Expansion of Liability for Employers?

Recent Advances of the Traveling Employee Doctrine

By Craig S. Young and Brad A. Elward

It is important for the employment community to keep track of developments and do everything possible to slow the advance of the traveling employee doctrine.

The traveling employee doctrine has been an evolving aspect of workers' compensation law since legislation was enacted in the early 1900s. Whether created by statute or developed by common law decisions, the doctrine has expanded the scope of an employer's liability under such laws and serves as an exception to the long-standing rule that injuries sustained while coming and going to work are not compensable. The rationale for the "going and coming" rule is that an employee's trip to and from work is the result of the employee's decision about where to live, which is not a matter of concern for an employer.

While it appears that the original intent of the traveling employee doctrine was to cover those employees who because of their employment traveled and stayed away from home overnight, the doctrine has gradually expanded in many states to cover a variety of circumstances when the work takes an employee away from the primary work premises for varied reasons and for shorter durations. The doctrine is of particular importance today because many jobs involve employee travel, not only as a part of the job, as with a traveling salesman or over-the-road truck driver, but also between various company facilities and between job sites. The latter may involve employees who are hired out of a union hall for a specific job at a far-away location or home health-care workers who leave home, travel from patient to patient, and never truly have a base of employment.

Employers have difficulty with the traveling employee doctrine because it not only expands the situations that will be considered "in the course of" employment, but also lowers the standard of accident compensability. While the terminology varies from state to state, a nontraveling employee generally has to prove that an injury "arose out of" the employment. This usually means that an employee must prove that he or she faced a risk at the time of an accident that was greater than the risk faced by the general public. This compensability standard, however, softens considerably for a worker deemed a traveling employee. Most states require a traveling employee only to prove that the activity

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that he or she performed at the time of an accident was "reasonably foreseeable." Other states adopt a continuous employment doctrine for a traveling employee, which deems virtually any activity that an employee undertakes while traveling to be compensable unless there is a clear deviation from normal activity. In reality, this lightened compensability standard in most states can equate to virtual strict liability unless a claimant is deemed to be on a purely personal deviation. For the traveling employee, traditional compensability analysis is obliterated, and most every injury that occurs while the travel continues is deemed compensable.

A finding that a claimant qualifies as a traveling employee does not relieve him or her of the burden of proving that his or her injury "arose out of" and "in the course of" employment.

While this reduced burden of compensability has made sense over the years for employees who are truly traveling—particularly those who are traveling away from their home on overnight trips—recent expansion of the traveling employee doctrine to those workers who have only incidental travel as part of their duties is problematic for employers. In today's economy, many jobs include at least some incidental travel throughout the course of a workday. As the traveling employee doctrine is expanded to include more of these work settings, workers' compensation ends up covering large segments of the working population even when there is little, if any, connection between an injury and the employment.

This article examines the difficulties created for employers when an activist judiciary works to expand the traveling employee doctrine. Specifically, it focuses on one of the more active judiciaries, that of Illinois. The Illinois Appellate Court, Workers' Compensation Commission Division, a special branch of the Illinois Appellate Court designated to only hear cases arising under the Illinois Workers' Compensation Act, has decided 12 traveling employee cases over the past three years, of which five have been published decisions. Fortunately for employers, the Illinois Supreme Court slowed the progression of this doctrine with the recent decision in *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728. Since the Illinois reasonably foreseeable standard is similar to that used by many other states, an analysis of the Illinois Appellate Court's expansion of the doctrine and the Illinois Supreme Court's decision attempting to limit that expansion could have implications for the traveling employee doctrine in other states.

The Doctrine

Ordinarily, an employer is not liable for acts of an employee who is "going to or coming from" work. This well-settled principle is based on the notion that the employment relationship is suspended from the time that an employee leaves work until he or she returns since the employee is not ordinarily rendering services to the employer while traveling. However, an exception exists for an employee who is classified as a "traveling employee," defined as "one who is required to travel away from the employer's premises in order to perform his job." Some states also focus on whether an employee, because of the employment, is required to travel away from the employee's home.

