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A WORD FROM THE PRACTICE CHAIR

Let's start with the latest COVID update, shall we? In Illinois, the numbers are heading in the right direction. Due to the decrease in the number of reported COVID cases, the mask mandate in Illinois is under revision. The continued decline will directly impact many things moving forward, beginning March 1, 2022. At the Illinois Workers' Compensation Commission, Chairman Brennan, on February 25, 2022, put out a new directive based upon instructions from Illinois Governor Pritzker. This updated directive, applying only to facilities owned and operated in the State of Illinois, impacts all in-person attendees at Commission proceedings states that as of March 1, 2022, masks will no longer be mandatory. In the scenario the IWCC is renting or leasing a piece of property on which it conducts its workers' compensation business, the facility owner can dictate any mask policy they see fit. We would have to abide by the same. Additionally, the Chairman is giving latitude to his Arbitrators and Commissioners who serve as hosts for in-person proceedings. If there is a needs-based health and safety concern, the Arbitrators and

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WORKERS' COMPENSATION UPDATE

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A NEWSLETTER FOR EMPLOYERS & CLAIMS PROFESSIONALS

FEBRUARY 2022

Commissioners have the right to ask those in attendance to wear a mask for the proceedings, and those in attendance would need to comply. This is a significant change from what we started doing approximately two years ago. I, for one, will very much enjoy participating in a trial and listening to an injured worker testify without wearing a mask. I can tell you from first-hand experience listening to testimony from someone wearing a mask is difficult and time-consuming because of the number of times people must repeat themselves. A shout-out to those court reporters who have done outstanding work over the past two years, perhaps the biggest beneficiaries of this news. Their job is difficult, let alone the further burden of witnesses testifying through masks.

Falling under the category of time flies when you are having fun, I proudly report that I celebrated my 25th anniversary of practicing law with Heyl Royster. It does not seem that long ago. This month, I have been doing a great deal of reflecting; on what I have learned, experiences that have stuck with me, and the people I have been lucky to work with and get to know. I can honestly say I really would not change much. I consider myself fortunate to work at a great law firm, surrounded by fun and knowledgeable attorneys and a supportive staff. My teammates have taught me well, and I am a better attorney and person for it. I have the honor of leading this outstanding team of attorneys and paralegals as their Practice Group Chair, and I do not hesitate to say we have the best workers' compensation attorneys in Illinois and the surrounding states. Don't get me wrong; if I won the lotto, I might very well find an island somewhere and retire. But, if I have to work (and according to my wife, I do), I am happy I found my forever home at Heyl Royster.

This month's article, written by our Chicago office manager [Brad Antonacci](#), discusses and explains the recent Illinois Supreme Court decision of *Munoz v. Bulley & Andrew, LLC*. The Supreme Court tackled the issue of whether or not the exclusivity provision of the Illinois Workers' Compensation Act applied in this case. Under Section 5(a) of the Illinois Workers' Compensation Act, an employer can use this provision as a shield to prevent a Plaintiff from pursuing a civil action arising out of the same fact pattern as the workers' compensation accident. As we all know, facts matter and Brad outlines what the Supreme Court was dealing with, how and why they ruled the way they did, and the takeaways we all need to know moving forward to have a better appreciation and understanding of the exclusivity provision of the Act.



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FEATURE ARTICLE

NO SECTION 5(A) IMMUNITY FOR GENERAL CONTRACTOR OPERATING SEPARATELY FROM SUBSIDIARY-SUBCONTRACTOR

By Brad Antonacci

In the recent Illinois Supreme Court decision of *Munoz v. Bulley & Andrew, LLC*, 2022 IL 127067, the court clarified the extent of the exclusivity provision of the Workers' Compensation Act. The exclusivity provision, Section 5(a) of the Act, is a tool Respondents can use to obtain a dismissal of personal injury actions filed by Petitioners who also have underlying Workers' Compensation claims stemming from the same accident. However, in *Munoz*, the Supreme Court held that the exclusivity provision did not apply based on the specific facts in that claim.



BACKGROUND

In *Munoz*, Bulley & Andrews was a corporation and Bulley Concrete was a wholly owned subsidiary of Bulley & Andrews. Both Bulley & Andrews and Bulley Concrete operated as separate corporations.

