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ROYSTER

BELOW THE RED LINE

WORKERS' COMPENSATION UPDATE
"WE'VE GOT YOU COVERED!"

January 2023

WORKERS'
COMPENSATION
PUBLICATION
TEAM

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Practice Chair

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Editor & Featured Author

A WORD FROM THE PRACTICE CHAIR

Believe it or not the sun is staying out longer these days. It is hard to tell when you don't see it for 4 or 5 days in a row, but that is another story. It does not make things any warmer here in east central Illinois but sometimes the small victories can get you through a day or a harsh winter season. So, I am hopeful you are keeping warm, or for those brave souls who enjoy outdoor winter activities, please enjoy this winter wonderland.

The Heyl Royster workers' compensation team had a planning meeting today for our upcoming Claims Handling Seminar. Our staff is busy locating sites for the event and booking dates. We hope to have all that information in place in February 2023, when we will be able to tell you about the actual locations and dates when the IN-PERSON seminar. You read that right; the Heyl Royster seminar will be IN-PERSON only. I miss you all, and I very much want to see you again. Honestly, looking at a camera is just not the same and not as fun as doing an event in-person. I miss the eye-rolling by my audience when I work in some of my bad "dad jokes." I promise there is more to come on this not to be missed event. Tip: we are looking at dates in May/June 2023.

My partner Amber Cameron is the author of this month's newsletter article. Amber works out of the Edwardsville office and is licensed in both Illinois and Missouri. She is integral to making the Heyl Royster workers' compensation team run smoothly in both southern Illinois and Missouri. I believe this article is timely in that it touches on a subject that always comes up this time of year: slip and fall injuries in parking lots when exposed to snow/ice. The analysis of the *Western Springs Police Department v. IWCC* case has some twists and turns as it makes its way from the arbitration level to the Appellate Court. Amber breaks down the decision and provides some helpful insight and pointers for future file management when facing a parking lot case with a slip and fall caused by snow or ice. These cases will rise and fall on their specific fact patterns, so it is always vital to ask the right questions, do your diligent investigation of the incident, and ask your Heyl Royster workers' compensation attorney whether your case can be defended. We are always here for you and take great pride in taking care of our clients and ultimately making your job easier.



Toney Tomaso



FEATURE ARTICLE



PUBLIC OR EMPLOYER PROVIDED PARKING? THAT IS THE QUESTION.

By [Amber Cameron](#)

A good amount of litigation over the years has centered around whether injuries occurring in parking lots to employees, both on and off the employer's premises, are compensable under the Workers' Compensation Act. In January 2023, the Appellate Court, Workers' Compensation Commission Division, issued an opinion regarding yet another injury in a parking lot.

In *Western Springs Police Department v. IWCC*, 2023 IL App (1st) 211574WC, the petitioner slipped on ice while exiting her car on the way to work, injuring her wrist. The petitioner, MacDonnell-Dayhoff, worked for the Village of Western Springs (the Village) as a crossing guard and was on her way to work outside village hall the morning of February 6, 2014. Petitioner testified that she parked in an angled public street space directly across from village hall as it was close to the corner where she worked as a crossing guard, even though there were two parking lots designated for employees behind village hall that were not for use by the general public. When she exited her car, she slipped on ice hidden by a thin layer of snow, lost her balance and fell, fracturing her wrist.

The evidence presented at arbitration included testimony that petitioner was not instructed by her employer to park in any particular area, that there were alternative employee-only lots provided by the employer, and that petitioner made the choice to park in a public parking spot maintained and owned by the Village and mainly used for commuter

train passengers. The spot in which petitioner parked on the date of her injury had limitations on the duration of parking, but MacDonnell-Dayhoff testified that the Village granted her and other employees the privilege of parking in the angled spots in excess of the four-hour limitation applicable to members of the general public and she chose to park there instead of the employee lot because it was more convenient to get to the area where she performed her crossing guard duties. In order to avoid a citation for excess parking time in the spot in which she parked, petitioner had to give the Village her license plate number.

