

BELOW THE RED LINE

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

April 2024

A WORD FROM THE PRACTICE CHAIR

As I draft this month's article, my wife and youngest are on their way back from college, and for her, the summer has begun. It seems really early to me, but graduations and end-of-school celebrations are just around the corner. If you have been paying attention around your neck of the woods, you may have seen some young men and women dressed to the nines (does anyone say that anymore?) going to Prom. All of the lead-up to summer sounds good to me. I look forward to eating meals outside and the sun staying out for those post-dinner walks without needing a jacket. I hope you get to soak in the change of season and enjoy your favorite annual events. I will have my entire family under my roof once again this summer, and I am very thankful because I know it won't last forever. So, let the summer of 2024 begin!

I hope you took the time to review a recent April 25, 2024, e-blast that our Employment Law Practice Group sent out that included those on the Workers' Compensation email list. The topic may affect your business or clients as the Fair Trade Commission, in essence, has said "no more" to non-compete agreements. I have attached the LINK [here](#) for the article. It is an excellent read from one of our new attorneys, [Ryan Bradley](#), and something every employer needs to be aware of moving forward.

This month, our Workers' Compensation Practice Group article is written by associate [Sam Brolley](#), who I get to work with and mentor in the Champaign office. Sam has a bright future ahead of him, and seeing him hard at work in his office late into the evening reminds me of his commitment to the law and his desire to make sure our client's needs are well taken care of. His is one of those articles I recommend you save in your electronic library, or if you take an old-school approach to things, print out the article as a reference guide when dealing with a traveling employee situation in Illinois. What is the traveling employee exception under the current Illinois case law, has it been expanded, and how do we combat it from a defense perspective? Sam does a great job of explaining this critical concept and reminding all of us that the devil is in the details - which is why a particular emphasis must always be on a thorough investigation of the claim early on and getting counsel involved to ensure the exploration of all possible defense avenues. We are here to help; all you need to do is call or email. Please feel free to contact any of the excellent Heyl Royster workers' compensation attorneys to help guide you through the process, and together, we can work to defend your traveling employee case best.

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THE TRAVELING EMPLOYEE DOCTRINE TRAVELS FARTHER

Town of Cicero vs. Illinois Workers' Compensation Commission

BY SAM BROLLEY

While most compensable workplace injuries occur at the employer's business, a portion do not. Some injuries occur among workers for whom travel is essential to their duties. Whether an injury sustained by a traveling employee is a compensable accident is a question that has garnered much debate over the years, and the First District Appellate Court of Illinois recently examined that question again in *Town of Cicero v. Illinois Workers' Comp. Comm'n*, 2024 IL App (1st) 230609WC.

Does the traveling employee doctrine, which impacts whether the injury is deemed to arise out of and in the course and scope of the workplace duties, apply to employees injured at their workplace on their way to their work vehicle? In *Town of Cicero v. Ill. Workers' Comp. Comm'n*, 2024 IL App (1st) 230609WC, ¶ 3, the petitioner, Michael Iniquez, was employed by Cicero as a blight inspector who would travel around the city inspecting buildings for broken windows, un-mowed lawns, and other eyesores diminishing the town's beauty. The petitioner was required to report to the town hall at 7:30 a.m. and would enter the building using a stairwell to ascend to the second floor, where his office was located. *Id.* Once in his office, the petitioner would retrieve his work phone and download his assignments for the day from the office computer. *Id.* After that, the petitioner would descend

the same stairwell, exit the building through the south entrance, and go to his Cicero-provided vehicle, which he would use to identify blighted properties. *Id.* Throughout the day, the petitioner would return to the town hall to receive further work assignments and would use the stairwell three or four times. *Id.*

On the date of the accident, the petitioner used the town hall stairwell to enter his office, where he spent about 20 minutes, and then he went to that same stairwell to access his Cicero-provided vehicle. *Id.* ¶ 4. As he started to descend the stairs, his right foot slipped off the edge of the second-floor landing, and he fell down the stairs, leading to various injuries. *Id.* The petitioner testified that while the edge of the landing was sludgy and greasy, there was nothing defective about the stairs, and the lights over the stairs were working. *Id.* No defects were mentioned in the accident report. *Id.* Testimony from other witnesses confirmed no defects were present. *Id.* ¶ 5.

