

BELOW THE RED LINE

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

June 2023

A WORD FROM THE PRACTICE CHAIR

I hope your summer is in full swing and you are enjoying a more relaxed schedule. You may realize when I penned this note to you because right now I am looking out my window thinking, "Geez Canada, I did not think anything could get me to wear my COVID mask again, but ..." If you are in the Northeast or Midwest, you have probably seen the smoke rolling in from Canada due to wildfires. I hope this haze is short-lived and has zero impact on your summer plans. Sometimes, it is just amazing how weather works.

Speaking of summer plans, I have some news. When you first read this, you might think it is unfortunate. But, upon further review, it might be a silver lining. Let me explain. Heyl Royster put on an awesome Claims Handling Seminar on June 15 in Bloomington, Illinois. Yes, I am biased. But, I must report the Heyl Royster workers' compensation team did truly great work, and we covered timely and important topics. I requested the event be recorded. It was, partially. The bad news is our very new, high-def video camera died during the first phase of our event. So, we could not upload the presentation video to the Heyl Royster library online. Now, for the good news. Heyl Royster is willing to give the presentation again for you. We can do this at your office or virtually. You can cherry-pick what subject matters you want to be presented, and we will set you up with some of our practice group members—a presentation tailored just to your needs. We always talk about getting together with our friends and ensuring the product we provide is practical and important to you. So, if you go looking for the video of our June 15th presentation, you will not find it. But you will find a LINK to me so we can talk about how best to provide a presentation just for you and your Team. And, if this presentation is in person, I promise we will bring along cookies.

This month's article was prepared by [Heidi Agustsson](#), a seasoned attorney in our Rockford office. Heidi touches on a topic that should be discussed at the beginning of any workers' compensation case analysis: Is the worker an actual employee of the employer? I think we all realize if the answer to that question is no, then you might have a short and sweet file handling on the claim. Heidi examines the *Larson case*, where she explains the Court's reasoning in determining a claimant's status as an employee. There are some really good takeaways from this case and the Appellate Court's findings.

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FEATURE ARTICLE

EMPLOYER/EMPLOYEE RELATIONSHIP- ARE INCIDENTAL BENEFITS ENOUGH TO ESTABLISH THE RELATIONSHIP?

BY HEIDI AGUSTSSON

It is well settled that for an injury to be covered under the Illinois Workers' Compensation Act, an employer/employee relationship must exist at the time the accident occurs. An entity must have a person in its service under a contract of hire, oral or written, express or implied, to create that relationship. 820 Ill Comp.Stat.Ann 305/1(a)(West 2014).

The Illinois Appellate Court recently looked at this issue in *Larson v. Illinois Workers' Compensation Comm'n*, 2023 Il App (4th) 22052WC-U. The court examined whether or not the petitioner, who was injured during a crash landing of the plane she was flying, was an employee of Quad City Skydiving Center, Inc.

Petitioner Larson wanted to accumulate flight hours to obtain her flight instructor rating, which would allow her to fly jets. Her friend told her of an opportunity to fly for Quad City Skydiving (QCS) to increase her flight hours. Larson met with QCS owner Dennis Jensen. They agreed that Larson would fly between 5-8 hours each Sunday, depending on the number of jumpers QCS had registered. Larson did not get paid and never expected to get paid.

On June 29, 2014, she was flying for QCS when the plane crashed while she was attempting to land. Larson flew two or three times before the accident occurred. Larson sustained blunt force

trauma to her face, causing lacerations and a broken nose requiring two reconstructive nasal surgeries. She filed a claim against QCS with the Illinois Workers' Compensation Commission.

At the arbitration hearing, Jensen testified that he had owned the skydiving business for 20 years and had never paid a pilot who flew for QCS. He used only volunteer pilots for his business and had no employees. Likewise, several other pilots testified that they flew for QCS to acquire flight hours but were never paid.

QCS provided Larson with the airplane and the fuel to ferry skydivers. Although Larson used her own headset, QCS provided the other equipment and directed Larsen where to fly and the route. QCS also told Larson what altitude to fly, where skydivers could jump, how much fuel to use, and what to do while descending the plane. She was to stay until the jumps were completed, and QCS would tell her when she was allowed to leave.

