The Law of Parking Lot Cases

WCLA 2/28/19

Jon C. Walker

WOODRUFF JOHNSON & EVANS
CHICAGO | AURORA | CHAMPAIGN
WORKERS' COMPENSATION | SOCIAL SECURITY DISABILITY | PERSONAL INJURY

jwalker@woodrufflawyers.com

WCLA MCLE 2-28-19

- The Law of Parking Lot Cases
- February 28, 2019
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

The origin of parking lot liability
De Hoyos v. Industrial Comm'n

- 26 Ill.2d 110 (1962).
- Mauro De Hoyos parked in employer provided parking lot in St. Charles for 12 years, on December 8, 1958 he slipped on ice and injured his right knee while walking towards plant entrance.
- Mr. De Hoyos testifed the parking lot was owned by employer (Moline Malleable Iron Co.), on cross conceded he did not know as a fact who owned parking lot.

Moline Malleable Iron Company's argument:

- Employee was not on company property.
- Fall caused by the elements.
- No connection to employment.
- Supreme Court rejects: "Whether or not the employer owned the parking lot is immaterial: for if the employer provides a parking lot which is customarily used by its employees, ***the employer is responsible for the maintenance and control of that parking lot."***

De Hoyos Increased Risk

- Supreme Court: “an employee who falls on a parking lot provided by his employer while proceeding to work, we believe, is subjected to hazards to which the general public is not exposed.”

Maxim's of Illinois v. Industrial Comm'n

- 35 Ill.2d 601 (1966).
- Elma Buhs was a beauty salon employee who works at Maxim's, located on the 2nd floor of the W. Lewis & Co. department store in Champaign.
- On December 4, 1964, Elma asked her manager for a ride to work because it was raining.
- Manager parked in W. Lewis parking lot and Petitioner slipped and injured her right ankle. W. Lewis parking lot separated from department store by another store, Rogards.

Supreme Court denies compensation in Maxim's

- Court notes employees did not customarily use parking lot and Petitioner usually traveled to work by bus.
- Lease between W. Lewis & Co. and Maxim's did not mention parking facilities.
- Parking lot was not owned, controlled or maintained by employer.

Hiram Walker & Sons v. Industrial Comm'n

- 41 Ill.2d 429 (1968).
- Elmer Radosavlyev had worked for Hiram Walker distillery for 24 years. Customarily drove to work, parked in company lot, punched in between 6:10 and 6:20 a.m., though he was not to start work until 7:00 a.m.
- On the morning of March 23, 1965, he arrived at work shortly after 6:00 a.m., walked about 15 feet and slipped on ice, injuring his hand.
- Some dispute as to whether he was walking into distillery or to Elsie's Café, one block from main gate of distillery.

Supreme Court finds compensable

- “He fell at about the time at which he had customarily checked in for work during his 24 years as an employee. On that morning, as on other mornings, he parked in the company lot intending to leave his car there throughout the working day. **His presence in the lot was due entirely to his employment, and the risks to which he was there exposed because of the icy surface did not depend upon whether he went directly into the plant or detoured briefly to get breakfast**. In the absence of evidence that the condition of the lot would have been remedied between the time of the claimant’s arrival and the time that he was due to start work, **neither the precise time of his arrival nor his immediate destination was relevant to the risk created by the condition of the parking lot.”**

Walker analysis continued…

- “In numerous decisions it has been held that an employer is responsible for the maintenance and control of a parking lot that he provides for the use of his employees, and that an injury incurred by an employee while on the lot, within a reasonable time before or after work, arises out of and in the course of his employment.”
- “the parking lot was provided and used as an incident of the employment. The lot was used as an adjunct of the employer’s plant, it was furnished and maintained by the employer to facilitate the arrival and departure from work, and it was contemplated that employees would use the lot in going to and from their employment.”

Aaron v. Industrial Comm'n

- 59 Ill. 267 (1974)
- Gardenia Aaron was an employee of Archer Laundry.
- On January 14, 1971, she left work at 3:30 p.m., picked up some cleaning from Respondent's cleaning service, and proceeded to the Respondent's parking lot where she was to meet fellow employee, Ethel Slate, who was to driver her home. While walking to Ms. Slate's car she slipped on ice and injured her left ankle.
- Ms. Slate and Ms. Miller testified that after leaving work they (along with Gardenia Aaron) spent 2 hours in a nearby tavern drinking, and the injury occurred while walking to the car after the happy hour.

Supreme Court denies compensation in Aaron

- “It is not enough that the injury occurs within the time of employment or on the premises of the employer; it must also have occurred in the course of some activity related to the employment. The course of employment may embrace a reasonable period of time before and after working hours as well as the going to and from work. However, a personal deviation by an employee can break the link with his employment.”
- “The facts in *Hiram Walker & Sons, Inc*. are substantially different from the facts of the present case.”

