**Opinions for the week of June 15 – June 19, 2020**

**Thomas Trottier v. Andrew Saul** No. 19-3470
Argued June 4, 2020 Decided — June 15, 2020
Case Type: Civil
Northern District of Indiana, Hammond Division. No. 2:18-cv-00304-JVB-JEM — **Joseph S. Van Bokkelen**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

**ORDER**
Thomas Trottier filed an application for Social Security disability benefits on the basis of degenerative disc disease, obesity, and major depressive disorder. An administrative law judge found these conditions to be severe but ruled that Trottier remains able to do light work. A district judge affirmed. 2019 U.S. Dist. LEXIS 183063 (N.D. Ind. Oct. 22, 2019). Trottier's appeal contends that the ALJ did not properly account for limitations on his concentration, persistence, and pace, and failed to accord required weight to the opinion of Dr. Dobransky, his treating psychiatrist. The district court's opinion adequately addresses those contentions, and we affirm substantially for the reasons the district court gave.
Full text

**USA v. Adron H. Tancil** No. 19-1621
Argued February 13, 2020 — Decided June 15, 2020
Case Type: Criminal
Northern District of Indiana, Hammond Division. No. 2:13-CR-111 — **Philip P. Simon**, *Judge*.
Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

**ORDER**
Adron Tancil pleaded guilty to RICO conspiracy and murder. He claims the district judge pronounced a clear sentence at the sentencing hearing but then issued a written judgment effectively adding about five years to the sentence. We vacate and remand.
Full text

**Aishef Shaffer v. Jacqueline Lashbrook** No. 19-1372
Argued June 9, 2020 — Decided June 15, 2020
Case Type: Prisoner
Southern District of Illinois. No. 16-cv-0784 — **Michael J. Reagan**, *Judge*.
Before KANNE, SYKES, and BRENNAN, *Circuit Judges*.

KANNE, *Circuit Judge*. Aishef Shaffer, while an Illinois state inmate, sued prison officials for alleged violations of his constitutional rights. But when he was released on parole, he did not notify the court of his new address or respond to the defendants' motions or discovery requests. And after more than seven months of silence from Shaffer, the district court dismissed his case for failure to prosecute. When Shaffer returned to prison a month later, he renewed his interest in his lawsuit and moved unsuccessfully to reopen the case. He now appeals the district court's denial of his post judgment motion. Because the court acted within its discretion in denying the motion, we affirm.
Full text

**USA v. David Shanks, Jr.** No. 18-3628
Submitted June 9, 2020 — Decided June 15, 2020
Case Type: Criminal

Eastern District of Wisconsin. No. 18-CR-18 — **William C. Griesbach**, *Judge*.
Before KANNE, SYKES, and BRENNAN, *Circuit Judges*.

PER CURIAM. David L. Shanks, Jr. did not attend his trial for drug-distribution offenses, for which a jury found him guilty and the district court entered a judgment of conviction. Shanks challenges the judgment on two bases. First, he contends that the district court did not comply with Rule 43 of the Federal Rules of Criminal Procedure, which he argues requires a defendant's presence in a courtroom at the start of trial. Shanks's trial began before the judge and counsel at a jail, not in a courtroom. Second, he argues that the court clearly erred in finding that, through his disruptive conduct, he knowingly and voluntarily waived his right to attend trial. Because the district court permissibly began trial at the jail and reasonably found that Shanks waived his right to attend the remainder of his trial, we affirm.
Full text