To obtain compensation under the Act, petitioner must show, by a preponderance of the evidence, that an accidental injury arose out of and in the course of employment. An injury "arises out of" one's employment if it originated from a risk connected with, or incidental to, the employment and involved a causal connection between the employment and the accidental injury. "In the course of" employment refers to the time, place, and circumstances under which the petitioner is injured. Injuries sustained while an employee is at work, or within a reasonable time before or after work, at a place where she might reasonably have been while performing work duties, are generally deemed to be in the course of employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52 (1989).

Generally speaking, when an employee is injured off the employer's premises while traveling to or from work, the resulting injuries do not arise out of and in the course of employment and are subsequently not compensable under the Act. *Joiner v. Industrial Comm'n*, 337 Ill. App. 3d 812, 786 N.E.2d 627 (2003). This concept is usually referred to as the general premises rule. However, over the years, the Court has carved out exceptions to the general premises rule allowing recovery where the employee is injured in a parking lot provided by and under the control of the employer (known as the parking lot exception) and when the employee is injured in a place where she was required to be in

the performance of her duties and the employee is exposed to a risk common to the general public to a greater degree than other persons. See *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 546 N.E.2d 603 (1989) and *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210, 437 N.E.2d 609 (1982).

At the trial level in *Western Springs Police Department*, the arbitrator found that petitioner failed to establish that her accident arose out of and in the course of her employment since she was in a parking spot open to the general public, on a public street, in a place removed from her crossing guard work location. The petitioner sought review by the Commission, which reversed the arbitrator's decision. The Commission found petitioner fell in a parking spot over which her employer exercised control by exempting employees from the four-hour parking limitation, and petitioner was therefore on the employer's "premises" at the time of the injury. The Circuit Court overturned the Commission's decision, finding that the accident did not arise out of and in the course of MacDonnell-Dayhoff's employment as such a finding involving injury in this public parking spot would mean the Village's "premises" for purposes of determining compensability of an injury to an employee while traveling to work would then include all the municipality's streets and sidewalks.

Upon review, the Illinois Appellate Court reinstated the decision of the Commission finding MacDonnell-Dayhoff sustained a compensable accident and was entitled to workers' compensation benefits. The Appellate Court rejected the Circuit Court's expansive definition of the term "premises" in the context of a workers' compensation claim and opined that the employer's premises included only a place where the injured employee reasonably might be in the performance of her duties and places incident thereto, including employer-provided parking areas. The employer premises does not include all property owned by the municipality regardless of its connection to the performance of the employee's duties. The Appellate Court

ruled the Commission's decision was not against the manifest weight of the evidence as it was based on the finding that the parking space where petitioner fell was an employer provided parking area with special privilege granted by the employer to petitioner and other employees to park in the



spaces over the time limitations applicable to the general public.

As the *Western Springs Police Department* decision demonstrates, when dealing with injuries in a parking lot, it is critical to conduct a thorough factual investigation into the relationship between the employer and the owner of the lot, the degree of control the employer retains over the lot and the route its employees take to enter the employer's place of business or work location in order to determine if the injury occurred in a place where the employer had sufficient control or dominion. In parking lot falls, the devil is in the details. In this case, the fall occurred in a place that was open to use by the general public but was owned and maintained by the municipal employer, convenient to the employee to reach her workplace, and a special exception for parking duration was made for employees to park in the lot that were not given to members of the general public.

The Heyl Royster Workers' Compensation Practice has extensive experience investigating and defending workers' compensation claims, including parking lot claims. If you need assistance or advice relating to any aspect of a workers' compensation claim, please do not hesitate to reach out to any of our workers' compensation attorneys.



ABOUT THE AUTHOR



Amber Cameron

Partner in Edwardsville, IL

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Amber is a seasoned trial attorney representing the interests of employers of all sizes throughout southern Illinois and Missouri.

Amber Cameron concentrates her practice on workers' compensation and toxic tort litigation. A partner working out of the firm's Edwardsville and St. Louis offices, she is a seasoned trial attorney representing the interests of employers of all sizes throughout southern Illinois and Missouri. She also devotes a portion of her practice to defending asbestos personal injury suits and representing the firm's clients at depositions, hearings, and procedural matters.

