

BELOW THE RED LINE

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

A NEWSLETTER FOR EMPLOYERS & CLAIMS PROFESSIONALS

OCTOBER 2021

WORKERS' COMPENSATION PUBLICATION TEAM

Toney J. Tomaso
Practice Chair

Amber Cameron
Editor

Joe Rust
Feature Author

A WORD FROM THE PRACTICE CHAIR

All Hallows Eve is right around the corner and I am very much looking forward to trick-or-treaters coming to the house. Last year was a bit of a COVID bust as far as Halloween is concerned, so I am hoping for a better 2021. I do hope the ghouls and goblins in your neighborhood have some safe, well-deserved fun.... and candy! We can't forget the most important part: the candy!

Although Chairman Michael Brennan is always open to fine-tuning practices and procedures around the (Illinois Workers' Compensation) Commission we are definitely hitting our stride as far as normalcy. It is not the Commission from two years ago, but it is the new and improved Commission that has been mindful of proper COVID protocols and the safety of all Commission employees as well as the attorneys and parties that come before the Commission. Our docket calls and pre-trial

hearings are virtual via the Webex platform, and the latest intel from the Commission is that virtual calls and pre-trials will continue and we will be getting more days and available pre-trial slots for our dockets around the state. Approval of *pro se* settlement contracts take place virtually as well, but trials take place in person. If a request is made for a trial date, then a pre-trial is necessary and the first step in the trial process, followed by the granting of a trial date the month following the pre-trial. This is the trial procedure for emergency 19(b) petitions as well as all other trial requests and allows the parties to get their ducks in a row and prepare for the trial date.

This month's author is my associate, [Joe Rust](#). Joe practices out of our Chicago office, handling the Chicago docket as well as collar county dockets. Joe has tackled the subject matter of voluntary undertakings by an employee and if those activities are compensable under the Illinois Workers' Compensation Act. He touches on the *Purdy Brothers* and *McAllister* cases to help clarify points that are often brought up in conversation with our clients when dealing with the complicated issue of when an accident has "arose out of" and "in the course" of employment.

If you ever have follow-up questions on any of the pointers and information shared in any of our newsletters you should feel perfectly comfortable calling or e-mailing any of the Heyl Royster workers'

compensation attorneys. We are here for you whether it is an open file with our firm or one you are working on alone. Our job is to make your life easier and better by bringing our considerable bank of knowledge and expertise to work for you and your Team.



[Toney J. Tomaso](#)
Workers' Compensation
Practice Chair
ttomaso@heyloyroyster.com

FEATURE ARTICLE

What's My Job?: A Look at
Voluntary Undertakings
Considered "In the Course" of
Employment

by Joe Rust

As we know, for a Workers' Compensation claim to be considered compensable under the Illinois Workers' Compensation Act, it must "aris[e] out of" and be "in the course of" his or her employment. 820 ILCS 305/2. A common defense to workers' compensation claims is the injury did not occur while the employee was performing a task within the scope of their employment with the employer.

While the determination of whether an injury is compensable is largely

fact specific, the Illinois Appellate Court recently addressed the topic of whether claimant sustained an accidental injury arising out of and occurring in the course of his employment while voluntarily performing tasks outside the scope of his job responsibilities in *Purdy Brothers Trucking, LLC v. Illinois Workers' Compensation Comm'n*. 2021 IL App (3d) 200463WC-U. Ultimately, the Third District Illinois Appellate Court affirmed the finding of the Commission that claimant sustained an accidental injury arising out of and in the course of his employment. Although a favorable decision for claimants, the *Purdy Brothers Trucking* decision is certainly illustrative for employers as will be discussed below.

Factual Background

In *Purdy Brothers Trucking*, claimant suffered an injury to his left hand and wrist on June 6, 2018, when he tripped and fell while unloading a truck. *Id.* ¶ 4. In July 2018, claimant worked as a 'spotter' at respondent's food processing plant in Amboy, Illinois which was operated by a third party, Sensient. *Id.* ¶ 5.

