



PAST PRESIDENT'S MESSAGE

Dear WCLA Members:

My year as the 64th President of the Illinois Workers' Compensation Lawyers Association (WCLA) is quickly coming to an end. I want to thank everyone who has supported me over the past 18 months, especially the many past presidents who provided much help and advice, including immediate Past Presidents Michael F. Doerries and Wayne L. Newman. I also want to thank all my fellow officers, board members and our Executive Director, Nina Albano Vidmer, who have helped to make this such a wonderful year for a great organization.

I know we will be in good hands with my successor, Andrew L. Rane, who has been an exemplary Vice President for me this year as I am certain he will do a wonderful job as the 2014 President. I extend my thanks to the great newsletter staff and the Chair of that committee, John J. Castaneda for their hard work in issuing the quarterly newsletters.

I have been honored to serve as president and I hope my fellow WCLA members have enjoyed this year and will continue to enjoy all that WCLA has to offer.

I want to thank all who attended the Installation Dinner on January 19, 2013 at the Trump International Hotel & Tower in Chicago, IL. It was a wonderful night for me, personally, as well as the other Officers and Board of Directors who were sworn in by the Honorable Thomas L. Kilbride, Chief Justice of the Illinois Supreme Court. A real highlight of the evening included the donation of wine sitting at our tables from fellow WCLA member, Joseph Garofalo.

One of my goals was increasing our membership, We achieved that and set a new record of 713 members. Another goal was to continue to promote fellowship and education among members of the Illinois bar engaged in the trial of workers' compensation matters. We accomplished that by hosting free monthly accredited CLE programs and by hosting our annual medical seminar that was held on September 13, 2013. We also protected our client's mutual interests by way of our PAC that continues to grow as our membership grows. Finally, we promoted respect and collegiality within our profession and with the judiciary via the three-hour CLE ethics program on February 12, 2013, as well as by the Appellate Court Luncheon on October 30, 2013.

No president works alone and I did not work alone this year. Without my fellow Officers and Board of Directors who were up to the task of making this an exciting year, we could not have had the year that we had. This was an experience I will cherish forever and I will continue my good work with the WCLA.

Though the Association was committed to providing its members with current legal updates and education on medical/legal issues, we did not forget to offer social functions that promote and foster camaraderie among Association members. This year, we again hosted our annual Golf Outing on August 2, 2013 (back at Oak Brook Hills Marriott Resort) and our Holiday Party on December

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Winter 2014

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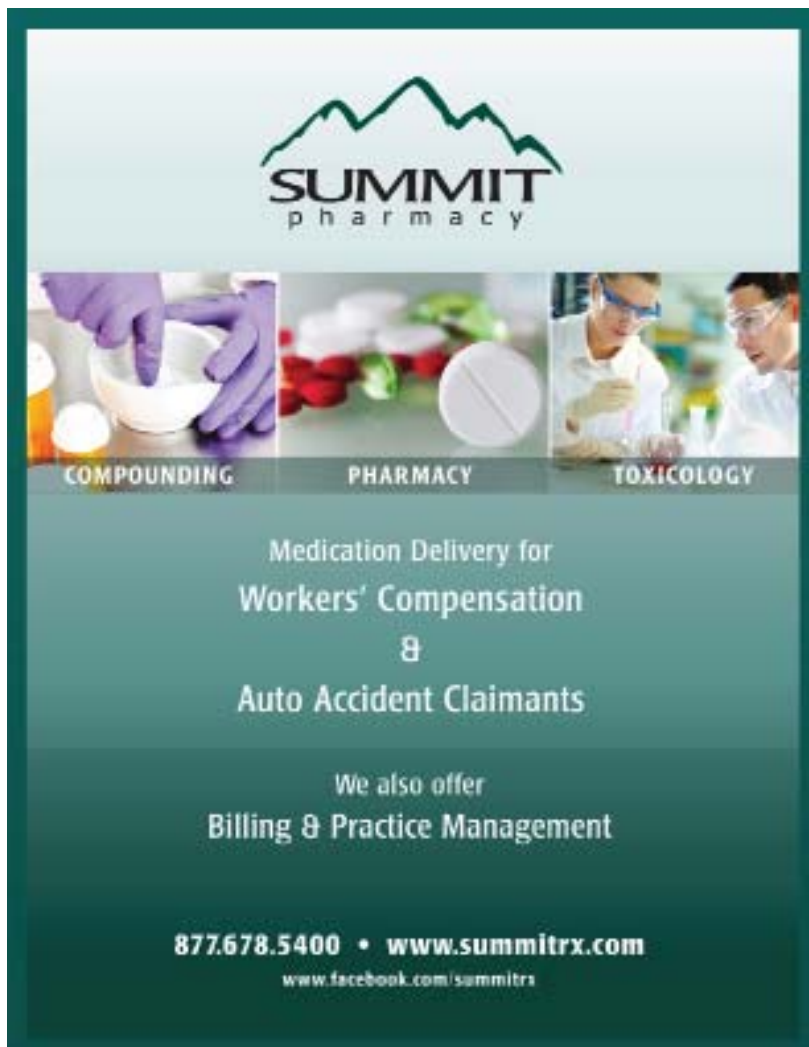
Interested in submitting an article? Contact John Castaneda at jcastaneda.cac@gmail.com

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6, 2013, at the W Hotel. Our “Young Lawyers’ Section” offered additional social functions including happy hours, a Chicago Blackhawks game, as well as other charity events.