While the traveling employee doctrine varies from state to state, there are generally five accepted views. The majority position holds that all injuries sustained while away from the premises and performing company work are compensable unless an accident has resulted from a purely personal deviation or departure. This viewpoint is followed by Alabama, California, Colorado, Delaware, Florida, Georgia, Idaho, Missouri, and Nevada, to name a few. When applicable, the traveling employee status pertains to an entire trip and covers an employee from the moment of departure through the moment of return. The traveling employee's status as such does not change nor cease after the task has been completed. In Colorado, for example, a traveling employee need not be engaged in the actual performance of work to be considered in the course of the employment. Rather, an employee who is away from home on a business trip for his or her employer receives continuous workers' compensation coverage from the time that he or she leaves home until the time that he or she returns home unless the employee departs on a personal errand. *Goettman v. North Fork Valley Rest.*, 176 P.3d 60, 70 (Colo. 2007).

The second major viewpoint is that of reasonable foreseeability as adopted in Arizona, Arkansas, the District of Columbia, Illinois, Maryland, Minnesota, New Mexico, North Carolina, and South Dakota. Under Illinois law, for example, a traveling employee is one who is required to work away from the employer's premises. *Hoffman v. Illinois Industrial Comm'n*, 109 Ill. 2d 194, 199, 486 N.E.2d 889 (1985). Such an employee is deemed to be in the course of his or her employment from the time that he or she leaves home until he or she returns. However, a finding that a claimant qualifies as a traveling employee does not relieve him or her of the burden of proving that his or her injury "arose out of" and "in the course of" employment. *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 545, 941 N.E.2d 961 (1st Dist. 2010). A traveling employee must show that his or her conduct "might normally be anticipated or foreseen by the employer." *Howell Tractor & Equipment Co. v. Illinois Industrial Comm'n*, 78 Ill. 2d 567, 573, 403 N.E.2d 215 (1980). Stated another way, a traveling employee may be compensated for an injury as long as the injury was sustained while he or she was engaged in an activity that was both "reasonable and foreseeable." *Wright v. Illinois Industrial Comm'n*, 62 Ill. 2d 65, 71, 338 N.E.2d 379 (1975).

This reasonably foreseeable doctrine is likewise applied in Minnesota. There, the supreme court has observed, "The general rule is that an employee whose work entails travel away from the employer's premises is, in most circumstances, under continu-

ous workers' compensation coverage from the time he leaves home until he returns." *Voight v. Rettinger Transp., Inc.*, 306 N.W.2d 133, 136 (Minn. 1981). Accordingly,

> [a]n employee who is required to be out-of-town overnight has no choice but to eat, sleep and conduct all his activities away from home. Just as injuries sustained as a consequence of the necessity of sleeping in hotels, *Stansberry v. Monitor Stove Co.*, 150 Minn. 1, 183 N.W. 977 (1921), or traveling between a restaurant and a hotel, … are compensable, we are of the view that an employee does not leave the course of his employment while engaging in reasonable relaxation or recreational activities after working hours.

Voight, 306 N.W. 2d at 138.

Reasonable activities, according to the court, "are those which may normally be expected of a traveling employee as opposed to those which are clearly unanticipated, unforeseeable and extraordinary." *Id*. In so holding, the *Voight* court concluded, "we note that traveling employees have a *sui generis* status since their work necessarily requires that they be away from home." *Id*. In *Voight*, the claimant, a charter bus driver, was shot on his way back to a motel from a tavern, where he and other drivers had gone. The court upheld the conclusion that the claimant was a traveling employee and that the actions were reasonably foreseeable, finding that the claimant had merely indulged in a reasonable activity that could be considered an incident of the employment.