After two arbitration hearings, the arbitrator issued a written decision denying benefits and finding that the petitioner failed to meet his burden of proof that he sustained an accident that arose out of and in the course of his employment. *Id.* ¶ 13. The arbitrator specifically found that "at the time of the fall, [Petitioner] was not a traveling employee, and although [Petitioner's] injuries were incurred in the course of employment, they did not

arise out of his employment.” *Id.*

The petitioner filed a Petition for Review of the arbitration decision. The Illinois Workers’ Compensation Commission issued a unanimous decision reversing the arbitrator’s decision and finding that the petitioner sustained an accident that arose out of and in the course of his employment, and the current condition of ill-being was causally related to that accident. *Id.* ¶ 14. The Commission found “the claimant was a traveling employee and that he did not lose that status merely because his accident occurred on stairs located in Cicero’s facility.” *Id.* The Commission also found that the “act of descending the stairs from his second-floor office to the exit leading to the parking lot where his assigned vehicle was located was reasonably foreseeable and incidental to his job duties.” *Id.* The Commission awarded the petitioner medical expenses, TTD benefits, and interest and ordered the Respondent to pay for bilateral shoulder surgeries. *Id.* The matter was remanded back to the arbitrator for further proceedings. *Id.*



Cicero sought judicial review of the Commission’s decision in the Circuit Court of Cook County, and the circuit court ultimately entered an order confirming the Commission’s decision. *Id.* ¶ 15.

On appeal to the First District Appellate Court of Illinois, Cicero relied on the Illinois Supreme Court’s analysis

in *McAllister v. Illinois Workers’ Comp. Comm’n*, 2020 IL 124848, arguing the injuries sustained by the petitioner when he fell down the stairs did not arise out of his employment because he was not exposed to a risk to a greater degree than the general public. *Cicero*, 2024 IL App (1st) 230609WC ¶ 17. The First District noted that traversing stairs is generally a neutral risk, and injuries resulting therefrom are not compensable under the Act. (citing *Village of Villa Park v. Illinois Workers’ Comp. Comm’n*, 2013 IL App (2nd) 130038, ¶ 20). Cicero argued the petitioner was not a traveling employee when he fell. *Cicero*, 2024 IL App (1st) 230609WC ¶ 17.

“In order to obtain compensation under the Act, the claimant must establish by a preponderance of the evidence that he suffered a disabling injury that arose out of and in the course of his employment.” *Id.* ¶ 19 (citation omitted). Both elements must be present at the time of the injury. *Id.* The First District explained that “[i]n the course of the employment’ refers to the time, place, and circumstances under which the claimant is injured.” (citing *Shefler Greenhouses, Inc. v. Industrial Comm’n*, 66 Ill. 2d 361, 366 (1977)). Because Petitioner here was injured while at work and on Cicero’s premises, the First District found he was clearly injured in the course of his employment. *Cicero*, 2024 IL App (1st) 230609WC ¶ 20. The remaining issue was whether the petitioner’s injuries arose out of his employment.

What does the “arising out of” prong consider? It considers whether “the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.” (citing *Sisbro*, 207 Ill. 2d at 203). “A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in order to fulfill his job duties.” (citing *McAllister*, 2020 IL 124848, ¶ 17).

The First District then returned to the question of whether the petitioner was a traveling employee. *Cicero*, 2024 IL App (1st) 230609WC ¶ 22. The court defined a traveling employee as “one who is required to travel away from his employer’s premises in order to perform his job.” (citing *Venture-Newberg-Perini, Stone & Webster v. Ill. Workers’ Comp. Comm’n*, 2013 IL 115728, ¶ 17). The court opined he was a traveling employee because the petitioner was required as a blight inspector to travel away from Cicero’s town hall, an essential element of his duties. *Cicero*, 2024 IL App (1st) 230609WC ¶ 22. Cicero disagreed and argued the petitioner was not a traveling

employee, as it was not until he left the town hall to travel through the town to inspect buildings that he would have become a traveling employee. *Id.* ¶ 23. Remember here: the petitioner tripped on stairs on his way to his vehicle to continue his job duties. Cicero cited *Pryor v. Illinois Workers' Comp. Comm'n*, 2015 IL App. (2nd) 130874WC, in support of its argument. In *Pryor*, the worker was injured as he bent down to pick up a suitcase and place it in his personal car before he was to drive from his home to his employer's terminal facility to commence his workday. *Id.* ¶ 7. Because the claimant had not embarked on a work-related trip at the time of his injury but was injured in preparation for a regular commute from his home to his employer's premises, there the First District affirmed the Commission's determination that the injury did not arise out of or in the course of his employment. *Id.* ¶ 29.