In closing, from the outstanding attendance and support at my installation dinner, to becoming a partner of Romanucci & Blandin, to all the great WCLA board meetings and events throughout the year with my WCLA family, and to the new addition to my actual family, my daughter Sophia, this past year has truly been one that I will never forget. As this year winds down, I want to thank God for all of the blessings he has given to me personally, and to say how honored I am to have been able to lead such an outstanding group of lawyers and how I will always be so proud to say that I was president of the Workers’ Compensation Lawyers Association. Thank you.

Very truly yours,
Frank A. Sommario
2013 President



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MEMBERSHIP NEWS

Membership: The WCLA has reached a new membership high of more than 700 for 2013! **Membership fees for 2014 are due at this time.** Pay online or download a form for mailing at our website at www.wcla.info.org.

While our dues remain unchanged, our Association shall continue to offer monthly accredited CLE programs. Once again, this will include a three-hour CLE ethics program currently set for February, at no extra cost. If you plan to attend the ethics seminar and use the CLE credits, be certain to have your dues paid before that event. Also, for a nominal cost, CLE credits are available at our annual medical seminar currently scheduled for September, as well as at our Appellate Court Luncheon currently set for October. This year, we will again offer downstate CLE programs. We hope to expand our downstate program as well.

Our Golf Outing is set for August 1 at Oak Brook Hills Marriott Resort; the Holiday Party will be held in December. The Young Lawyers’ Section” offers additional social functions open to all members.

UPCOMING EVENTS

Installation Dinner

Saturday, January 18, 2014

The Peninsula, 108 E. Superior St.,
Chicago

6 p.m. Cocktails; followed by
program, dinner and dancing. Tickets
\$150 per person. RSVP by January 8

[HTTP://WWW.WCLA.INFO/MEMBERSHIP/
JOIN-RENEW.HTML](http://www.wcla.info/membership/join-renew.html)



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TAXATION OF WORKERS' COMPENSATION BENEFITS?

THE OFFSET TAXATION BY THE INTERNAL REVENUE SERVICE

By: John J. Castaneda and
Cameron B. Clark

Background:

Old-Age, Survivors and Disability Insurance (OASDI), commonly referred to in our workers' compensation arena as "Social Security Disability," underwent several legislative amendments in the 1980's. See, Social Security Amendments of 1983: Legislative History and Summary of Provisions, Social Security Bulletin, July 1983, pp. 5-6. Despite these amendments, expenditures of the OASDI program had exceeded revenues and (the Congressional Budget Office) anticipated that, without legislative action, the Social Security Administration financially could not continue paying OASDI cash benefits on time beginning in July 1983. SS Amendments of 1983, at p. 3.

On September 24, 1981, President Ronald Reagan announced in his address to the Nation:

To remove Social Security once and for all from politics . . . I will appoint five, to a task force which will review all the options and come up with a plan that assures the fiscal integrity of Social Security and that Social Security recipients will continue to receive their full benefits.

SS Amendments of 1983, at p. 6. On December 16, 1981, President Reagan established the National Commission on Social Security Reform (NCSSR) to review the current and long-range financial condition of the Social Security trust funds and report its findings. Id. The NCSSR held nine public

sessions through 1982 and on January 20, 1983, transmitted a report to the President and Congress. SS Amendments of 1983, at p. 7.

One of the proposals recommended taxation of Social Security benefits "(c)ounting, for income-tax purposes, one-half of the Social Security benefits of higher-income beneficiaries, with the revenues deposited to the Social Security trust funds." Id. On January 25, 1983, President Reagan urged Congress to enact all of the NCSSR proposals by Easter but noted in the State of the Union address on that date: . . . It asks for some sacrifice by all-the self-employed, beneficiaries, workers, government employees, and the better off among the retired-but it imposes an undue burden on none.

SS Amendments of 1983, at p. 8. The next day, the NCSSR recommendations were introduced in Congress as S. 1, by Senator Robert Dole, and the Committee on Ways and Means promptly began hearings on the proposals. Id., at 8.

After many public hearings, introduction of Senate and House of Representative Bills, Conference Bills and amendments, on March 25, 1983, the Senate passed H.R. 1900 as agreed to in the conference committee report by a vote of 58-14 and Congress adjourned for the Easter recess. SS Amendments of 1983, at p. 24 (emphasis added). On April 20, President Reagan signed Public Law 98-21. Id.

In the preamble to the legislation, the conference committee's report noted the purpose of Public Law 98-21: "(the) Committee's bill (is) therefore intended to restore the financial soundness of the old age and survivors' and disability insurance trust funds, both in the short-term and over the entire seventy-

five year forecasting period. In order to accomplish this goal your Committee has approved a number of reforms, including . . . changes in the types of income subject to social security and income taxes ." . . **1983 U.S.C.C.A.N., 230.**

Newly amended 42 USC 424a [Section 86(d)(3)] read as follows:

For purposes of this section, if, by reason of section 224 of the Social Security Act . . . any social security benefit is reduced by reason of the receipt of a benefit under a workmen's compensation act, the term 'social security benefit' includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

The Committee report explanation stated, "(b)enefits subject to tax would include any workmen's compensation receipt of which caused a reduction in disability benefits. (Proceeds from the taxation of these benefits would be deposited in either the social security or railroad retirement account)." 1983 U.S.C.C.A.N. 412. The Committee noted that under prior law "social security benefits are excluded from the gross income of the recipient" but found this status as "inappropriate" and that "social security benefits are in the nature of benefits received under other retirement systems, which are subject to taxation to the extent they exceed a workers' after-tax contributions and that taxing a portion of social security benefits will improve tax equity by treating more nearly equally all forms of retirement and other income that are designated to replace lost wages (for example, unemployment compensation and sick pay)." 1983 U.S.C.C.A.N. 166.