Three Illinois decisions provide good insight into what constitutes unreasonable actions. For example, in *Howell Tractor & Equip. Co. v. Illinois Industrial Comm'n*, 78 Ill. 2d 567, 403 N.E.2d 215 (1980), the court held that an employee's conduct in walking back to a motel alone in an unfamiliar town after drinking at a tavern constituted unreasonable action. In *Humphrey v. Illinois Industrial Comm'n*, 76 Ill. 2d 333, 392 N.E.2d 21 (1979), the court upheld the denial of compensation when an employee was injured while returning to his motel after partying on a work day. Likewise, in *U. S. Industries v. Illinois Industrial Comm'n.*, 40 Ill. 2d 469, 240 N.E.2d 637 (1968), an employee injured on a midnight pleasure drive in unfamiliar, mountainous terrain was held to be engaged in unreasonable activity.

A third group of states focuses on whether the activity undertaken during travel constitutes an integral part of the work. This standard is similar to that of the majority of states—continuous employment—but conditions compensability on the employee performing tasks that are integral to the employment. New Mexico is a prime example adopting this interpretation. At least one state—New Jersey—conditions the traveling employee status on whether an employee was paid wages for the time spent traveling. *Scott v. Foodarama Supermarkets*, 398 N.J. Super. 441, 448 (N.J. Super. Ct. App. Div. 2008).

At least two states, Kentucky and Texas, apply a positional risk doctrine. In *Gentry Thoroughbreds/Fayette Farms v. Mandujano*, 366 S.W.3d 456 (Ky. 2012), the Kentucky Supreme Court noted that the state's traveling employee doctrine is "[g]rounded in the positional risk doctrine" and that it "considers an injury that occurs while the employee is in travel status to be work-related unless the worker was engaged in a significant departure from the purpose of the trip." In *North River Ins. Co. v. Purdy*, 733 S.W.2d 630 (Tex. App. Ct. 1987), a Texas appellate court summarized the "arising out of" aspect of the analysis, noting that the state applies the positional risk doctrine, which asks whether the injury would have occurred if the conditions and obligations of the employment had not placed the claimant in harm's way. Indiana previously used such a test, articulated in *Olinger Const. Co. v. Mosbey*, 427 N.E.2d 910 (Ind. Ct. App. 1981), but a legislative amendment to the state workers' compensation act in 2006 abrogated positional risk, and the effect on the doctrine is not clear from the subsequent cases. *See A Plus Home Health Care Inc. v. Miecznikowski*, 983 N.E.2d 140 (Ind. Ct. App. 2012).

South Carolina applies a slightly different form of the traveling employee doctrine, finding an injury compensable when there is a causal connection between the injury and the work performed. The injury does not need to have been foreseeable or expected, but after the event it must appear to have originated in a risk connected with the employment and to have come from that source as a rational consequence. *Ardis v. Combined Ins. Co.*, 669 S.E.2d 628, 632 (S.C. Ct. App. 2008). An exception applies when an employee has deviated from his business route or purpose. *Hall v. Desert Aire, Inc.*, 656 S.E.2d 753, 762 (S.C. Ct. App. 2007).

Finally, as an odd-lot, Montana defines a traveling employee as one who suffers an injury while traveling if (1) the employer furnishes or reimburses for the transportation, or (2) the travel is necessitated by and on behalf of the employer as an integral part of the employment, or is required. *Carillo v. Liberty Nw. Ins.*, 278 Mont. 1, 5 (Mont. 1996). Montana specifically excludes injuries for traveling employees while they are on break or engaged in a social or recreational activity.

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Illinois—An Example of Judicial Activism

Illinois has been one of the busiest jurisdictions concerning the traveling employee doctrine. The past two years have seen roughly a dozen appellate court decisions on the issue, including five published decisions, and one that generated a very recent Illinois Supreme Court decision. In the latter case, *The Venture-Newberg-Perini, Stone and Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728 (Venture-Newberg), the appellate court found that a union pipefitter, who was working at a nuclear power plant some 200 miles from home, was a traveling employee, and as such, was covered when he sustained an automobile accident en route from his hotel to his job site. Fortunately, the Illinois Supreme Court reversed this additional expansion of the traveling employee doctrine, and that important decision will be addressed later in the article. Initially, however, it is instructive to analyze how the

Venture-Newberg decision expanded the doctrine, along with other cases.

