

## BIPA TRENDING: ILLINOIS BIOMETRIC INFORMATION PRIVACY ACT LITIGATION ONCE AGAIN ON THE RISE

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### U.S. Biometric Data Compliance & Defense Alert

By: Molly K. McGinley, Kenn Brotman, Nora E. Becerra, Carl E Volz

K&L Gates has previously issued client alerts (here) related to Illinois' Biometric Information Privacy Act ("BIPA"), and the lawsuits that have been filed against companies that allegedly collect, store, and/or use biometric information for their business purposes in violation of the requirements of that law. Recent developments in BIPA litigation highlight the need for companies that may be collecting, storing, or using biometric identifiers or information to ensure that they are in compliance with the requirements of BIPA.

The massive flow of new BIPA case filings that took place in late 2017 slowed to a trickle in the first half of 2018, likely as a result of the December 21, 2017 decision in *Rosenbach v. Six Flags Entertainment Corp.*, [1] in which the Illinois Appellate Court held that a plaintiff must allege more than a mere technical violation of BIPA's notice and consent provisions in order to state a cognizable claim.

On May 30, 2018, the Illinois Supreme Court granted leave to appeal the Appellate Court's *Rosenbach* decision. Soon after, the number of new BIPA case filings spiked again, with eight cases filed in the first week of June 2018.

Thus, it appears that the temporary slowdown of new BIPA case filings is coming to an end, and companies collecting, storing, and using biometric information should revisit (or redouble) their efforts to comply with the law and avoid or mitigate the effect of these potentially devastating strike suits.

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[1] 2017 IL App (2d) 170317.

## KEY CONTACTS



**MOLLY K. MCGINLEY**  
PARTNER  
CHICAGO  
+1.312.807.4419  
MOLLY.MCGINLEY@KLGATES.COM



**KENN BROTMAN**  
COUNSEL  
CHICAGO  
+1.312.807.4277  
KENN.BROTMAN@KLGATES.COM



**NORA E. BECERRA**  
ASSOCIATE  
CHICAGO  
+1.312.807.4222  
NORA.BECERRA@KLGATES.COM

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