She recorded the hours she flew in her flight logbook. QCS never checked those hours to ensure they were accurate, nor was it something that QCS required its pilots to do. Despite Larson's testimony, Jensen denied that he controlled the manner in which she flew. He explained that she was already qualified to fly the Cessna 182, and he only conveyed instructions from the tower to her.

At the arbitration hearing, Larson admitted she had agreed to fly without monetary compensation in order to accumulate flight hours. Alternatively, she would have had to rent a plane from a flight school for \$195 an hour to obtain the required hours. Therefore, for every hour she flew for QCS, she saved \$195. She testified that she told Jensen that flying for QCS would benefit her by allowing her to get hours free of charge and that Jensen responded that he would benefit from the fact she could fly his plane, freeing





him from performing the task. Larson admitted during cross-examination that she was “volunteering” and that she was receiving an “incidental benefit.” She never received any tax documentation from QCS reflecting a monetary or other benefit.

The arbitrator found there was consideration for the parties’ agreement. He held that QCS gave as consideration the implied promise that Larson could fly the company’s plane and accumulate hours. Therefore, he found Larson was an employee, not an independent contractor, and awarded benefits.

On appeal, the Commission reversed the arbitrator’s decision. It held that “a true employer-employee relationship does not exist in the absence of the payment or expected payment of consideration in some form by employer to employee.” It relied on the Court’s findings in *Board of Education of the City of Chicago v. Industrial Comm’n*, 53 Ill.2d 167 (1972), where a volunteer assistant teacher was not entitled to benefits under the Act because there was no consideration between the parties that could give rise to an employment contract as the assistant’s activities were strictly on a volunteer basis with no expectation of money. Similarly, Larson admitted that she had no expectation of being paid for the hours she flew and did not expect that it would lead to gainful future employment. She used this volunteer opportunity to gain additional flight hours required for a higher rating. Therefore, because no consideration or payment was given in exchange for Larson’s agreement to volunteer, no employer/employee relationship was created, and she was not entitled to workers’ compensation benefits.

Larson sought judicial review in the circuit court. The court reversed the Commission’s decision and reinstated the arbitrator’s decision, finding she was an employee and was entitled to benefits. The matter was then appealed to the appellate court, which confirmed the Commission’s decision and found it was not against the manifest weight of the evidence. Focusing on whether or not an employer/employee relationship existed at the time of the accident, the appellate court noted there could be no employer/employee relationship and no liability of an employer under the Act, absent a contract for hire, express or implied. *Pearson v. Industrial Comm’n*, 318 Ill. App. 3d 932, 935 (2001). An employer/employee relationship is a product of mutual assent and is reached by a meeting of the minds. In this case, the facts did not give rise to a contract for hire being established, despite the fact that both parties benefited from the agreement. It simply was the petitioner volunteering for a task that provided her an incidental benefit and both parties a mutual gratuity – not consideration for the petitioner’s services.

When a claim is filed by a party who may not be an employee, such as an independent contractor, volunteer, or agricultural or seasonal worker, it may be difficult to determine if the claimant is an employee under the terms of the Act. An early miscalculation can be costly. 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



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- Professional Liability
- Toxic Torts & Asbestos
- Workers' Compensation

Heidi is a straight shooter. Her practice philosophy is simple. No matter the size or extent of the injuries or damages claimed, she and her clients are a team going into battle together.

Heidi Agustsson understands that a successful relationship is built not only on honesty but knowing the facts (the good, the bad, and the ugly). Combined with hard work and shared goals, it is important to Heidi to establish a strong working relationship with her clients, ensuring they have access to her and instilling confidence that their case is being handled promptly and efficiently. Her clients appreciate her truthful direct communication about the challenges they may face.

Heidi began practicing law in 2000 after graduation from the University of Illinois Chicago School of Law. She joined Heyl Royster in 2006, becoming a partner in 2012. Heidi was offered an opportunity in 2019 to work in-house with an insurance company writing legal professional liability policies. She obtained her adjuster's license which allowed her to gain experience and understand, from another perspective, the tools available to defend a client. In the spring of 2020, Heidi returned to Heyl Royster as an Of Counsel attorney. Working out of our Rockford office, Heidi's practice takes her to northern and central Illinois, as far east as Cook County and as far west as Jo Daviess County.