In *Venture-Newberg*, the employer was a contractor hired to perform maintenance and repair work at the Cordova, Illinois, nuclear plant. The local union, Local 25, had insufficient manpower to cover the job needs so the union solicited members from other locals to work. One of these locals was the claimant's Local 137 in Springfield. When the claimant accepted the job, he understood that it was over 200 miles from his home; however, he was unemployed and needed a job. At the end of the first day of work, the claimant spent the night at a local Cordova motel and on the following morning en route to the plant, was injured in a car accident. The employer had not instructed the route that the claimant was to take to work, did not reimburse the claimant for his travel or lodging expenses, did not make his travel arrangements, and did not pay him for the time that he spent traveling.

Perhaps the Illinois Supreme Court reversal of the appellate court majority also portends a movement in the direction of scaling back other job scenarios into which the traveling employee doctrine has expanded.

The Illinois Workers' Compensation Commission (Commission) concluded that the claimant was a traveling employee and awarded benefits, finding that (1) the claimant was in the course of employment while traveling to work because the course or method of travel was determined by the demands or exigencies of the job rather than by the claimant's personal preference as to where he chose to live, and (2) the claimant was a "traveling employee" at the time of the accident. The circuit court reversed this decision and denied the claim, but the appellate court reinstated the Commission's decision.

In upholding the Commission's finding that the claimant was a traveling employee, the majority noted that the following was undisputed: (1) the claimant was employed by Venture-Newberg; (2) he was assigned to work at a nuclear power plant in Cordova, Illinois, operated by Exelon, more than 200 miles from his home; and (3) the premises at which the claimant was assigned to work were not the premises of his employer. Moreover, and moving on to the second aspect of the test—whether the conduct was reasonably foreseeable—the court found that Venture-Newberg must have anticipated that the claimant, who had been recruited to work at Exelon's facility over 200 miles from his home, would be required to travel and to arrange for convenient lodging to perform the duties of his job, and it was reasonable and foreseeable that he would travel a direct route to Exelon's facility from the hotel at which he stayed. Two justices dissented, arguing that the majority's ruling expanded the traveling employee doctrine beyond its intended scope. According to the dissent, when an employer hires an employee on a temporary basis only to work at one specific jobsite for the duration of the employment, that assigned location becomes the employer's "premises" for purposes of the application of the traveling employee rule.

The Illinois Appellate Court, Workers' Compensation Commission Division's activism on the traveling employee doctrine reaches further into the past than *Venture-Newberg*. The rash of traveling employee decisions began with *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 941 N.E.2d 961 (1st Dist. 2011), in which the claimant, a foreman of a six-person excavating crew, was injured in a truck accident while driving a company vehicle back to his residence to retrieve his family car and attend a doctor's appointment. On the way home, the claimant stopped at a bank for cash, and was injured in an accident upon pulling back onto the road to head for home. Although there was some evidence that the claimant had stopped for cash for his work, the Commission rejected that evidence and concluded that the bank stop was personal. As such, it found that the stop constituted a personal deviation that removed him from the course of his employment. It further concluded that he was not a traveling employee.

On appeal, the appellate court reversed. First, the court concluded that the claimant was a traveling employee. While the analysis of the traveling employee issue was sparse, the finding appears to be based upon the fact that the petitioner was assigned and was driving a company vehicle. Second, the court concluded that the claimant's deviation to go to the bank for personal reasons was insubstantial: "Although the claimant made this slight deviation from his route home in order to go to the bank, at the time of his accident, he had already made his withdrawal and was again on his way home." *Cox*, 406 Ill. App. 3d at 547. The court, therefore, concluded that the claimant had reentered the course of his employment at the time of the accident. In focusing on whether the bank stop was or was not a personal deviation, the court seemed to assume without comment that the trip home to retrieve a family car to attend a doctor's appointment established traveling employee status.