Claimant's spotter job required him to position tractor trailers in docks of the manufacturing plant. *Id.* For this position, respondent provided no job manual or training on either claimant's job duties or use of any equipment. *Id.* ¶ 6. Claimant testified he was simply instructed 'to do as [another spotter] did.' *Id.*

On the day of the accident, claimant was instructed by a Sensient employee to get a trailer containing barrels that were used to ship Sensient's products. *Id.* ¶ 9. Claimant drove the spotter truck and trailer filled with barrels to the dock. *Id.* Claimant then told the Sensient employee he would help get the barrels off the trailer. *Id.* When claimant grabbed one of the barrels and walked it to the back of the trailer, he tripped on a strap that was used to secure the barrels. *Id.* Claimant fell to the ground, injuring his left knee and left wrist. *Id.*

At arbitration, Claimant acknowledged he was taking direction from someone who was not employed by the respondent. *Id.* ¶ 12. Respondent's witness testified a spotter's responsibility is to move trailers into and out of the docking area, and spotters were instructed not to load or unload trailers. *Id.* ¶ 13. On cross-examination, the witness admitted respondent did not have an employee manual or specific job description for spotters, which would have confirmed his testimony spotters were instructed not to load or unload trailers. *Id.* ¶ 14. The arbitrator determined claimant suffered an injury that arose out of and in the course of his employment with respondent. *Id.* ¶ 16. In support of the finding, the arbitrator was critical of the respondent not having a job manual or specific job description for the spotter position, and at the time of the accident, claimant was not doing

anything that could be deemed unreasonable or unusual. *Id.* The Commission affirmed and adopted the decision of the arbitrator. *Id.* ¶ 18. On judicial review, the Circuit Court of Bureau County confirmed the decision of the Commission and respondent appealed to the Illinois Appellate Court.

Appellate Court Analysis

On appeal before the Illinois Appellate Court, respondent argued the Commission finding that claimant's injuries arose out of and occurred in the course of his employment as a spotter was against the manifest weight of the evidence because claimant was voluntarily performing activities he knew were outside the scope of his job duties, as he was specifically told not to unload trailers, when he was injured. *Id.* ¶ 22.

"An injury is said to 'arise out of' one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accident injury." *Id.* ¶ 26; citing *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 36. Illinois courts recognize three categories of risks to determine whether a claimant's injury arose out of his or her employment: "(1) risks distinctly associated with employment; (2) risks personal to the employee; and (3) neutral risks." *Id.* ¶ 26.

"Employment risks are those that are inherent in one's

employment.” *Id.* ¶ 27; citing *Illinois Consolidated Telephone Co. v. Industrial Comm’n*, 314 Ill. App. 3d 347, 352 (2000). These include the more obvious injuries: falling on slippery ground at the worksite or performing some work-related tasks which contributes to the risk of falling. *Id.* Personal risk, the second category, includes “nonoccupational diseases, personal defects or weaknesses, and confrontations with personal enemies.” *Id.* ¶ 28; citing *Illinois Consolidated Telephone Co. v. Industrial Comm’n*, 314 Ill. App. 3d 347, 352 (2000). These risks include something akin to a fall due to a bad knee or a fall due to an episode of dizziness. *Id.* These risks are generally noncompensable unless the employment conditions increase the risk of injury. *Id.* The third category, neutral risks, “have no particular employment or personal characteristics.” *Id.* ¶ 29; citing *Illinois Consolidated Telephone Co. v. Industrial Comm’n*, 314 Ill. App. 3d 347, 353 (2000). Examples of neutral risks include stray bullets, dog bites, lightning strikes, etc. *Id.*

“A risk is distinctly associated with one’s employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident[al] to his or her assigned duties. *Id.* ¶ 30; citing

McAllister, 2020 IL 124848, ¶ 46. The Court determined claimant’s injury in *Purdy Brothers Trucking* arose out of an employment-related risk based on the third prong, reasoning claimant was performing a task he reasonably believed to be part of his job. *Id.* ¶ 30.