Amber regularly provides educational seminars to insurance companies, third party administrators, and self-insured employers on a wide range of topics concerning workers' compensation claim defense. With a keen eye for detail and a tactical approach, Amber works diligently with her clients to develop creative resolution strategies for her claims.

Prior to joining Heyl Royster in 2015, Amber was a staff attorney at the Illinois Workers' Compensation Commission, where she assisted Commissioners in deciding workers' compensation claims. At the Commission, she drafted hundreds of opinions on review and on remand, gaining advanced knowledge in workers' compensation law. Amber gained additional experience while working at a mid-sized defense firm in the St. Louis Metro East, where she represented clients in defense of workers' compensation and human rights claims throughout Illinois and Missouri.

Amber earned her law degree and a certificate in dispute resolution from the University of Missouri-Columbia School of Law. As a law student, she served as Vice-Justice of the Lawson Chapter of Phi Alpha Delta Law Fraternity and excelled in legal writing, winning Best Brief in the Board of Advocates Moot Court Competition. Amber is editor of the firm's Workers' Compensation Newsletter, *Below the Red Line*.

Outside of the office, Amber enjoys spending time with her husband and two boys, a hearty belly laugh, and experiencing new adventures and cultures through travel. If she can combine these three, then she is in her happy place.

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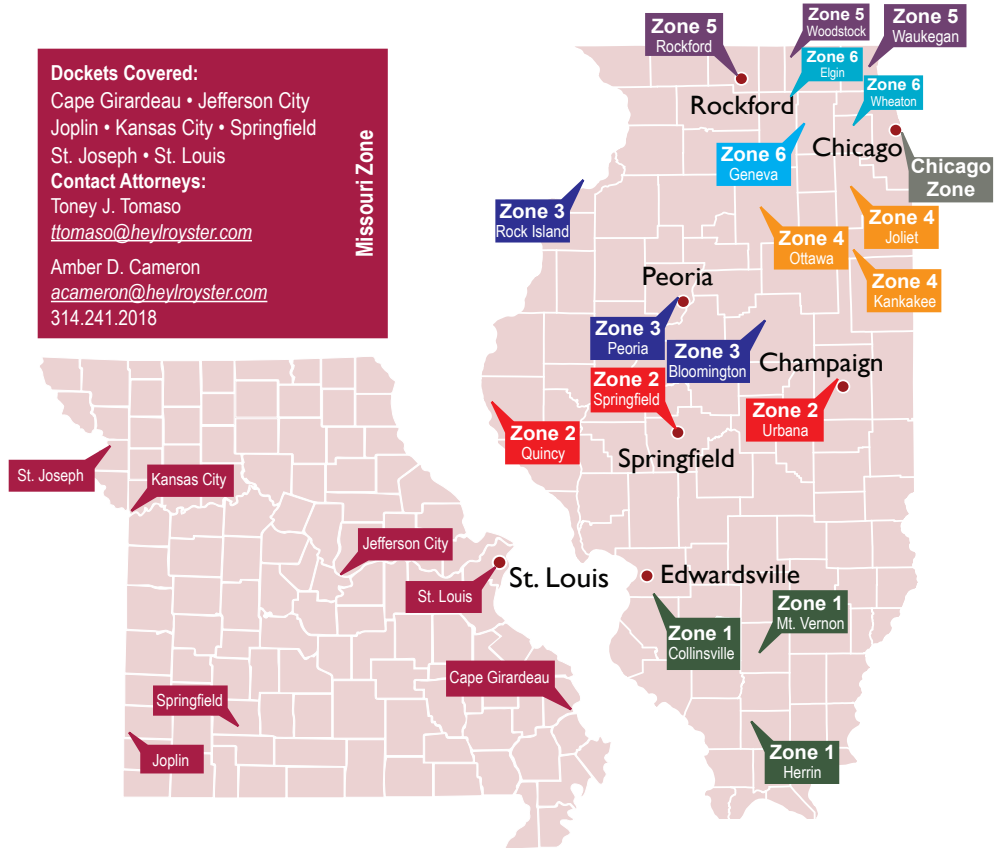
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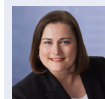
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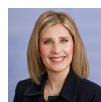
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