In *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 944 N.E.2d 800 (1st Dist. 2011), the appellate court, while not directly applying the traveling employee doctrine, nevertheless found an accident compensable using the "street risk" doctrine, which is a branch of the traveling employee doctrine. In this case the claimant was a bank worker who, as part of her job duties, had to walk to a local bank several times each week to make periodic deposits. On one of these trips she encountered a "dip" in the sidewalk and fell, sustaining injuries. The appellate court found the claim compensable and in doing so applied the street risk doctrine, under which when the evidence establishes that a claimant's job requires that he or she be on the street to perform his or her duties, the risks of the street become one of the risks of employment and an injury sustained while performing that particular street-related duty arises out of the employment. In this case, the majority could have sim-

ply viewed the case as one involving an employee's job functions and used the traditional increased risk analysis to evaluate compensability. Instead, the majority chose to apply the street risk doctrine to what was essentially a sidewalk, and to expand the scope of injuries that fall within the corresponding statute.

Application of the street risk doctrine continued in *Bergensons/Administaff v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 100876WC-U, which applied the doctrine to a regional manager who traveled between various job sites to oversee store operations. When the manager arrived at one of the stores, he returned to his car to retrieve an item that he had forgotten and slipped on the way back inside on a newly taped parking stripe in the recently paved parking lot. While the appellate court upheld the Commission's use of the street risk doctrine to find the fall compensable, it also concluded that the case was properly viewed as a traveling employee case. Under the latter theory, slipping in a parking lot of a store that the claimant was assigned to visit was reasonable and foreseeable. Although *Bergensons/Administaff* was an unpublished Illinois Supreme Court Rule 23 decision, which meant that it lacks precedential effect, the case is nevertheless insightful for the purposes of analyzing how the court would treat traveling employees and foreshadows future published decisions.

The next Illinois Appellate Court published opinion addressing the doctrine extended the traveling employee doctrine to cover an accidental fall while the claimant was walking to her employer-provided vehicle. The fall occurred on public property adjacent to her home. The court in *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2103 IL App (3d) 120411WC, concluded that the claimant was a traveling employee based on evidence that she and her husband cleaned churches, homes, and offices as part of their employment. The two used an employer-provided minivan to travel to and from job sites. At the time of the accident, the claimant and her husband had returned home for lunch following a cancellation before departing for another job that afternoon. When she approached the parked minivan, the pavement was covered with ice and snow. As she walked around the van, she slipped and fell.

The Commission had denied the claim, finding that the claimant was not a traveling employee. The appellate court, however, reversed, finding that she did not work at a fixed job site and that her work duties required her to travel to various locations throughout the Chicagoland area. Moving to the next part of the test—whether the act was reasonable and foreseeable—the court concluded that it was, stating that the fall occurred as the claimant was walking to the vehicle used to transport her to a work assignment: "Claimant's walk to the minivan constituted the initial part of her journey to her work assignment" and as such, "it was reasonable and foreseeable." *Mlynarczyk*, 2103 IL App (3d) 120411WC, ¶ 19.

Of interest, this decision was foreshadowed by an unpublished Illinois Supreme Court Rule 23 decision from earlier in 2013, *Northern Illinois Special Recreation Assoc. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 113644WC-U, which had applied the doctrine to a traveling employee's fall that happened while she left her office to warm up her car before making an employment-related trip. According to the court in that case, "[w]hile it is true that the claimant had not set off on her trip, her leaving the office to warm up the car constituted at least the prefatory part of her voyage, and those actions are inextricable from the voyage itself." The court continued, "Put simply, warming up a car is as much a part of a trip as walking to the car and pulling the car out of its parking spot." *Northern Illinois Special Recreation Assoc.*, 2013 IL App (1st) 113644WC-U, ¶ 14.

Finally, in *Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC, the appellate court reversed a Commission's denial of benefits in a case involving a bank manager who traveled between two branches of an employer's bank. The employee had stepped into a pothole in a public parking lot while attempting to avoid a passing car. The Commission majority had denied benefits using the traditional "arising out of" and "in the course of" analysis, finding that the claimant had failed to establish that he was exposed to a risk greater than that faced by the general public because the fall had taken place in a public parking lot.