The Committee provided the following example of how Section 86(d)(3) would operate: "For



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example, if an individual were entitled to \$10,000 of social security disability benefits but received only \$6000 because of the receipt of \$4000 of workmen's compensation benefits, then for purposes of the provisions taxing social security benefits, the individual will be considered to have received \$10,000 of social security benefits." 1983 U.S.C.C.A.N. 244.

A recent Tax Court decision has confirmed the Committee's original intent of this legislation. In *Moore v. Commissioner of Internal Revenue*, T.C. Memo 2012-249, filed on August 28, 2012, the United States Tax Court filed its decision regarding the appeal of Ronald and Debra Moore, pro se. The Internal Revenue determined that the Moores had a tax deficiency of \$1550 in Federal Income Tax for 2009 and a penalty was assessed of \$310 pursuant to Section 6662(a). What is relevant to workers' compensation practitioners involves the underlying issue creating the tax liability – whether the Moores are liable for tax on the full amount of Debra Moore's social security disability benefits before offset for worker's compensation payments that reduced the actual amount of Social Security payments received. The Tax Court found for the Internal Revenue on the deficiency but removed the tax penalty. T.C. Memo, 2012-249, p.5.

The facts of the appeal to the U.S. Tax Court were not in dispute. The Moores resided in Ohio and in 2009, Ms. Debra Moore received both social security disability benefits and Ohio workers' compensation benefits. The Social Security Administration reported to the Internal Revenue Service (hereinafter IRS) Ms. Moore's disability benefits for 2009 as \$11,947.20. T.C. Memo, 2012-249, p. 2. Of the \$11,947.20, \$5,844 was paid to Ms. Moore by check, \$1,388.40 was deducted for Medicare Part B Premiums, and \$4,714.80 was offset

for workers' compensation benefits. T.C. Memo, 2012-249, p.2 (emphasis added).

The Moores filed a joint Federal income tax return for 2009. The Moores reported the income from social security disability benefit of \$5,844 (the amount received on checks) on their return. The IRS determined that the full amount of \$11,947.20 should have been reported, of which 85% is taxable, and therefore the Moores had an underpayment of taxes due to the increase in their gross income. The Moores argued that since in Ohio (as in Illinois) the workers' compensation benefits are not taxable [See Section 104(a)(1)], including the offset portion in their social security disability benefits is "unfair." The Moores thus excluded the offset portion of the Ohio workers' compensation benefits in their reporting of the amount of social security disability benefits received in 2009. T.C. Memo, 2012-249, p. 3.

The Tax Court cited Sec. 86 (d) (1)(A) which provides that social security benefits must be included in gross income and defines such benefits as "any amount received by the taxpayer by reason of entitlement to a monthly benefit under the Social Security Act." T.C. Memo, 2012-249, p. 3. The Tax Court also referred to Section 86(d) (3) as discussed above.

The Tax Court interpreted Section 86(d)(3) to mean that taxable social security benefits "include the amount of the workers' compensation payments to the extent that they reduce, or offset, the total social security benefits to which the recipient is entitled." T.C. Memo, 2012-249, p.4. The Court noted that ". . . offsets do not reduce the taxable amount of social security benefits even though they have not been paid to taxpayers by the Social Security Administration." T.C. Memo, 2012-249, p. 4 (citing for support *Mikalonis v. Com-*

missioner, T.C. Memo 2000-281 (argument that the legislative intent of Section 86(d)(3) is to tax social security benefits which were paid in place of workers' compensation benefits once workers' compensation benefits were terminated is without merit) and *Willis v. Commissioner*, T.C. Memo 1997-290) (offset portion of workers' compensation benefits taxable despite paid by employer's self-insured fund). The Tax Court also pointed out the legislative history as noted above.

The Tax Court, bound by the statutory language, stated, "(t)he statute simply does not allow workers' compensation benefits paid by a State and that offset social security benefits to be excluded from the taxable amount of social security benefits." T.C. Memo, 2012-249, p. 5.

For workers' compensation attorneys, where a petitioner has received Social Security benefits at a reduced amount due to the offset of workers' compensation benefits; or, where a petitioner will receive reduced Social Security benefits as a result of a settlement (even with the standard spread language attempting to reduce the offset), the petitioner should be advised that the Social Security Administration will issue a SSA-Form 1099 indicating the total taxable social security benefits which will include amounts offset by receipt of workers' compensation benefits. The petitioner should be advised to consult with a tax advisor as to what, if any, taxes may be owed (both Federal and State) as a result of the total amount indicated on SSA-Form 1099. Counseling the parties that workers' compensation benefits are not taxable is correct – with the exception that the offset caused by non-taxable workers' compensation benefits is included in the total gross receipt of Social Security Disability benefits that are subject to taxation depending upon income requirements.