Respondent’s central argument on appeal relied on the findings in *George S. Mephram & Co. v. Industrial Comm’n*, to posit claimant was ‘volunteering to perform duties,’ which would be considered outside the scope of his employment. *Id.* ¶ 34; *George S. Mephram & Co. v. Industrial Comm’n*, 289 Ill. 484 (1919). In *George S. Mephram*, “the employee worked in a paint factory, operating paint mixers driven by belts.” *Id.* ¶ 35. On the day of the injury, one of the belts broke and claimant offered to help fix the belt, although respondent specifically hired millwrights to fix and maintain the belts. *Id.* Ultimately, the case reached the Illinois Supreme Court, which held “an injury to an employee, ‘while engaged in a voluntary act not accepted by or known to the employer and outside the duties for which he is employed, cannot be said to arise out of his employment.’” *Id.*; citing *George S. Mephram & Co.*, 289 Ill. at 488.

Respondent argued the *George S. Mephram & Co.* case was directly on point, but ultimately the Appellate Court was unconvinced. It determined there was zero evidence claimant was specifically

prohibited from unloading trailers, even though claimant admitted it was not a task he normally performed. *Id.* ¶ 32. The Court disagreed claimant made himself a volunteer. The Court was also critical there was not a written policy about spotters loading and unloading trailers. *Id.*

Conclusions

One can see how this issue becomes so fact specific to a particular case. Since it is so fact specific and may come down to the trier of fact’s findings on conflicting witnesses’ credibility, it is important for an employer to do everything they can to avoid such a situation. Employers should maintain detailed job manuals and/or job descriptions clearly setting out their employee’s responsibilities. If it is foreseeable an employee may help another position’s duties, it should be clearly defined if this action is forbidden. HR



Joe Rust is a graduate of The Drake University Law School with a Business Law Certificate and a BA in

History and Political Science from the University of Iowa. He joined Heyl Royster’s Chicago office in 2019.

Joe focuses his practice in several areas of litigation including professional liability, commercial litigation, business/corporate law, general civil litigation, and construction law.

Contact Attorney:
Brad A. Antonacci
bantonacci@heyloyroyster.com
Kevin J. Luther
kluther@heyloyroyster.com
312.971.9807

Chicago Zone

Dockets Covered:
Elgin • Geneva • Wheaton
Contact Attorney:
Kevin J. Luther
kluther@heyloyroyster.com
815.963.4454

Zone 6

Dockets Covered:
Rockford • Waukegan • Woodstock
Contact Attorneys:
Kevin J. Luther
kluther@heyloyroyster.com
815.963.4454

Zone 5

Dockets Covered:
Kankakee • Joliet • Ottawa
Contact Attorney:
Kevin J. Luther
kluther@heyloyroyster.com
815.963.4454

Zone 4

Dockets Covered:
Bloomington • Rock Island • Peoria
Contact Attorney:
Jessica M. Bell
jbelle@heyloyroyster.com
309.676.0400

Zone 3

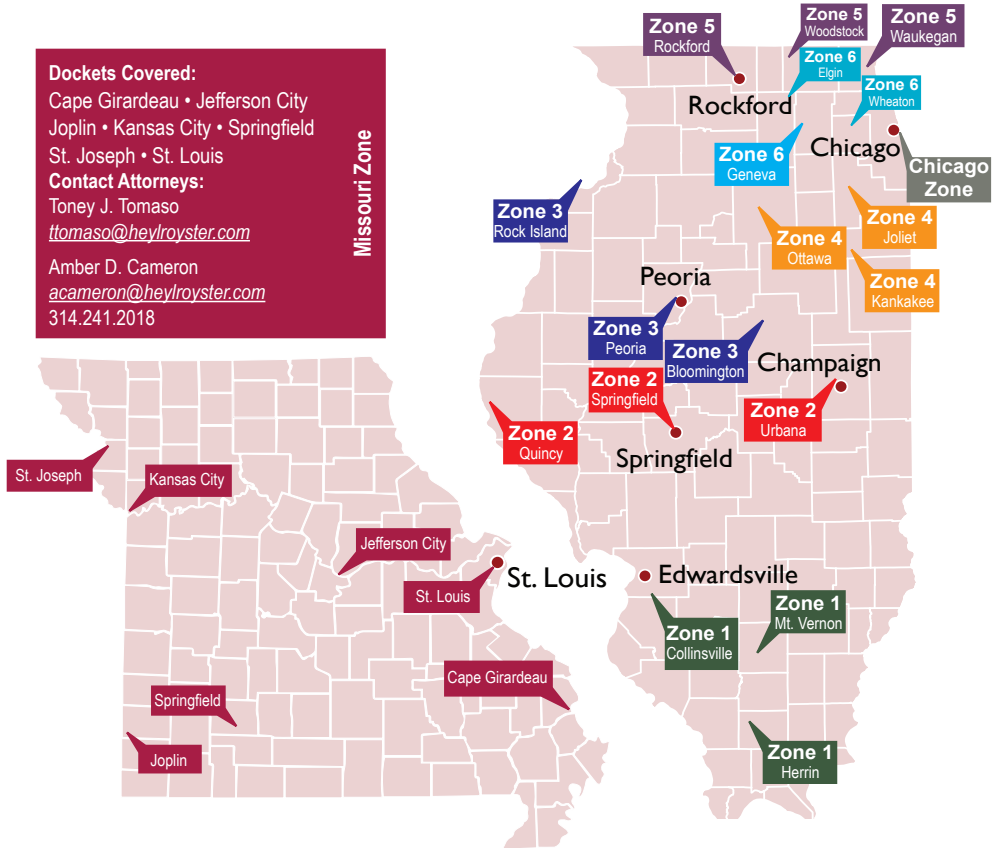
Dockets Covered:
Quincy • Springfield • Urbana
Contact Attorney:
Bruce L. Bonds
bbonds@heyloyroyster.com
217.344.0060