Picking up from the previously unpublished decision in *Bergensons/Administaff*, the appellate court applied the traveling employee doctrine because the claimant's work required him to travel between two bank branch locations. The question became whether it was reasonable and foreseeable that the claimant might fall while traversing a specific lot. According to the court, it was. Because the employer did not provide a parking lot, it was reasonable and foreseeable that the claimant would regularly park in the nearby municipal lot and walk to the bank office from that lot.

Kertis represents precisely the type of expansion that threatens the traditional analysis for employees who are merely in the performance of their work duties and as a result, have a limited amount of travel. Rather than using the traditional risk analysis, which in decisions other than *Kertis* resulted in Commission conclusions that the claimant's fall was not compensable because he was exposed to the same risk as the general public, under the *Kertis* reasoning the claim becomes compensable because using the lot was reasonable and foreseeable. This court reclassification lowers the required standard of proof and expands compensability under the Illinois Workers' Compensation Act.

The Illinois Supreme Court Speaks in *Venture-Newberg*

On December 19, 2013, the Illinois Supreme Court, in a six to one decision, reversed the appellate court decision in the *Venture-Newberg* case analyzed above. *Venture-Newberg Perini Stone and Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728. The court denied the claim, specifically concluding that the claimant was not a traveling employee at the time of his accident. In rejecting application of the traveling employee doctrine, the court drew heavily on two previous decisions—*Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 338 N.E.2d 379 (1975), which involved injuries to an employee required to travel frequently, and *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 618 N.E.2d 1143 (5th Dist. 1993), which involved injuries to an employee required to travel periodically, and used each case to outline the factors recognized in decisions over the years in determining traveling

employee status. Wright was a permanent employee who was regularly required by his employer to travel out of state. Reed, the claimant in *Chicago Bridge & Iron*, was not a permanent employee, but he had worked exclusively for the employer for 19 years. Both were reimbursed for mileage expenses and were "required" to travel for their positions. Furthermore, in each of the additional traveling employee cases cited in the Illinois Supreme Court opinion, the employee was regularly employed and directed by the employer to travel to a remote location.

According to the majority, unlike the claimant in *Wright*, the claimant Daugherty was not a permanent employee of Venture-Newberg and was not working on a long-term exclusive basis. Rather, Daugherty had worked on four other short-term Venture projects over the two years preceding the accident. Furthermore, the evidence showed that nothing in Daugherty's contract required him to travel beyond his union's territory to take the position with Venture. Daugherty acknowledged that he made a personal decision that the benefits of the pay outweighed the personal cost of traveling. According to the majority, "Daugherty was hired to work at a specific location and was not directed by Venture to travel away from this work site to another location." Daugherty merely traveled from the premises to his residing location, as did all other employees. Finally, Venture did not reimburse Daugherty for his travel expenses, nor did it assist Daugherty in making his travel arrangements. According to the majority, Daugherty made the personal decision to accept a temporary position with Venture at a plant located approximately 200 miles from his home. Venture did not direct Daugherty to accept the position at Cordova, and Daugherty accepted this temporary position with full knowledge of the commute that it involved. Due to these facts, the Commission's conclusion that Daugherty was a traveling employee contradicted the manifest weight of the evidence.

In addition to concluding that Daugherty did not qualify for the traveling employee exception, the majority noted that Daugherty's course or method of travel was not determined by the demands and exigencies of the job: "Venture did not reimburse Daugherty for travel expenses or time spent traveling. Venture did not direct Daugherty's travel or require him to take a certain route to work." Instead, the majority observed, "Daugherty made the personal decision to accept the position at Cordova and the additional travel and travel risks that it entailed."

Justice Kilbride dissented, finding that the claimant was a traveling employee at the time of his accident. According to Justice Kilbride,

> There can be no question that Daugherty, who lived over 200 miles away from the Cordova plant work site, had to travel away from his employer's premises in Wilmington, Illinois. Even assuming, as the majority concludes in a footnote with no legal analysis, that Cordova, Illinois, the location of the plant, should be considered his employer's premises ***, Daugherty would have had to travel to that site because he lived 200 miles away in Springfield.