Bulley & Andrews entered into a contract with a property owner to act as a general contractor for a construction project. Bulley & Andrews utilized Bulley Concrete, its subsidiary, as a subcontractor on the job. Bulley & Andrews agreed, in the terms of that contract, to pay workers' compensation benefits for employees of Bulley Concrete working on the contracted job. Petitioner Munoz, an employee of Bulley Concrete, was injured on this job and filed a workers' compensation claim with the Illinois Workers' Compensation Commission against his employer. Petitioner also filed a personal injury action in circuit court against Bulley & Andrews as the general contractor, the property owner, and a management company that operated the construction site.

Bulley & Andrews moved to dismiss the Petitioner's personal injury action against them based upon Section 5(a), the exclusivity provision, of the Workers' Compensation Act. Bulley & Andrews argued that it had a pre-existing legal obligation with the property owner to pay Petitioner's Workers' Compensation benefits and had already paid more than \$76,000.00 of his medical bills. The Circuit Court agreed and granted Bulley & Andrews' Motion to Dismiss, finding that Bulley & Andrews was legally obligated under its contract with the property owner to pay for workers' compensation insurance and provided workers' compensation benefits that the Petitioner received. The Appellate Court affirmed. Petitioner Munoz filed a Petition for Leave to Appeal which the Supreme Court of Illinois granted.

Before the Supreme Court of Illinois, Petitioner argued that because subcontractor Bulley Concrete was his employer, the exclusive remedy provisions under Sections 5(a) and 11 of the Act did not bar him from suing

the general contractor, Bulley & Andrews. Bulley & Andrews argued that the exclusive remedy provisions of the Workers' Compensation Act applied to bar Petitioner's personal injury claim because it was legally obligated under contract with the property owner to insure the project and all aspects, including providing workers' compensation coverage and benefits for its employees and those of its wholly owned subsidiaries, including Bulley Concrete.

ANALYSIS

Section 5(a) of the Workers' Compensation Act states, in relevant part: "No common law or statutory right to recover damages from the employer, his insurer, his broker, any service organization that is wholly owned by the employer, his insurer or his broker and that provides safety service, advice or recommendations for the employer or the agents or employees of any of them for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury." 820 ILCS 305/5(a) (West 2016).

Section 11 of the Act provides, in relevant part: "The compensation

herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in Section 3 of this Act, or of any employer who is not engaged in any such enterprises or businesses, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act..." 820 ILCS 305/11.2 (West 2016).

The dispute on appeal centered on whether Bulley & Andrews, who was not Petitioner's direct employer, enjoyed the immunity afforded by the exclusive remedy provisions of the Act. The Illinois Supreme Court held that under the plain language of Section 5(a), immunity is conferred only on immediate employers of an injured worker. In the case at hand, there was no dispute that Bulley & Andrews was not Petitioner's immediate employer. The court therefore held that Petitioner was not barred by Sections 5(a) & 11 of the Act from bringing a civil action against Bulley & Andrews. The fact that Petitioner's immediate employer, Bulley Concrete, was a subsidiary of Bulley & Andrews was not relevant to the Supreme Court. The court held that if a parent company and its subsidiary operate as separate entities, only the entity that was the immediate employer of the injured worker is

entitled to Section 5(a) immunity.

In the case at hand, there was no dispute that Bulley & Andrews and Bulley Concrete operated as separate and distinct entities. Further, the court was unmoved by the fact that Bulley & Andrews paid the Workers' Compensation insurance premiums for Bulley Concrete or benefits to the Petitioner. The court noted that Section 5(a) of the Act includes no category granting non-employers of the injured worker the ability to acquire immunity by either paying Workers' Compensation insurance premiums on behalf of the injured worker's direct employer or compensation benefits directly, as Bulley & Andrews did here. Nor does the Act provide any provision for an entity that is legally distinct from the immediate employer to insulate itself against liability for its negligence by paying Workers' Compensation insurance premiums or benefits on behalf of the immediate employer of an injured worker.




THE TAKEAWAY

While the Supreme Court's decision in *Munoz* is unfavorable for Respondents, we must remember that the decision is

specific to the facts of that claim. The decision does not stand for the principle that the exclusivity provision of the Act never applies to parent corporations of subsidiaries. Rather, the court made it clear in *Munoz* that the decision hinged on the fact that the parent corporation and its subsidiary operated as separated entities. Assuming the parent company (general contractor) and its subsidiary (subcontractor) did not operate as separate entities, the exclusivity provision most likely would apply and the Petitioner's third-party personal injury claim would be dismissed. The court also pointed to another case, *Ioerger v. Halverson Construction Company*, 232 Ill. 2d 196 (2008), in which the Illinois Supreme Court previously held that a joint venture was not a separate legal entity under partnership law and the joint venture itself was shielded by the exclusive remedy provision of the Act. In *Ioerger*, the joint venturer also paid the workers' compensation premiums and entered into an agreement with the Petitioner's employer to provide Workers' Compensation benefits. In the very fact specific situation in *Ioerger*, a joint venturer was protected by the exclusive remedy provisions of the Act.