IN MEMORIAM

Arbitrator Douglas J. Holland died at his home in Deer Park Township on October 17, 2013. Doug was 56 years old. He is survived by his wife, Mary Aubry Holland and their three children: Nathan (Brittani) Holland, Amanda (David) Carter, and Michael (Courtney) Holland.

Doug was highly respected in his community, serving tirelessly as president of the LaSalle County Historical Society working to preserve local history. Fellow board members were inspired by his vision and leadership.

Doug Holland served the Workers' Compensation Commission for 28 years, first as a commissioner and then as an arbitrator. He brought enthusiasm and dedication to his work and is remembered by his colleagues as a man who was always willing to help.

New arbitrators found a mentor and friend in Doug. He offered a genuine and warm welcome, taking time to listen and advise. Arbitrators who trained with him continue to use the skills he taught them, especially those skills needed to settle cases.

Practicing attorneys found him to be helpful and fair. He was focused on the case under consideration and will be remembered for his ability to bring opposing parties together. Doug was truly the "Master of the pre-trial."

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Ill. Supreme and Appellate Court decisions- 2013

By: Jacqueline A. Kinnaman

Gruszczyk v. IWCC (Alliance Contractors), 2013 IL114212 Mailbox rule

Petitioner Gruszczyk claimed he sustained a compensable accident on July 21, 2004 while work for Alliance Contractors. In March 2008 an arbitrator denied the claim and was affirmed by the Commission on April 15, 2009. Petitioner's attorney received a copy of the Commission's decision on April 20, 2009. Gruszczyk then appealed to the Circuit Court of DeKalb County, where the alleged accident occurred, by submitting a request for the issuance of summons and his attorney's affidavit of payment of the probable cost of the record. These were date stamped May 14, 2009; 24 days after Petitioner's attorney received the Commission decision. Alliance filed a motion to dismiss, arguing the circuit court lacked jurisdiction because the appeal was filed more than 20 days after receipt of the Commission's decision. Alliance further argued that venue was improper in the Circuit Court of DeKalb County because it, as a party defendant, was located in McHenry County. In his response, Gruszczyk argued that he had mailed all the necessary documents to the clerk of the circuit court within 20 days of his attorney's receipt of the Commission's decision, thereby fulfilling the jurisdictional requirements for filing an action for judicial review. He relied on an affidavit of a clerk in his attorney's office that she had mailed the necessary documents to the clerk of the circuit court on May 4, 2009. Gruszczyk argued the Circuit Court of De Kalb

County had jurisdiction because he was hurt while working in the city of Sycamore, within Dekalb county. The Circuit Court of De Kalb County agreed Petitioner's appeal was timely filed, but sided with Alliance on the venue question. The case was then transferred to McHenry County, where the circuit court also found the appeal was timely filed but confirmed the Commission's decision denying benefits. When the case reached the appellate court, the majority held Petitioner failed to commence his circuit court appeal within the 20-day period required by Sec. 19(f)(1). The majority's conclusion was based on its finding that the mailbox rule did not apply when a party seeks circuit court review of a Commission decision. Two justices, Stewart and Holdridge, dissented. The Illinois Supreme Court reversed and remanded, holding Petitioner was entitled to rely on the mailbox rule so that his appeal to the circuit court was timely filed and jurisdiction was proper.

Skokie Castings v. Illinois Insurance Guaranty Fund, II. S. Ct. Docket #113873, Oct. 18, 2013. Guaranty Fund obligation to pay

Skokie Castings is the corporate successor to Wells Manufacturing, the original Respondent in this dispute, which elected coverage under the Act pursuant to section 2 of the Act. Wells/Skokie secured payment for any potential liability for workers' compensation benefits by self-insuring, in part, and purchasing workers' compensation excess coverage from Home Insurance

Company for the remainder. Wells purchased two related policies from Home Insurance, an "Aggregate Excess Workers' Compensation and Employers' Liability Policy" and a "Specific Excess Compensation and Employers' Liability Policy." Under the second policy, Wells/Skokie had to pay out \$200,000 before Home Insurance was required to indemnify its obligations as "Statutory Workers' Compensation—Unlimited Employers' Liability."

Mona Soloky was a Wells/Skokie employee who, in 1985, sustained work-related injuries that led the Commission to find she was permanently, totally disabled and entitled to weekly payments for life as well as reasonable and necessary medical expenses. Wells/Skokie paid this award up to its \$200,000 retained limit of liability when Home Insurance took over the payments under the excess coverage policies, via third-party administrator Martin Boyer. Home Insurance continued to pay until it became insolvent and was liquidated.

As an insurance company authorized to conduct business in Illinois, Home Insurance was a member of the Illinois Insurance Guaranty Fund, established to step in where insurance carriers have become insolvent and cannot meet their policy obligations. 215 ILCS 5/532 (West 2010). Members of the Fund are charged an annual fee to cover its expenses plus an assessment for a share of the total amount the Fund must pay out to cover the claims

Continued on page 10

of an insolvent member. 215 ILCS 5/537.1 (West 2010). The Fund's obligation to pay "covered claims" is subject to a variety of conditions and limitations prescribed by the insurance code, 215 ILCS 5/537.2 (West 2010). In this case, there was no dispute that the obligations of Wells/Skokie to Soloky were "covered claims". The Fund paid Soloky's benefits totaling \$300,000 before terminating payments on the grounds that Wells/Skokie's claim was subject to a \$300,000 cap. 215 ILCS 5/537.2 (West 2010). Wells/Skokie brought a declaratory action claiming the law contains an express exception to the cap for "any workers compensation claims". (215 ILCS 5/537.2 (West 2010)). The Fund's interpretation of the law was rejected at both the trial and appellate court levels, and the Illinois Supreme Court agreed.