In *Cicero*, however, the First District distinguished *Pryor*, noting that unlike the claimant there, the petitioner was not injured either during or in preparation for a regular




commute from his home to his employer's principal location to begin his workday. *Cicero*, 2024 IL App (1st) 230609WC ¶ 24. Instead, he was injured when he fell down the employer's stairs after he had arrived at work, retrieved his assignments from Cicero's computer, and was on his way to his Cicero-provided vehicle. *Id.* The First District also rejected an argument that the petitioner was injured on the employer's premises before his workday began, as the facts showed that he fell down the stairs after retrieving his work phone and downloading his assignments for the day. *Id.* ¶ 25.

Why does it matter that the petitioner was deemed a traveling employee? The court was careful to note that determining whether an injury to a traveling employee arises out of and in the course of his employment

is governed by different rules that apply to other employees. *Id.* ¶ 26 (citations omitted). An injury to a traveling employee arises out of his employment if he was injured while engaging in conduct that is "reasonable and foreseeable" by his employer." (citing *Robinson v. Industrial Comm'n*, 96 Ill. 2d 87, 92, 70 Ill.Dec. 232, 449 N.E.2d 106 (1983)). To the Commission, the petitioner's actions of obtaining his work phone, downloading his assignments, and attempting to make his way to his employer-provided vehicle to perform his inspection duties were reasonable, foreseeable, and incidental to his job. *Cicero*, 2024 IL App (1st) 230609WC ¶ 26. The First District agreed, concluding the Commission's findings that the petitioner was a traveling employee and that the injuries sustained arose out of and in the course of his employment were neither contrary to law nor against the manifest weight of the evidence. *Id.* The First District affirmed the judgment of the circuit court, which confirmed the Commission's decision to award benefits. *Id.* ¶ 28.

This case shows that arbitrators and reviewing courts may find that an injured worker was a traveling employee even if they were not traveling at the time of the injury. Had the petitioner sustained a fall while taking the staircase up to his office before he began working, or had he injured himself while on his regular commute from his home to his workplace or while preparing for that commute as was the case in *Pryor*, the outcome of this matter may have been different. Once it is established that an employee is a traveling employee, the "arising out of" prong is established simply by showing that the injury occurred while the worker was engaged in conduct that was reasonable and foreseeable by the employer, a standard which gives significant latitude for arbitrators, commissioners, and reviewing courts to find in favor of injured workers. As always, it is critical for employers and insurance companies investigating injuries to keep careful documentation so that all possible defenses may be explored with vigor. Retaining counsel in a timely fashion maximizes the likelihood of preserving existing evidence and identifying additional investigation needed to fortify one's defense position against these claims.

Please feel free to contact any of our workers' compensation attorneys should you have any questions on this topic or any other workers' compensation issues. 



ABOUT THE AUTHOR



Sam Brolley

Associate in Champaign, IL

- Casualty & Tort
- Civil Rights & Correctional Healthcare Litigation
- Employment & Labor
- Healthcare
- Trucking
- Workers' Compensation

Sam believes in preparing diligently, getting to know the needs and motivations of his clients, and paying attention to local rules. He brings effort, enthusiasm, and energy to every case and client interaction.

Sam joined Heyl Royster's Champaign office in 2021 as an Associate attorney. He works in civil litigation, focusing on Workers' Compensation, casualty/tort litigation, healthcare, guardianships, trucking, and employment. Sam believes in preparing diligently, getting to know the needs and motivations of his clients, and paying attention to local rules. He brings effort, enthusiasm, and energy to every case and client interaction.