**Elim Romanian Pentecostal Church and Logos Baptist Ministries v. Jay Pritzker** No. 20-1811
Argued June 12, 2020 — Decided June 16, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 20 C 2782 — **Robert W. Gettleman**, *Judge*.
Before EASTERBROOK, KANNE, and HAMILTON, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Two churches contend, in this suit under 42 U.S.C. §1983, that an executive order limiting the size of public assemblies (including religious services) to ten persons violates their rights under the Free Exercise Clause of the First Amendment, applied to the states by the Fourteenth Amendment. The Governor of Illinois issued this order to reduce transmission of the coronavirus SARS-CoV-2, which causes the disease COVID-19. The disease is readily transmissible and has caused a global pandemic. As of June 16, 2020, 133,639 persons in Illinois have tested positive for COVID-19, and 6,398 of these have died. Epidemiologists believe that those numbers are undercounts—persons with no or mild symptoms may not be tested, some people die of the disease without being tested, and some deaths attributed to other causes may have been hastened or facilitated by the effect of COVID-19 weakening the immune system or particular organs… So we do not deny that warehouse workers and people who assist the poor or elderly may be at much the same risk as people who gather for large, in-person religious worship. Still, movies and concerts seem a better comparison group, and by that standard the discrimination has been in favor of religion. While all theaters and concert halls in Illinois have been closed since mid-March, sanctuaries and other houses of worship were open, though to smaller gatherings. And under Executive Order 2020-38 all arrangements for worship are permitted while schools, theaters, and auditoriums remain closed. Illinois has not discriminated against religion and so has not violated the First Amendment, as Smith understands the constitutional requirements. Plaintiffs present some additional arguments, which have been considered but need not be discussed separately.
AFFIRMED
Full text

**Dror Ironi v. EFI Global, Inc.** No. 19-3006
Argued May 21, 2020 — Decided June 16, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division No. 18-cv-07989 — **Edmond E. Chang**, *Judge*.
Before DANIEL A. MANION, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**
Dror, Dennis, and Dan Ironi created an environmental consulting company. They sold it in 2015 to Defendants EFI Global and CL Acquisition Holdings for $7 million, broken down like this: $4.2 million in cash and 28,000 shares of restricted preferred stock in CL Holdings. The parties memorialized this sale in the Purchase Agreement, which states the shares shall issue to the Ironis at an "agreed value" of $100 per share. The dispute here arose three years later when the Ironis redeemed their 28,000 shares at a much lower price: $26 per share. They filed suit to rescind the contract based on breach and mutual

mistake, with separate claims for equitable fraud and unjust enrichment. Their claims (governed by Delaware law) all boil down to a theory that the contract's reference to "agreed value" really means "market value" or "actual value," and that Defendants misrepresented and oversold the shares' 2015 worth. The Ironis insist this caused them to receive less than the full $7 million sale amount… For all these reasons and for those articulated in the district court's well-reasoned opinion, we AFFIRM the entry of judgment on the pleadings.
Full text

**Franco Damian Ferreyra v. William P. Barr** Nos. 18-3021 & 19-2055
Argued April 28, 2020 — Decided June 16, 2020
Case Type: Agency
Board of Immigration Appeals. No. A204-076-881
Before EASTERBROOK, RIPPLE, and SCUDDER, *Circuit Judges*.

RIPPLE, Circuit Judge. Franco Damian Ferreyra, a citizen of Argentina, seeks review of an order of the Board of Immigration Appeals mandating his removal from the United States. The Board upheld the validity of a waiver, signed upon Mr. Ferreyra's entry into the United States, that prevents Mr. Ferreyra from contesting removal for reasons other than persecution and torture. The Board determined that Mr. Ferreyra was ineligible for relief on either of those grounds, and that, given the waiver, it could not consider his requests for cancellation of removal based on family hardship. We conclude that the record supports the Board's determination that Mr. Ferreyra did not present a case warranting relief because of a credible fear of persecution or torture. We further conclude that the Board correctly held that the waiver is valid and that Mr. Ferreyra therefore cannot present a claim for cancellation of removal based on family hardship. Accordingly, we deny the petition for review.
Full text

**Elijah Reid v. Marc Balota** No. 19-1396
Argued April 28, 2020 — Decided June 16, 2020
Case Type: Prisoner
Central District of Illinois. No. 1:16-cv-01378-JBM-JEH — **Joe Billy McDade**, *Judge*.
Before EASTERBROOK, RIPPLE, and SCUDDER, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Elijah Reid, an inmate in the Illinois prison system, brought this action under 42 U.S.C. § 1983 against a correctional officer. He alleged that the officer used excessive force against him in violation of the Eighth Amendment of the Constitution of the United States as made applicable to the States by the Fourteenth Amendment. The district court dismissed the action, concluding that Mr. Reid had not exhausted the prison's administrative remedies before filing the lawsuit, as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We now conclude that the prison's communications were so obscure that they made further steps of its administrative process unknowable and, thus, unavailable to Mr. Reid. We therefore vacate the judgment of the district court and remand the case for further proceedings consistent with this opinion.
Full text