**Springfield Urban League v. IWCC (Kohlrus), 990 N.E.2d 371, 284 Ill. Dec. 384 (4th Dist., 2013).
Accident/causal connection/medical fee schedule**

Petitioner was leaving a mandatory employee meeting on Respondent's premises when she tripped and fell on a carpet mat leading to the exit door. Petitioner testified the carpet mat was "bunched" in the middle, causing her trip and fall. An eyewitness and co-worker testified the mat was "kinked" in the middle. Both testified photographs offered by the employer did not accurately depict the placement of the carpet mats at the time of Petitioner's fall. This testimony was contradicted by three other witnesses, all of whom agreed Petitioner fell forward. The arbitrator found Petitioner's testimony and that of her supporting witness cred-

ible. The arbitrator further found Petitioner sustained a fracture of her left distal femur, requiring surgery, and an aggravation of her pre-existing degenerative left knee condition, requiring a total knee replacement. On review, the Commission affirmed the arbitrator's finding that Petitioner sustained a compensable accident as well as a left distal femur fracture, but found no causal connection between her trip and fall and any aggravation of her left knee degenerative condition. The circuit court confirmed the Commission's finding and the appellate court affirmed. It held the manifest weight of the evidence showed that petitioner was at an increased risk of injury because she fell over a kinked and bunched up mat in an area where employees were required to go into and out of the employer's premises.

**Diaz v. IWCC (Village of Montgomery, 989 N.E.2d 233, 370 Ill. Dec. 845 (2nd Dist. 2013).
Mental/mental claim**

Petitioner had been a patrol officer for the Village of Montgomery for three years on May 29, 2007 when he responded to a call involving a dispute between two neighbors. A third neighbor, angry that police squad cars were blocking his driveway, came out of his home carrying what claimant initially believed was a hand gun. It took Petitioner 10 or 15 seconds to realize the gun had an orange tip, meaning it was either a BB gun or a toy gun. The neighbor came to about 10 feet from Petitioner. He refused Petitioner's order that he drop the gun and retreat to his home. Eventually a negotiator and a special response team became involved. The stand-off lasted several hours, but Petitioner left before it was over. His supervisor, the

deputy chief of police, testified everyone at the scene was concerned the neighbor might be armed and dangerous.

Claimant testified he was "wound up" after the incident, but had no anxiety or physical symptoms and continued working. He felt anxious two days later, on May 31, 2007, while working at the scene of an accident. Then on June 1, 2007, during roll call his vision became blurred, he felt dizzy, had heart palpitations, was sweaty and felt nervous. He went out on patrol without reporting these symptoms, but when his condition did not improve he returned to the station. From there he was taken by ambulance to the hospital. By June 5, 2007, the diagnosis was post-traumatic stress disorder. Petitioner attempted to work while taking medication and undergoing counseling, but he continued to have panic attacks, flashbacks to the May 29, 2007 incident and an earlier incident, and bad dreams related to his job as a police officer. A fitness-for-duty examination done in August, 2007, at the request of the deputy chief of police concluded Petitioner had emotional symptoms of depression and anxiety consistent with post-traumatic stress disorder and was in need of intensive treatment before returning to work. In November 2007, after psychiatric care and further medication, he was released to return to duty. At the time of arbitration he continued to take anti-depressant and anti-anxiety medication and to undergo follow-up care. Petitioner testified that before the May 29, 2007 incident he had never had the level of anxiety or depressive symptoms he had afterwards and never had any psychi-

Continued on page 13

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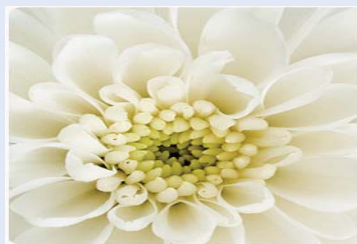


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Functional Capacity Evaluations (FCEs)
Physical Therapy**

atric treatment or took medication for such symptoms. The arbitrator found Petitioner sustained a compensable accident, relying on *Pathfinder Co. v. Industrial Comm'n*, 62 Ill. 2d 556, 343 N.E.2d 913 (1976), awarded TTD and medical benefits and found Petitioner disabled to the extent of 15% of the whole person. The Ill. Workers' Compensation Commission reversed, with one dissent, finding Petitioner failed to prove he sustained an accident. The Commission relied on *General Motors Parts Division v. Industrial Comm'n*, 168 Ill. App. 3d 678, 522 N.E.2d 1260 (1988). While acknowledging the incident of May 29, 2007, "presented a dangerous and precarious situation" for Petitioner, the Commission concluded the encounter was not an uncommon event of significantly greater proportion than what he would otherwise be subjected to in the normal course of his employment. This decision was confirmed by the circuit court but reversed on appeal. The appellate court did a de novo review because the facts were not in dispute and the issue was whether petitioner was held to a higher standard of proof than required by law. The court found the Commission misread *Pathfinder* and held that claimants in mental-mental cases must only prove the shock they experienced must be the reaction of a person of normal sensibilities, an objective, reasonable-person standard.