Sam received his J.D. from Notre Dame Law School in 2021. While at Notre Dame, Sam served two years as an editor for the Journal on Emerging Technologies. He spent his law school summers with the Cook County Public Defender in Chicago and Heyl Royster, respectively. During his final year, he externed for the City of South Bend's legal department and enjoyed serving the men of Knott Hall as an assistant rector.

Outside work, Sam mentors through the Big Brothers Big Sisters of Central Illinois program and is a fan of the Fighting Illini and Fighting Irish sports teams. He enjoys weightlifting, kayaking, and ultimate frisbee. Ask Sam about his favorite band (hint: it's Pearl Jam).

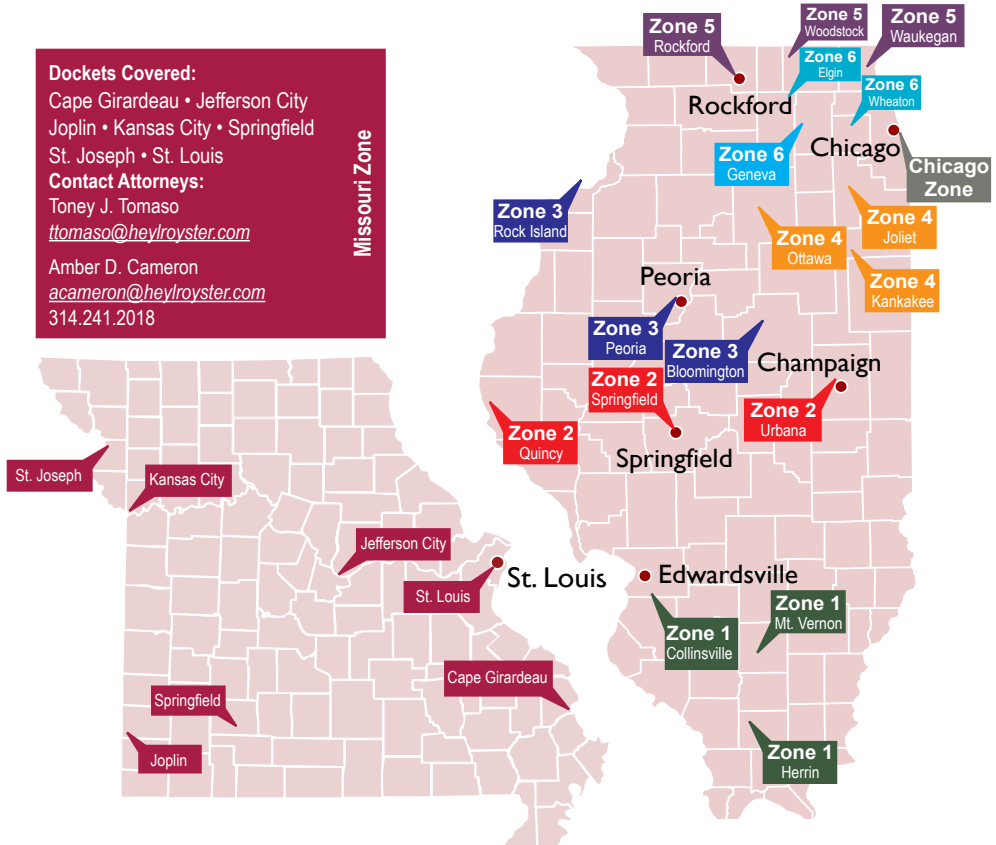
A graphic with a light beige background and red accents. In the top left, the Heyl Royster logo is displayed in white on a red square. To its right, the text 'COMMITTED COLLABORATIVE ACCOMPLISHED POSITIONED' is written in large, bold, black letters. On the right side, a vertical red bar contains the text 'WORKERS' COMPENSATION TEAM' in white, oriented vertically. The main body of text reads: 'WHEN EXPERIENCE MATTERS' followed by a paragraph: 'If your business, organization, or you as an individual need premier defense services from an industry-leading workers' compensation defense firm, the dedicated legal minds at Heyl Royster are ready to provide you with the legal advice and legal services that you deserve. From complex claims to disputes, causation, and more, our workers' compensation attorneys are experienced litigators ready to come to your defense.' At the bottom, it says 'Heyl Royster Is Ready To Defend You'.

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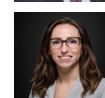
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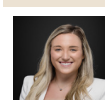
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