Rogers v. Industrial Comm'n

- 83 Ill 2nd 221 (1980).
- Lloyd Rogers parked in lot provided by his employer, Superior Equipment Managing.
- On April 25, 1977, at 3:35 p.m., Roger had "punched out" and was waiting for his wife to pick him up in employer parking lot.
- "As he was walking towards his wife's car in the parking lot he suddenly heard a loud noise, sounding, as he said, like a hundred automobile engines, and he saw his wife's automobile bearing down on him. It struck him, causing serious injuries."
- It was later determined that the vehicle malfunctioned.

Supreme Court denies compensation in Rogers

- “the injury was not caused by a condition of the parking lot, or by any activity of the employer. We cannot therefore say as a matter of law that the injury arose out of the employment.”

Caterpillar Tractor Co. v. Industrial Comm'n

- 129 Ill.2d 52 (1989).
- Thomas Price injured his right ankle stepping off curb while walking from Caterpillar plant to employee parking lot.
- Supreme Court concludes nothing in record to indicate that curb was either defective or hazardous.

Caterpillar increased risk analysis:

- “the object of comparing between the exposure of the particular employee to a risk and the exposure of the general public to risk is to isolate and identify the distinctive characteristics of the employment. Curbs, and the risks inherent in traversing them, confront all members of the public. The claimant is not more liable to twisting his ankle than he would have been had he been engaged in any other business. While it is true that he regularly crossed this curb to reach his car, there is nothing in the record to distinguish this curb from any other curb.”

Wal-Mart v. Industrial Comm'n

- 129 Ill.App. 3d 438 (2001).
- Parking lot used by both employees and customers.
- Employees requested to park on south side of lot to allow customers greater access to store entrance.
- On November 11, 1995, Heather Parry scheduled to work from 4:30 p.m. to 11 p.m. shift.
- At 8:30 p.m., Heather Parry was walking to south side of lot on her break, where her roommate was waiting in Parry's car, when she slipped on ice.

Appellate Court denies compensability

- Entire parking lot available for customers and employees.
- Roommate was not an employee; Heather Parry did not park her car in south lot.
- Hazard to which Heather Parry and the general public equally exposed.
- “the object is to isolate and identify the distinctive characteristics of the employment.”

Mores-Harvey v. Industrial Comm'n

- 345 Ill.App.3d 1034 (2004).
- Employees directed to park on the sides or behind restaurant to allow customers to park nearest entrance.
- On December 7, 1997, Bob Evans server, Janice Mores-Harvey parked in the back as instructed and slipped on ice.

Mores-Harvey walks back Wal-Mart

- “First, recovery has been permitted where the employee has sustained injuries in a parking lot ‘provided by and under the control of an employer.’”
- “Second, recovery has been permitted for off-premises injuries when ‘the employee’s presence at the place where the accident occurred was required in the performance of his duties and the employee is exposed to a risk common to the general public to a greater degree than other persons.’”
- Citing Larson, parking lots owned or maintained by the employer are considered part of the employer’s premises. Once the parking lot is part is considered part of the employer’s premises, “compensation coverage attaches to any injury that would be compensable on the main premises.”
- **“Whether a parking lot is used primarily by employees or by the general public, the proper inquiry is whether the employer maintains and provides the lot for its employees’ use. If this is the case, then the lot constitutes part of the employer’s premises. The presence of a hazardous condition on the employer’s premises that causes a claimant’s injury supports the finding of a compensable claim.”**
- The Court noted that in Wal-Mart the employee was walking to her roommate’s car and “There was no evidence that anyone had asked the claimant’s friend to park where she did. Thus, the claimant was in a sense, not acting under the employer’s control or restrictions when she left the store to go on break and so could not have faced any risks to a greater extent than those of the general public.” The Court distinguished its case because “Although the general public was free to park anywhere in the lot, claimant’s choices were restricted. Therefore, claimant’s exposure to risk was necessarily greater than that of the general public.”

Suter v. Ill. Workers' Comp. Comm'n

- 998 N.E.2d 971 (2013).
- Mary Suter was hired by Manpower, a temporary employment agency and was loaned to Illinois Department of Insurance, at the Bicentennial Building, in Springfield.
- The State of Illinois leased the building for several agencies. The lease required the landlord provide parking spaces for State of IL employees.
- Manpower did not provide Mary Suter with any instructions regarding parking.

Suter continued…

- On first day of work, she asked supervisor Tom Collier and he told her to speak with building manager, Douglas Sim.
- Douglas Sim was not State of IL employee but worked for building.
- Sim assigned her one of the State of IL employee lots.
- Parking lot not available to general public.
- Sims testified state of IL did not direct him to do so.
- February 8, 2010, Ms. Suter slips on ice and suffered injury.

Appellate Court find compensable

- “We believe that the holding of *De Hoyos* applies squarely to the facts of this case concerning whether the claimant’s accident occurred ‘in the course of’ her employment. It is uncontroverted that the claimant was a borrowed employee working for the State of Illinois and that the parking spaces in the lot where she fell were furnished to employees for their use through the State’s lease agreement with the building’s landlord. These facts, ‘uncontroverted on the record’, establish that the ‘employer provide[d] a parking lot for employees and an employee [fell] on [this] parking lot.’”

Dukich v. Ill. Workers' Comp. Comm'n.