Chicago Transit Authority v. IWCC(Timms), 989 N.E.2d 608, 371 Ill.Dec. 18 (1st Dist., 2013)
Mental/mental claim

Petitioner had been a bus driver for Respondent for three years on March 18, 2010. At about 1:30 PM

that day, Petitioner was leaving a stop and driving through an intersection when a passenger yelled that someone may have been hit. When petitioner stopped the bus and got out she found someone lying near the curb. She reported the accident and remained at the scene for about the next four hours. She testified that during that time the victim was curled up, that his mouth moving and that he spoke to police and to some of Respondent's supervisors. Petitioner was also told the victim's name. Eventually, Petitioner was taken to her employer's garage where she completed an accident report and learned the victim had died. She testified she told a supervisor she was shaken up and was referred to "comp psych." Following an investigation, Petitioner was terminated on or about April 28, 2010.

Petitioner testified she began having flashbacks and difficulty sleeping after the accident, but did not immediately seek assistance. When her symptoms worsened she sought help through her employer, but her request was denied because she was no longer employed. She finally saw a clinical psychologist on May 28, 2010, telling him she felt depressed because of a person's death. The doctor diagnosed an adjustment disorder with mixed anxiety and depressed mood. She underwent psychotherapy and a desensitization program and was prescribed antidepressant medication and a sleep aid. Her doctor took her off work due to her psychological injuries, which he related to the accident. She remained in treatment at the time of trial. The arbitrator found Petitioner sustained a compensable accident, even though more than two months passed between the accident and Petitioner's first treatment for her

injuries, relying on *Pathfinder Co. v. Industrial Comm'n*, 62 Ill. 2d 556 (1976)]. The Commission affirmed and adopted the arbitrator's decision, with one dissenter, who argued Petitioner failed to show an immediate psychological injury that resulted from the incident of March 18, 2010. The circuit court affirmed, as did the appellate court. The court agreed *Pathfinder* required only that a claimant show exposure to a sudden and severe emotional shock, not that the emotional injury be immediately apparent.

Tony L. Curtis v. IWCC (Village of Lansing), 987 N.E.2d 407, 369 Ill. Dec. 780 (1st Dist., 2013)
Section 8(a) and TTD

On Feb. 4, 2002, while working for the Village of Lansing as a police officer/paramedic, claimant tripped and fell as he was chasing a subject injuring his right hand. A hearing was held pursuant to section 19(b) of the Act leading to an arbitration decision finding that he sustained a compensable accident and was entitled to TTD and medical expenses. The Commission affirmed and adopted the arbitrator's decision and remanded for a further hearing regarding whether claimant was entitled to further benefits; neither party appealed. A second arbitration hearing was held, resulting in a second arbitration decision dated Jan. 25, 2005, in which the arbitrator awarded additional medical expenses pursuant to sec. 8(a) of the Act and permanency benefits for of 40% loss of use of the petitioner's right hand. Neither party filed any further appeal.

Five years later, on January 21, 2010, claimant filed a "Petition for

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Hearing Pursuant to Section 8(a)”, after undergoing surgery in October, 2009, which was causally connected to his 2002 accident. Respondent had paid the medical expenses associated with that surgery but refused to pay TTD for time Petitioner was off work related to the surgery. In addition to TTD benefits, Petitioner sought penalties pursuant to sections 19(k) and 19(l) of the Act and attorney fees pursuant to section 16 of the Act.

The Commission denied petitioner’s claims, holding section 19(h) of the Act was the proper vehicle for seeking TTD benefits after a final decision on benefits. Since the 30 month period for filing a sec. 19(h) petition had expired well before Petitioner’s 2009 surgery or his 2010 “Petition Under Section 8(a)” that remedy was not available. The Commission further found section 8(a) did not provide for the relief Petitioner sought. Both the circuit and appellate courts confirmed the Commission’s decision. The appellate court held sec. 19(h) encompassed TTD as well as permanency benefits based on its language regarding injuries that “recur” because only temporary disability can recur. The court further held that sec. 8(a) applied only to medical benefits, not TTD.

**Kertis v. IWCC (Washington Mutual a/k/a Chase Bank and Specialty Risk Services), 2013 Ill. App.2d 120252WC, 2013 Ill.App. LEXIS 410 (2nd Dist., 2013).
Traveling employee/accident**

Petitioner was a branch manager at two Chase bank locations, one in Hoffman Estates and one in St. Charles. He travelled between the two locations, sometimes once a

day, sometimes more often, depending on where he was needed; there was rarely an occasion when he spent the entire day at only one location. When he was at the St. Charles office, Petitioner almost always parked in a municipal parking lot close by because the employer did not provide parking for employees or customers there. After starting his day on Aug. 25, 2008 at the Hoffman Estates branch, Petitioner drove to the St. Charles office at about 3:30 PM for a loan closing. He parked in the nearby municipal parking lot, exited his parked car and walked across the parking lot toward the branch office. Near the parking he stepped into a pothole and fell as he was trying to get out of the way of a car pulling into the lot.

