BIPA violation.