**USA v. Kittrell Freeman** Nos. 19-2928 & 19-3153
Argued May 13, 2020 — Decided June 17, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 18-cr-00804 — **Robert W. Gettleman**, *Judge*.
Before FLAUM, HAMILTON, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Does an air freshener hanging from a rearview mirror obstruct the driver's clear view? A Chicago police officer believed that, in this case, it did. That officer pulled over Napoleon Jackson and his passenger Kittrell Freeman for violating a provision of the Chicago municipal code prohibiting any object obstructing the driver's clear view through the windshield. Officers subsequently recovered three

firearms from the vehicle and Jackson and Freeman were each charged with unlawful possession of a firearm by a felon. Jackson and Freeman moved to suppress the evidence for lack of probable cause to conduct the traffic stop based on their argument that the officer erroneously believed that there could not be anything hanging from the rearview mirror, regardless of whether it obstructed the driver's view. The district court denied the motion, finding that an officer could reasonably conclude that the air freshener obstructed the clear view and thus supported probable cause to conduct a traffic stop. Jackson and Freeman both pleaded guilty while preserving their rights to appeal the suppression ruling. Though the district court couched its analysis in terms of probable cause, all that is required for a traffic stop is reasonable suspicion. Even so, because the officer had an articulable and objective basis for suspecting that the air freshener obstructed Jackson's clear view in violation of the city municipal code, the stop was lawful. The district court correctly denied the motion to suppress and we affirm the judgment.
Full text

**Bradley LeDure v. Union Pacific Railroad Company** No. 19-2164
Argued February 12, 2020 — Decided June 17, 2020
Case Type: Civil
Southern District of Illinois. No. 3:17-cv-00737-JPG-GCS — **J. Phil Gilbert**, *Judge*.
Before BAUER, KANNE, and BARRETT, *Circuit Judges*.

BAUER, *Circuit Judge*. Bradley LeDure, a conductor for Union Pacific Railroad Company, slipped and fell while preparing a locomotive for departure. LeDure brought suit for negligence against Union Pacific under the Locomotive Inspection Act and the Federal Employers' Liability Act. The district court granted summary judgment for Union Pacific. It found the Locomotive Inspection Act inapplicable and then determined that LeDure's injuries were otherwise unforeseeable because he slipped on a small "slick spot" unknown to Union Pacific. For the following reasons, we affirm.
Full text

**Timothy B. O'Brien LLC v. David Knott** No. 19-2138
Argued June 2, 2020 — Decided June 17, 2020
Case Type: Civil
Western District of Wisconsin. No. 18-cv-00684 — **James D. Peterson**, *Chief Judge*.
Before FLAUM, KANNE, and BRENNAN, *Circuit Judges*.

FLAUM, Circuit Judge. David Knott, an employee of Wisconsin wellness retail store Timothy B. O'Brien, LLC ("Apple Wellness"), left the company and started a similar, competing wellness shop. Apple Wellness sued Knott for trademark and copyright infringement. Knott countersued. The district court found the copyright claims baseless but commented that the trademark claims might have merit. Nonetheless, Apple Wellness later voluntarily dismissed all its claims with prejudice, and the district court declined to exercise supplemental jurisdiction over the counterclaims. All that remained was Knott's motion for attorneys' fees. The district court denied that motion, and Knott appeals only as to the denial of fees on the copyright claims. Because the district court's decision denying fees was well-reasoned and appropriate, we now affirm.
Full text

**USA v. Darrius Washington** No. 19-1331
Argued November 14, 2019 — Decided June 17, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 16-cr-477-1 — **Robert M. Dow, Jr.**, *Judge*.
Before MANION, KANNE, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. Darrius Washington was charged with unlawfully possessing a firearm as a felon after police officers saw him toss a gun into a residential yard. Before trial the government moved to admit a video posted on YouTube about three months before the arrest depicting Washington holding what