After the fall, he began to have pain in his low back and right hip and was diagnosed with a herniated disk, resulting in treatment and lost time. These facts were un rebutted. The arbitrator found Petitioner was a traveling employee. The arbitrator further found that while his fall occurred in the course of his employment, it did not arise out of the employment because there was no evidence he was exposed to a greater risk than the general public. The Commission affirmed and adopted the arbitrator’s decision, with one dissenter, who argued “[t]he test for determining whether an injury to a traveling employee arose out of the employment is ‘the reasonableness of the conduct in which [the employee] was engaged and whether it might normally be anticipated or foreseen by the employer,’ “ citing Wright v. Industrial Comm’n, 62 Ill. 2d 65, 70 (1975), and that Petitioner met this standard.

The circuit court confirmed the Commission’s decision. The appellate court unanimously reversed. It concluded Petitioner was a traveling employee because travel between two locations was an essential requirement of his job. The appellate court went on to hold that as a traveling employee Petitioner was in the course of his employment from the time he left home until he returned. His fall arose out of his employment because his conduct at the time was reasonable and foreseeable to his employer.

**National Freight Industries v. IWCC, 2013 Ill.App. (5th) 120043WC, 2013 Ill. App.LEXIS 381 (5th Dist., 2013).
Intervening accident**

Petitioner Andrew Smith filed two claims on Dec. 31, 2008. He first filed a claim for a motor vehicle accident on Dec. 4, 2008 while he was working for National Freight Industries; the second was for a previous accident on Nov. 6, 2006 while he was working for Fischer Lumber. The cases were tried together, resulting in an arbitration decision finding Petitioner’s current condition of ill-being was not causally connected to the Nov. 6, 2006, injury because the accident of Dec. 4, 2008, constituted an independent, intervening accident that broke the chain of causation and ended Fischer Lumber’s liability for temporary total disability (TTD) benefits and medical expenses as of Dec. 4, 2008. The arbitrator held National Freight liable for TTD benefits and medical expenses for the period from December 5, 2008, through the date of the arbitration hearing. In addition, the arbitrator determined that Petitioner was not enti-

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tled to a permanency award against Fischer Lumber because his injury had not reached maximum medical improvement prior to his second accident. The Commission and circuit court affirmed the arbitrator's decision. National Freight appealed, arguing the finding the Dec. 4, 2008 accident broke the chain of causal connection was against the manifest weight of the evidence and contrary to law. Petitioner also filed an appeal, challenging the finding he was not entitled to a permanency award from Fischer Lumber.

The appellate court did an extensive analysis of the evidence. As it involved more than two years of medical evidence, readers are directed there for details. In short, the Petitioner felt a "pop" in his low back followed by low back pain with pain radiating to his right leg while working for Fischer Lumber on Nov. 6, 2006. Following an MRI in Dec. 2006, he was diagnosed with a disc herniation to the right side at L3-4. Conservative treatment and work restrictions were prescribed and his treating neurosurgeon, Dr. Kitchens, to whom he was referred by Respondent, related Petitioner's condition to the work accident of Nov. 6, 2006. Petitioner went to work for National Freight on Jan. 19, 2007. He worked full duty, but saw his family doctor for his low back. He occasionally complained of symptoms in his left, as well as his right, leg. In Sept. 2008 he returned to the specialist he had seen right after the accident and a new MRI was completed. Petitioner and his doctor discussed whether he should undergo further conservative care or surgery. Petitioner elected surgery, which was scheduled for Dec. 5, 2008. However, on Dec. 4, 2008, while driving a tractor-trailer

for National Freight, claimant was involved in a motor vehicle accident. He testified he felt a "pop" on the left side of his back and numbness and tingling down his left leg. Dr. Kitchens cancelled the surgery, noting the new symptoms. A new MRI was recommended and Petitioner was referred to Dr. Chu. According to the radiologist who compared the new MRI of Dec. 10, 2008 to the previous MRIs of Dec. 2006 and Sept. 2008, there had been changes in disc pathology. Petitioner was taken off work by his family doctor. The neurosurgeon Petitioner saw at his attorney's referral, Dr. Kennedy, disagreed. He opined claimant's symptoms began in Nov. 2006 but were aggravated by the motor vehicle accident. He also took Petitioner off work while ordering a myelogram and postmyelogram CT. He found no change at L3/4 but said there had been a worsening of the condition at L4/5 between the MRI of Sept. 2008 and that of Dec. 2008, after the motor vehicle accident. He recommended a lumbar laminectomy and fusion with stabilization at L3-4 and L4-5. Dr. Kitchens took Petitioner off work due to the worsening of the L4-5 disc and opined his need for surgery was not related to the Nov. 2006 work accident at Fischer Lumber. Meanwhile, Dr. Chu reviewed the myelogram and postmyelogram CT to the previous MRIs. He did not think the myelogram results were very different from the Dec. 2008 MRI or that that MRI was very different from the Sept. 2008 MRI. On that MRI, Dr. Chu found two disc herniations; one at L2/3 on the right and one at L3/4 on the left with degenerative disc disease at L4/5, unrelated to the Dec. 4, 2008 motor vehicle accident. Drs. Kennedy and Kitchens were deposed.