In sum, as with most claims, issues involving the application of the Act's exclusivity provisions are very fact specific. It is important to obtain as much detail as possible regarding the nature

of the relationship between a general contractor and a subcontractor to determine whether the exclusivity provision will apply. While Petitioner's attorneys will argue that the *Munoz* case is a blow to the Respondent's right to invoke the exclusivity provision, this argument can be countered with evidence of a single legal entity forcing the court to apply the exclusivity provision, as the court did in *Ioerger*. 

ABOUT THE AUTHOR

Brad Antonacci



Brad has extensive experience defending hundreds of employers before the Illinois Workers' Compensation Commission (IWCC). He has arbitrated numerous cases and argued many reviews before the IWCC, including the Commission's circuit court. He has professionally spoken on and authored employment layoffs, temporary total disability benefits, and case law articles. Focusing his practice on workers' compensation and civil litigation and is recognized as an industry leader by his peers, he has received designation as a Super Lawyers Illinois "Rising Star" and "Leading Lawyer" in Illinois by Leading Lawyers.

Brad joined Heyl Royster after receiving his J.D. from Northern Illinois University School of Law in 2002 and became a partner in 2013. He is a member of the Winnebago County Bar Association's Workers' Compensation Section, Illinois State Bar Association, and Illinois Association of Defense Trial Counsel.

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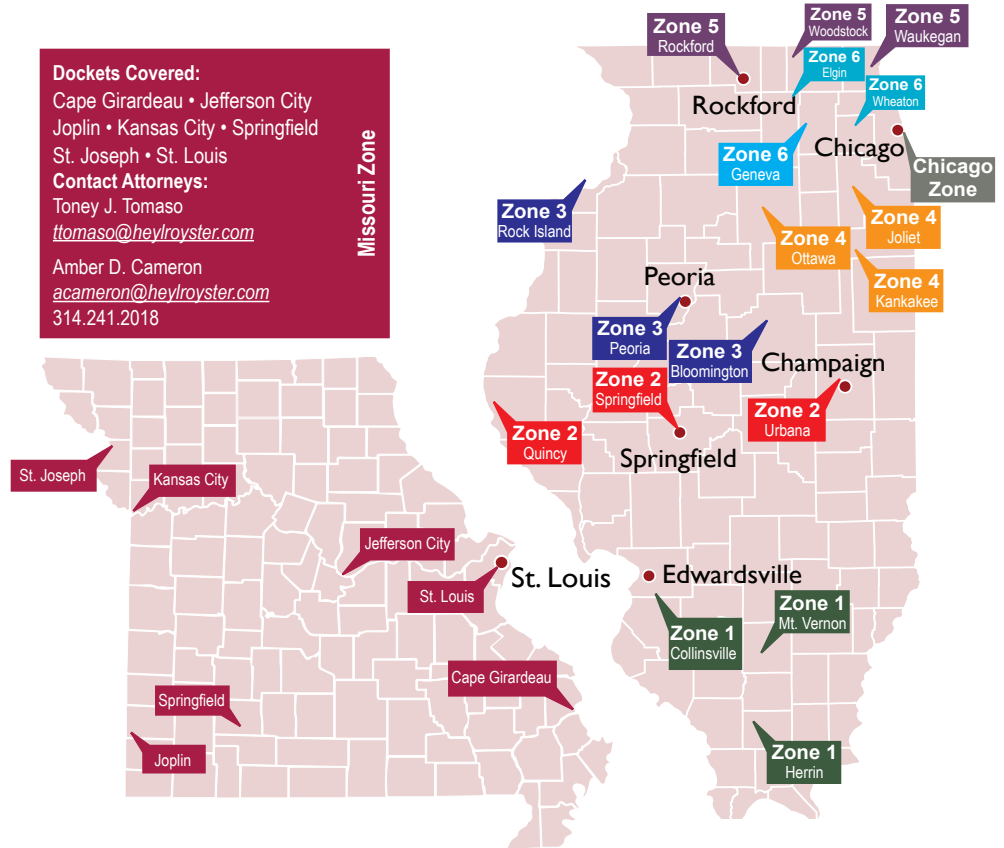
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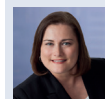
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