prosecutors argued was the same gun. Over Washington's objection, the district judge permit ted the admission of still photos from the video but not the video itself. The jury found Washington guilty. Washington challenges the admission of this evidence, arguing that the photos were irrelevant, inadmissible under Rule 404(b) of the Federal Rules of Evidence, and unfairly prejudicial. We disagree. As explained in United States v. Miller, evidence of recent past possession of the same gun is admissible for a nonpropensity purpose—namely, to show the defendant's ownership and control of the charged firearm—although evidence of past possession of a different gun would raise Rule 404(b) concerns. 673 F.3d 688, 694–95 (7th Cir. 2012). Washington notes, accurately enough, that Miller was a case about constructive possession and his case involves a charge of actual possession. That distinction doesn't make a difference in the Rule 404(b) calculus. The judge properly admitted this evidence for a nonpropensity purpose and minimized its potential for unfair prejudice by limiting the government to still photos rather than the video itself. We affirm the judgment.
Full text

**Aaron Murphy v. Wexford Health Sources, Inc.** No. 19-3310
Argued June 9, 2020 — Decided June 18, 2020
Case Type: Civil
Southern District of Illinois. No. 18-CV-01077-JPG-MAB — **J. Phil Gilbert**, *Judge*.
Before KANNE, SYKES, and BRENNAN, *Circuit Judges*.

PER CURIAM. Aaron Murphy, a former Illinois prisoner, appeals the district court's entry of summary judgment in favor of the defendants in his suit asserting their deliberate indifference to his dental infection. Murphy's infection—which swelled on his face to the size of a softball—ultimately required multiple surgeries. Relying on expert testimony, Murphy argues that fact questions exist concerning the prison doctor's choice of medicine and subsequent delay in sending him to a hospital. The district court correctly concluded that the record reflects not deliberate indifference but at most a medical disagreement over the course of treatment, so we affirm the judgment.
Full text

**Lawrence Northern v. Lynn Dobbert** No. 19-3167
Argued June 9, 2020 — Decided June 18, 2020
Case Type: Civil
Western District of Wisconsin. No. 16-cv-277-jdp — **James D. Peterson**, *Chief Judge*.
Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

**ORDER**
This case deals with exhaustion of administrative remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). Lawrence Northern, a Wisconsin inmate, sued several prison officials under 42 U.S.C. § 1983 for the medical care that he received after tearing his Achilles tendon. He alleged, in relevant part, that four prison nurses failed to provide him adequate post-surgical wound care in violation of the Eighth Amendment and Wisconsin state law. The district court granted summary judgment in favor of the prison officials, explaining that Northern had not properly exhausted his administrative remedies on these claims. We agree and affirm the judgment.
Full text

**Sherrie Baker v. El du Pont de Nemours and Company** Nos. 19-3159 & 19-3160
Argued June 2, 2020 — Decided June 18, 2020
Case Type: Civil
Northern District of Indiana, Hammond Division. No. 2:17-cv-00429 — **Joseph S. Van Bokkelen**, *Judge*.
Before FLAUM, KANNE, and BRENNAN, *Circuit Judges*.

FLAUM, *Circuit Judge*. Former residents of the West Calumet Housing Complex sued nine industrial manufacturing companies in Indiana state court. The residents allege that, for most of the twentieth century, each company directly or through a predecessor corporate entity polluted the soil in and around the site of their later-built residence. Specifically, the residents claim that the companies' operations at these facilities contaminated the property with "lead, arsenic and likely other substances." Several companies removed the case to federal court under 28 U.S.C. § 1442(a)(1), asserting their right to a federal forum because the case relates to their acts under color of federal office. During World War II, the companies argue, the United States government directed them to produce certain materials for the military, supervised distribution of these goods, and controlled their ultimate usage. The residents disagreed and moved to remand the case back to state court. The district court granted that motion, holding in principle that the companies acted under color of federal office for only a portion of the time period covered by the residents' claims. We reverse.
Full text

**Fred Cartwright v. Silver Cross Hospital** No. 19-2595
Submitted March 19, 2020 — Decided June 18, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 15 CV 6759 — **John Robert Blakey**, *Judge*.
Before MANION, SYKES, and ST. EVE, *Circuit Judges*.