Zone 2

Dockets Covered:
Collinsville • Herrin • Mt. Vernon
Contact Attorneys:
Toney J. Tomaso
ttomaso@heyloyroyster.com
618.656.4646

Zone 1

REGIONAL ZONE MAPS



Workers' Compensation Practice Chair

Contact Attorney:
Toney Tomaso - ttomaso@heyloyroyster.com
217-344-0060

Workers' Compensation Appellate

Contact Attorneys:
Toney Tomaso - ttomaso@heyloyroyster.com
217-344-0060
Christopher Drinkwine - cdrinkwine@heyloyroyster.com
815-963-4454

State of Wisconsin

Contact Attorney:
Kevin Luther - kluther@heyloyroyster.com
815-963-4454

Jones Act Claims

Contact Attorney:
Ann Barron - abarron@heyloyroyster.com
618-656-4646

WORKERS' COMPENSATION OFFICE LOCATIONS

Champaign

301 N. Neil St.
Suite 505
Champaign, IL
61820
217.344.0060

Chicago

33 N. Dearborn St.
Seventh Floor
Chicago, IL
60602
312.853.8700

Edwardsville

105 W. Vandalia St.
Mark Twain Plaza III
Suite 100
Edwardsville, IL
62025
618.656.4646

Peoria

300 Hamilton Blvd.
Second Floor
Peoria, IL
61602
309.676.0400

Rockford

120 W. State St.
Second Floor
Rockford, IL
61101
815.963.4454

Springfield

3731 Wabash Ave.
Springfield, IL
62711
217.522.8822

St. Louis

701 Market St.
Peabody Plaza
Suite 1505
St. Louis, MO
63101
314.241.2018

WWW.HEYLROYSER.COM

WORKERS' COMPENSATION PRACTICE GROUP



Practice Group Chair

Toney Tomaso

ttomaso@heyloyroyster.com

Champaign Office



Contact Attorney:

Bruce Bonds

bbonds@heyloyroyster.com



John Flodstrom

jflodstrom@heyloyroyster.com



Joseph Guyette

jguyette@heyloyroyster.com



Toney Tomaso

ttomaso@heyloyroyster.com

Peoria Office



Contact Attorney:

Jessica Bell

jbell@heyloyroyster.com



Bruce Bonds

bbonds@heyloyroyster.com



Craig Young

cyoung@heyloyroyster.com



James Manning

jmanning@heyloyroyster.com



Melinda Rowe-Sullivan

mrowesullivan@heyloyroyster.com



Taylor Cascia

tcascia@heyloyroyster.com

Chicago Office



Contact Attorney:

Brad Antonacci

brantonacci@heyloyroyster.com



Kevin Luther

kluther@heyloyroyster.com



Joseph Rust

jrust@heyloyroyster.com

Rockford Office



Contact Attorney:

Kevin Luther

kluther@heyloyroyster.com



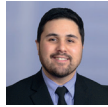
Heidi Agustsson

hagustsson@heyloyroyster.com



Jordan Emmert

jemmert@heyloyroyster.com



Joe Pishghadamian

jpishghadamian@heyloyroyster.com



Steve Getty

sgetty@heyloyroyster.com

Appellate



Contact Attorney:

Toney Tomaso

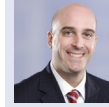
ttomaso@heyloyroyster.com



Christopher Drinkwine

cdrinkwine@heyloyroyster.com

Edwardsville Office



Contact Attorney:

Toney Tomaso

ttomaso@heyloyroyster.com



John Flodstrom

jflodstrom@heyloyroyster.com



Amber Cameron

acameron@heyloyroyster.com

Springfield Office



Contact Attorney:

Dan Simmons

dsimmons@heyloyroyster.com



John Langfelder

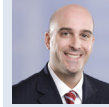
jiangfelder@heyloyroyster.com



Jessica Bell

jbell@heyloyroyster.com

St. Louis Office



Contact Attorneys:

Toney Tomaso

ttomaso@heyloyroyster.com



Amber Cameron

acameron@heyloyroyster.com



Jenna Scott

jscott@heyloyroyster.com



Below is a sampling of our practice groups highlighting a partner who practices in that area – For more information, please visit our website

www.heyloyster.com



Appellate Advocacy

Ann Barron

abarron@heyloyster.com



Business and Commercial Litigation

John Heil

jheil@heyloyster.com



Business Organizations & Transactions

Ken Davies

kdavies@heyloyster.com



Casualty/Tort Litigation

Nick Bertschy

nbertschy@heyloyster.com



Civil Rights/Section 1983 & Correctional Healthcare

Keith Fruehling

kfruehling@heyloyster.com



Construction

Mark McClenathan

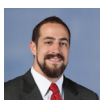
mmcclenathan@heyloyster.com



Employment & Labor

Brian Smith

bsmith@heyloyster.com



Governmental

Andy Keyt

akeyt@heyloyster.com



Healthcare

Katie H. Anderson

kanderson@heyloyster.com



Insurance Services

Patrick Cloud

pcloud@heyloyster.com



Long Term Care/Nursing Homes

Tyler Robinson

trobinson@heyloyster.com



Product Liability

Mark Hansen

mhansen@heyloyster.com



Professional Liability

Renee Monfort

rmonfort@heyloyster.com



Toxic Torts & Asbestos

Jennifer Johnson

jbjohnson@heyloyster.com



Trucking/Motor Carrier Litigation

Matt Hefflefinger

mhefflefinger@heyloyster.com



Workers' Compensation

Toney Tomaso

ttomaso@heyloyster.com



Scan this QR Code
for more information about
our practice groups and attorneys

Peoria

300 Hamilton Blvd.
Second Floor
Peoria, IL
61602
309.676.0400

Champaign

301 N. Neil St.
Suite 505
Champaign, IL
61820
217.344.0060

Chicago

33 N. Dearborn St.
Seventh Floor
Chicago, IL
60602
312.853.8700

Edwardsville

105 W. Vandalia St.
Mark Twain Plaza III
Suite 100
Edwardsville, IL
62025
618.656.4646

Rockford

120 W. State St.
Second Floor
Rockford, IL
61101
815.963.4454

Springfield

3731 Wabash Ave.
Springfield, IL
62711
217.522.8822

St. Louis

701 Market St.
Peabody Plaza
Suite 1505
St. Louis, MO
63101
314.241.2018

Jackson

200 W. Jackson St.
Suite 200
Ridgeland, MS
39157
800.642.7471

Under professional rules, this communication may be considered advertising material. Nothing herein is intended to constitute legal advice on any subject or to create an attorney-client relationship. The cases or statutes discussed are in summary form. To be certain of their applicability and use for specific situations, we recommend that the entire opinion be read and that an attorney be consulted. Prior results do not guarantee a similar outcome.