Heidi currently concentrates on civil defense matters, including automobile litigation, premises liability, and legal malpractice. She represents agricultural companies, employers in Workers' Compensation cases, and companies in toxic tort claims. She has tried several cases to verdict and has handled numerous arbitrations. She has obtained defense verdicts in automobile accidents, disposed of alleged slip and fall accidents through dispositive motions, and secured dismissals of suits filed against toxic tort clients at the close of discovery. Heidi also believes in and takes advantage of several good regional mediators who assist with settlement conferences. Her opinion is that a well-written mediation position statement and a keen understanding of the details of the case, along with the assistance of a persuasive mediator, can educate opposing counsel on the true value of a claim and help the parties reach a favorable settlement.

Heidi is active in her community, serving on several boards and leading the Christopher and Jack Ruckman Music Memorial Scholarship Foundation. The Foundation, through its generous donors, provides scholarships to graduating high school seniors, as well as musical instruments/lessons and camp tuitions for children. She is an avid runner, completing several half marathons at Disney World, various national parks, and most recently, at the Joshua Tree National Park.

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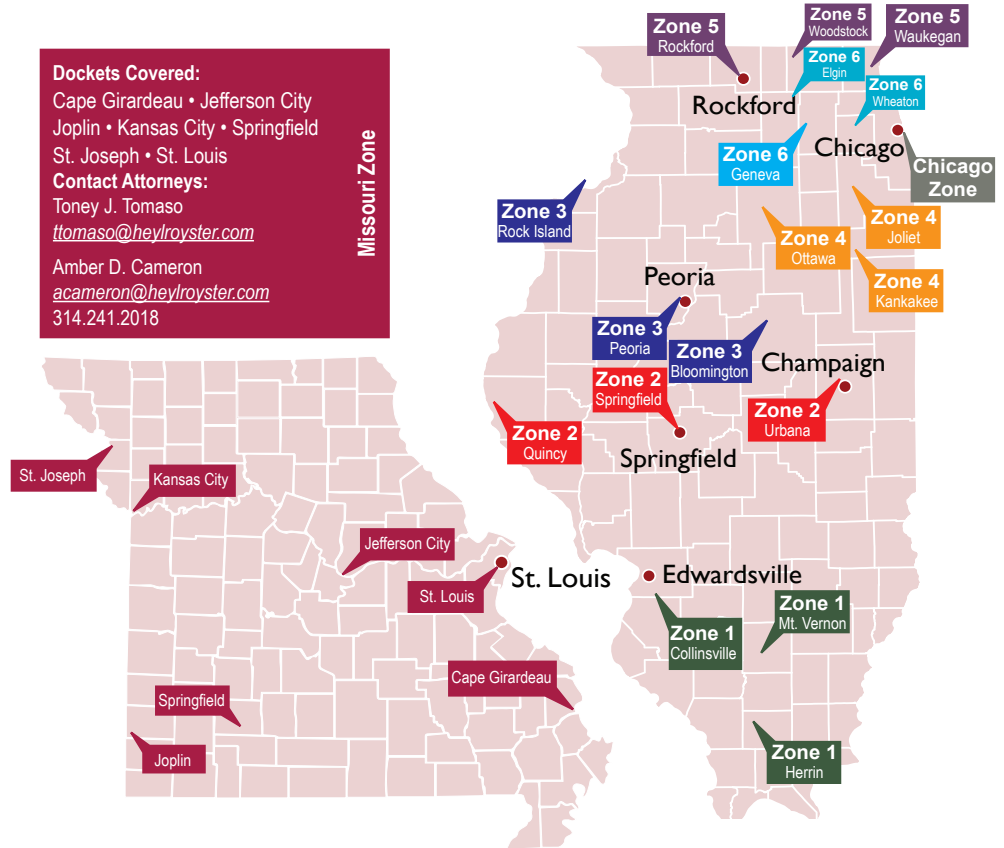
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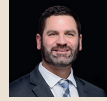


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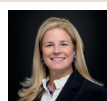


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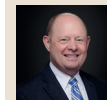


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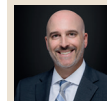


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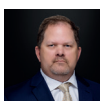
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