Kilbride also pointed out that

> Exelon and Venture-Newberg agreed to hire union tradesmen from outside of the area who would necessarily be required to travel to the area to work. In fact, as Daugherty's experience reveals, he was required to travel over 200 miles to reach the Cordova plant to complete the job he was hired by Venture-Newberg to perform. By definition, then, Daugherty was required to travel from his employer's premises and qualifies as a traveling employee.

Moving Forward Following the Illinois Experience

The Illinois Supreme Court decision in *Venture-Newberg* had been highly anticipated by the workers' compensation community in Illinois. While employers had hoped that the decision might contain broadly based limitations on the traveling employee doctrine that would limit or overrule some of the appellate court's recent expansions, the decision did not do that, and as of today the full importance of the decision is unclear. Certainly, it was well-received in the employment community. At the very least, the decision will limit what will be considered an "employer's premises." Perhaps the Illinois Supreme Court reversal of the appellate court majority also portends a movement in the direction of scaling back other job scenarios into which the traveling employee doctrine has expanded.

At the moment, however, it remains clear that at least in Illinois, many more employees have traveling employee status than even five years ago. Certainly *Venture-Newberg* now tells us that a union employee who is assigned to another union 200 miles away to perform a job when he is not required by his long-term employer to live away from home is not deemed a traveling employee. We also know, however, from other decisions not overruled by *Venture-Newberg* that in Illinois the following employees qualify as traveling employees:

- A foreman who drives a company vehicle home to run a personal errand;
- A bank worker who has to walk to a local bank several times each week;
- A regional manager who must travel between various jobsites throughout the course of a day;
- A cleaning worker who returns home for lunch and walks to his or her van to prepare for the next job;
- A worker who has not left yet on a trip and walks to his or her car to turn it on and warm it up; and
- A bank manager who travels between two branches of an employer's bank.

By analogy, one can imagine a myriad of job situations in which these types of incidental travel could trigger the traveling employee doctrine.

Clearly, the expansion of the traveling employee doctrine in Illinois, which could spread to other states given that Illinois shares the reasonably foreseeable standard with many other states, creates broad-ranging policy concerns for employers and the business community. Especially problematic is the Illinois trend of expanding not only those examples of minimal travel that trigger the doctrine, but also of the timeframe during which the lessened compensability standard applies. Many of the cases mentioned above move the compensability threshold from vehicular travel to preparatory steps in anticipation of a work trip. Indeed, it is no longer completely absurd to argue that an employee who stumbles over an object in his or her dark bedroom while getting out of bed with the intention of beginning to dress for work

might be deemed a traveling employee if the work day will involve some level of incidental travel.

An expanding traveling employee doctrine has implications beyond the workers' compensation arena. A liberal body of case law holding that a particular employee is a traveling employee may well mean that he or she also acts within the scope of the employment for the purposes of tort law respondeat superior. *See, e.g. Laird v. Whager*, 2012 WL 2051963 (N.J. Super. Ct. App. Div 2012). Thus, not only does an employer face expanded liability under the state workers' compensation laws, it may also face additional civil responsibilities for accidents caused by its traveling employees since respondeat superior holds the employer liable for an employee's actions within the scope of the employment.

Conclusion

Does the Illinois Supreme Court decision in *Venture-Newberg* repudiate the expansive interpretation of the traveling employee doctrine in appellate court decisions? Only time will tell. Will the expansion of the traveling employee doctrine seen in Illinois move to other states that use the reasonably foreseeable standard of compensability for traveling employees? Again, only time will tell. Given the near 24-hour workers' compensation coverage status enjoyed by traveling employees in most states, it is important for the employment community to keep track of developments and do everything possible to slow the advance of the traveling employee doctrine. As more and more employees who have incidental travel as part of their work duties become defined as traveling employees, we move ever closer to strict liability, 24-hour coverage, which workers' compensation statutes throughout the country have not contemplated. If the trend continues, workers' compensation costs will escalate significantly. FD

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