SYKES, *Circuit Judge*. Fred Cartwright sued his former employer asserting claims of discrimination based on his race, sex, and age. Throughout four years of litigation, he repeatedly failed to appear for his deposition, missed a status hearing, would not follow the local rules regarding motion practice, refused to respond to discovery despite repeated orders to do so, and ignored the judge's multiple warnings that his conduct would lead to dismissal of the suit. Despite this obstructive behavior, the judge continued to recruit a succession of pro bono attorneys to assist Cartwright, each of whom invested many hours of valuable time in the case before moving to withdraw because the client would not cooperate. After permitting the fourth—yes, fourth—volunteer lawyer to withdraw, the judge finally dismissed the case as a sanction for want of prosecution. We affirm the dismissal and take this opportunity to remind judges that they need not and should not recruit volunteer lawyers for civil claimants who won't cooperate with the basic requirements of litigation. Pro bono representation of indigent civil litigants is a venerable tradition in the legal profession. The courts must be careful stewards of this limited resource.
Full text

**Seaway Bank & Trust Company v. J&A Series I, LLC, Series C** Nos. 19-2268 & 19-2425
Argued December 6, 2019 — Decided June 18, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:17-cv-07213 — **Charles R. Norgle**, *Judge*.
Before ROVNER, BRENNAN, and ST. EVE, *Circuit Judges*.

ROVNER, *Circuit Judge*. J&A Series I, LLC, Series C ("J&A Series"), J&A Investment Group, LLC ("J&A Investment"), and Adam Ackerman (collectively "J&A Parties") appeal from the district court's dismissal of the petition they filed under 735 ILCS 5/2-1401. We affirm.
Full text

**USA v. Kevin Schaul** No. 19-1632
Argued February 14, 2020 — Decided June 18, 2020
Case Type: Criminal
Central District of Illinois. No. 3:16-cr-30067-SEM-TSH-1 — **Sue E. Myerscough**, *Judge.*
Before RIPPLE, SYKES, and SCUDDER, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Kevin Schaul pleaded guilty to five counts of health care fraud in violation of 18 U.S.C. § 1347. He now challenges his conviction, submitting that his guilty plea was not knowing and

voluntary because he never was informed of the elements of the offense. The indictment gave Mr. Schaul sufficient notice of the charges. However, he was informed erroneously of the mens rea required by the statute; such an affirmative misrepresentation of the elements of the offense constitutes plain error. We conclude nevertheless that this error did not affect Mr. Schaul's substantial rights. The record affirmatively demonstrates that he knowingly and willfully violated the law. We therefore affirm the judgment of the district court.
Full text

**David Gill v. Charles Scholz** No. 19-1125
Argued January 7, 2020 — Decided June 18, 2020
Case Type: Civil
Central District of Illinois. No. 3:16-cv-03221 — **Colin S. Bruce**, *Judge*.
Before BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.

BRENNAN, *Circuit Judge*. In August 2015 David Gill launched his fifth congressional campaign. Unlike his past campaigns, Gill ran as an independent. Although Gill needed 10,754 signatures to qualify for the general ballot, he came up 2,000 short, so the Illinois State Officers Electoral Board ("SOEB") did not permit him to appear on the general ballot for Illinois's 13th Congressional District. Gill filed suit, claiming violations of the First and Fourteenth Amendments. The district court, relying on this court's case law, granted a motion for summary judgment filed by the Illinois State Board of Elections ("ISBE") and the SOEB. Because the district court failed to conduct a fact-based inquiry as mandated by the Supreme Court, we reverse and remand.
Full text

**USA v. Alfred L. Cross** No. 18-3633
Argued September 25, 2019 — Decided May 22, 2020 — Amended on Denial of Rehearing and Rehearing en Banc June 18, 2020
Case Type: Criminal
Southern District of Illinois. No. 3:17-cr-30047-NJR-1 — **Nancy J. Rosenstengel**, *Chief Judge*.
Before RIPPLE, ROVNER, and BRENNAN, *Circuit Judges*.