- 2017 IL App (2d) 160351 WC.
- Barbara Dukich parked in Fenton High School parking lot each day, at 1 p.m. on February 23, 2012, she was walking to her car with the intention of driving home for lunch.
- She used the handicap ramp between the school's entrance and parking lot.
- Barbara slipped on the wet ramp and suffered severe injuries.

Appellate Court rejects increased risk

- Supreme Court in De Hoyos: “an employee who falls on a parking lot provided by his employer while proceeding to work, we believe, is subjected to hazards to which the general public is not exposed.”

- Appellate Court in Dukich: “the wet pavement upon which the claimant fell was no different from any other wet pavement. The paved surface was merely wet from the rain…She did not argue that the ramp upon which she fell was unusually slippery when exposed to rainfall. Thus, there was no evidence suggesting that the claimant was more likely to slip and fall on her employer’s premises than she or any other member of the public would be likely to fall on any other paved, wet, and sloped surface.”
- But isn’t slippery water a hazard???

Appellate Court rejects extension of employer's premises

- Appellate Court in Mores-Harvey: parking lots owned or maintained by the employer are considered part of the employer's premises. Once the parking lot is considered part of the employer's premises, compensation coverage attaches to any injury that would be compensable on the main premises.
- Supreme Court in De Hoyos: "Whether or not the employer owned the parking lot is immaterial: for if the employer provides a parking lot which customarily used by its employees, the employer is responsible for the maintenance and control of that parking lot."
- Appellate Court in Dukich: "The claimant cites no published case that holds or suggests that an outdoor, paved surface wet from rainfall constitutes a 'hazardous condition' absent ice, snow or some other defect or hazard."

Why Is Ice Slippery?

- Live Science, May 21, 2018
- It turns out that scientists didn't really know the answer to that simple question until recently. But new research has shown that ice's slipperiness may be due to "extra" molecules on the surface of the ice.
- A long-standing theory says that this is what causes ice to be slippery: As you step on it, the pressure of your weight causes the top layer to melt into water.
- "I think everybody agrees that this cannot possibly be, " Mischa Bonn, director of the molecular spectroscopy department at the Max Planck Institute for Polymer Research in Germany, told Live Science. "The pressures would need to be so extreme, you can't even achieve it by putting an elephant on high heels.“
- Another theory says that the heat created by friction when you move across the ice produces the layer of water. However, ice is not only slippery when you are moving, as anyone who tries to stand on ice skates for the first time quickly discovers.

Why Is Ice Slippery? continued…

- Mischa and Daniel Bonn, who are brothers, published a paper May 9th in the Journal of Chemical Physics describing the surface of ice. Rather than a layer of liquid water on the surface of ice, they found, there were loose water molecules. Mischa Bonn compared it to a dance floor that is "filled with marbles or ball bearings." Slipping across the surface of the ice is simply "rolling" on these molecular marbles.
- Ice has a very regular, neat crystal structure, where each water molecule in the crystal is attached to three others. The molecules on the surface, however, can only be attached to two others. Being so weakly bonded to the crystal allows these surface molecules to tumble, and attaching and detaching themselves to various sites on the crystal as they move.
- Even though slipping on ice is caused by essentially rolling over these water molecules, this layer of molecules is not the same as a layer of liquid water. These molecules and the slipperiness exist at temperatures far below water’s freezing point. In fact, the way these molecules move so freely and diffuse across the surface actually makes them look more like a gas, Daniel Bonn said.

Cher Smith v. Manhattan Park District

- 11 WC 19917
- Cher Smith employed as program coordinator.
- December 13, 2010, she completed her shift at 4 p.m. and walked to her car through the snow covered parking lot.
- Smith testified she was told where to park.
- Supervisor Julie Popp testified did not see snow accumulation and the lot is open to general public.
- Supervisor Popp testified parking lot cleared of snow and that superintendent salted the lot, likely the morning of accident.

No citation of parking lot cases in Commission decision

- “The evidence establishes that the parking lot was open to and used by members of the general public. While the parking lot was also used by employees of the Park District, there is no evidence establishing that the Park District instructed their employees to park in that lot. Rather, employees were free to park anywhere in the lot, park in the street, or park in the Park District’s other parking lot. Thus, the employees and members of the general public were exposed to the same risk.”

Cher Smith Rule 23
2019 IL App (3d) 180251WC-U

- This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).
- Quoting Mores-Harvey: “[w]hether a parking lot is used primarily by employees or by the general public, the proper inquiry is whether the employer maintains and provides the lot for its employees’ use. If this is the case, then the lot constitutes part of the employer’s premises. The presence of a hazardous condition on the employer’s premises that causes a claimant’s injury supports the finding of a compensable claim.”

But that's not what you've said since De Hoyos 1962!!!

- Appellate Court in Cher Smith: "The hazardous condition on the employer's premises renders the risk of injury incidental to employment without having to prove that she was exposed to the risk of that hazard to a greater extent than are members of the general public."
- Supreme Court in De Hoyos: "an employee who falls on a parking lot provided by his employer while proceeding to work, we believe, is subjected to hazards to which the general public is not exposed."