

Sean Wieber Discusses the Potential Increase in Privacy Cases Going to Trial in Illinois with *Bloomberg Law*

MARCH 20, 2024

Winston & Strawn partner and co-chair of the Global Privacy & Data Security Practice, Sean Wieber was quoted in a *Bloomberg Law* article discussing the possibility of more companies taking their privacy cases to trial in Illinois following a landmark federal settlement resolving an Illinois Biometric Information Privacy Act case in which a class of over 44,000 members claimed BNSF Railway Co. violated BIPA by illegally collecting biometric data. After the jury found BNSF liable, the judge himself imposed a \$228 million penalty, but later withdrew that award because the jurors should have been told that damages are not mandatory in BIPA cases, and they should have had the chance to determine penalties themselves. The parties agreed to settle for \$75 million before the damages portion of the trial commenced. The settlement and a related Illinois Supreme Court ruling, in which the high court said lawmakers had intended to make BIPA damages “discretionary,” is expected to encourage defendants to consider an even more aggressive stance when litigating these types of claims.

“[T]he more quantifiable the alleged [BIPA] violation is—you know exactly how many scans were taken and the functionality of the technology—I can see defendants rolling the dice [and proceeding to trial,]” Sean said.

Another development that may steer defendants towards trial is that the statute allows the “prevailing party” to recover defense costs, which could impose large fees on plaintiffs who bring losing BIPA cases. However, in a recent Northern District of Illinois case, a judge ruled recoveries by defendants may be secured only when the plaintiffs act in bad faith. Be that as it may, Sean noted that is only one interpretation of the prevailing party language and case law could shift more in favor of the defense in the future.

[Read the full article.](#)

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