ROVNER, *Circuit Judge*. Alfred L. Cross pled guilty to five counts of bank fraud, in violation of 18 U.S.C. § 1344(1). Shortly before sentencing, he moved pro se to terminate his counsel, withdraw his guilty plea, and dismiss the case. The district court denied all three motions. He now appeals the court's denial of his motion to withdraw his plea, and we affirm.
Full text

**Ricardo Gomez v. Cavalry Portfolio Services, L** No. 19-1737
Argued December 12, 2019 — Decided June 19, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 14-cv-09420 — **Andrea R. Wood**, *Judge*.
Before BAUER, EASTERBROOK, and ST. EVE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. In 2009 Ricardo and Debora Gomez stopped paying their debt on a credit card issued by Bank of America. Later that year the Bank concluded that collection was unlikely and treated the account as a bad debt; it stopped sending monthly statements. But it did not tell the Gomezes that they no longer owed the money. In 2011 it sold the debt to Cavalry SPV, which used Cavalry Portfolio Services (Cavalry) to collect. In January 2013 Cavalry sent a letter seeking payment of about $5,800, of which roughly $1,600 was interest for months after the Bank gave up billing the Gomezes. It sent another letter in March 2013 seeking $6,200… Eight months later the Gomezes filed this suit under the Fair Debt Collection Practices Act (FDCPA). They contended that, by demanding interest during the months between the Bank's decision to write off the debt and its sale, Cavalry violated

15 U.S.C. §1692e, which prohibits "any false, deceptive, or misleading representation … in connection with the collection of any debt." … Plaintiffs have not asked us to abandon the standard of *Bravo* and its predecessors, and we are not disposed to jump from one side of a circuit conflict to the other without a powerful argument based on the statute's language. The third letter would not have misled a competent lawyer, who also would not deem "false" a demand by a potential opponent in litigation just because counsel believes that his client may be able to persuade a judge that there is a defense. Plaintiffs advance an argument for declaratory and injunctive relief, which they say is not under the federal statute—but they do not develop a substantive argument under any other body of law. This means that the judgment dismissing the suit must be AFFIRMED.
Full text

**USA v. Jerry J. Jones** No. 19-1644
Argued June 10, 2020 — Decided June 19, 2020
Case Type: Criminal
Southern District of Indiana, Indianapolis Division. No. 97-cr-00118 — **Richard L. Young**, *Judge*.
Before FLAUM, BARRETT, and ST. EVE, *Circuit Judges*.

FLAUM, *Circuit Judge*. In 1998, a federal jury convicted Jerry Jones of two carjackings, an armed bank robbery, and using firearms during those crimes of violence. The district court sentenced him to 840 months in prison. Twenty years later, the district court vacated its original sentence and ordered re-sentencing because Jones no longer qualified as a career offender under the federal Sentencing Guidelines. At resentencing, Jones's effective Guidelines range was 348–390 months. The district court deviated from the Guidelines and once again sentenced Jones to 840 months in prison. That was an increase of 450 months, approximately 215% above the high end of Jones's Guidelines range. Jones now appeals his sentence. Because the district court did not sufficiently justify the extent of its deviation from the Guidelines, we vacate its judgment and remand for resentencing.
Full text

**Market Street Bancshares, Inc. v. Federal Insurance Company** No. 18-3395
Argued December 10, 2019 — Decided June 19, 2020
Case Type: Civil
Southern District of Illinois. No. 3:17-cv-36-NJR-SCW — **Nancy J. Rosenstengel**, *Chief Judge*.
Before KANNE, SYKES, and BARRETT, *Circuit Judges*.

KANNE, *Circuit Judge*. This is an insurance-coverage dispute between a bank and its insurer. In 2014, the two entered an agreement: in exchange for an insurance premium, the insurer, Federal Insurance Company, would defend and indemnify the bank, Peoples National Bank, against "claims" made by third parties during the policy period, which ran from April 15, 2014, to April 15, 2017. When they entered this agreement, the bank had been embroiled in an ongoing lawsuit for about a decade. During the damages phase of that lawsuit, in 2016, the plaintiffs in the case argued that the bank owed certain damages, and the bank called upon Federal Insurance to defend against the argument and to cover the bank's corresponding losses. Federal Insurance refused, explaining in part that the damages argument was not a "claim" under the policy. The bank then sued Federal Insurance in Illinois state court, seeking to recover losses (including defense costs) from the underlying damages argument. Federal Insurance removed the action to federal court and filed a counterclaim for declaratory relief. Both parties moved for summary judgment on the counterclaim, and the district court granted judgment in the insurer's favor. We affirm because the damages argument in the underlying lawsuit is not a "claim" under the parties' insurance policy.
Full text

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