The appellate court concluded the record before the Commission supported its finding that the Petitioner's accident of Dec. 4, 2008 constituted an independent, intervening accident breaking the causal connection between the first accident of Nov. 6, 2006 and his low back condition. The court gave four reasons, based on the record: 1) there was a change in claimant's symptoms following the Dec. 4, 2008 motor vehicle accident; 2) there was a change in pathology; 3) there was a change in the type of surgery prescribed; and 4) there was a change in his ability to work. In addition, the court rejected National Freight's argument that the Commission's decision was contrary to law.

With respect to Petitioner's appeal, the court found any permanency award against Fischer Lumber for the Nov. 6, 2006 accident should not have been made in the proceedings to date, because the matter was tried pursuant to section 19(b) of the Act and not on a permanency basis. The court further held Petitioner may be entitled to separate permanency awards for both accidents because they were separate and distinct injuries.

United Airlines v. IWCC (Young), 2013 Il.App.(5th)120043WC, 2013 Ill.App.LEXIS 381.

Wage differential calculation

Petitioner was working for United Airlines as a ramp service worker, loading and unloading luggage, when he sustained a right wrist injury on Dec. 28, 2004. He returned to work for United on a trial basis on April 19, 2006. He was working

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for United on April 21, 2006, when he injured his right shoulder. After referring claimant to a vocational rehabilitation consultant, United offered Petitioner a job as a station operations representative (SOR), a desk job. There was no dispute that in this new position Petitioner was entitled to a wage differential award; the dispute was over the amount of the differential. In December 2004, Petitioner earned \$20.66 per hour, which included shift differential pay (\$0.50/hour) and line pay (\$0.10/hour); he was also eligible for longevity and overtime pay. He testified that in December 2004 he averaged 44 hours per week, which included overtime hours. He testified that had he still been employed as a ramp service worker in April 2008, he would have been making \$19.81 plus shift differential, line pay, and longevity pay, based on the union agreement that was in effect in March 2008. After an initial mistake in the amount of his pay as an SOR, United began paying him \$9.92 an hour as of April 28, 2008, based on the union contract. He was also eligible for longevity pay and shift differential but testified he worked 40 hours a week and did not have the chance to work the overtime he had worked as a ramp service worker.

United's representative at arbitration agreed Petitioner would have been earning \$19.81 per hour as a ramp service worker as of March, 2008 when he left that position and began working as an SOR. He would also have earned line pay of \$0.10 per hour, and longevity pay of \$0.06 per hour, for a total of \$19.97 per hour. United's representative testified claimant's SOR wage as of March 17, 2008 was \$9.61 per hour but he moved up to \$10.36 per hour

on April 12, 2009 and to \$10.61 as of the date of trial, March 5, 2010. She testified he would gradually move up the wage scale, reaching the top of the SOR scale, \$21.77, by March 17, 2018. At that point, Petitioner would be paid more as an SOR at the top of the scale than he would have been paid at the top of the ramp service worker's scale, which was projected to be \$21.08. At the time of trial the union agreement governing both the ramp service worker and SOR positions was being re-negotiated.

The arbitrator ruled that the wage differential benefit payments should end effective April 13, 2018, when Petitioner would be earning more as an SOR than he would have had he remained a ramp service worker, based on the union contract.

The Commission affirmed most of the arbitrator's award, but found the amount of the wage differential should be based on Petitioner's wages at the time of the hearing. It found Petitioner was entitled to a wage differential of \$277.06 per week, beginning April 27, 2009, and continuing for the duration of the disability. United appealed to the circuit court, which set aside the Commission decision and reinstated the arbitrator's award. At the appellate court, the circuit court's decision was reversed. The court held that as a matter of law based on statutory construction, a sec. 8(d-1) wage differential award must be determined as of the date of hearing. The court found the plain and ordinary meaning of the statutory language required a single wage differential amount, not multiple figures which would change in the future. On the separate issue of the amount of the wage differential, the court upheld the Commission's determi-

nation finding Petitioner entitled to \$277.06 a week as not against the manifest weight of the evidence. The court also upheld the Commission's decision not to include overtime hours in the calculation of claimant's wage differential, again applying a manifest weight standard.

Autumn Accolade v. IWCC, 2013 IL App (3d) 120588WC, 991 N.E.2d 430, 372 Ill. Dec. 123 (App. Ct., 1st Dist. 2013).

Accident- arising out of Petitioner was helping an assisted living home resident with her shower on March 15, 2009. She was holding the resident with her right hand, when she turned to her left and reached with her left hand for a soap dish on a ledge beneath the showerhead. She felt a "pop" in her neck and shooting pain into her right arm. An accident report completed by respondent that same day showed something popped in Petitioner's shoulder while she was giving a resident a shower. It also showed Petitioner reported that she turned her head and felt something pop. She saw her family doctor, Dr. Baumgartner the next day. His records show Petitioner was reaching at work while the radiologist's records showed she was lifting a patient in the shower.

The appellate court reviewed the medical records, focusing on the doctors' description of the incident, which varied. The reader is referred to the appellate court decision for its summary of these histories. An MRI on March 20, 2009 showed a right C6-C7 herniated nucleus pulposus as well as disc degeneration and uncovertebral spurring on the

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left at C5-C6. After conservative treatment was unsuccessful, Petitioner underwent an anterior cervical discectomy and fusion at C5-C6 and C6-C7 with cornerstone cortical graft and vision plating from C5-C7 on April 2, 2009. Petitioner's examining doctor, Dr. Pineda, opined the incident at work at least aggravated pre-existing degeneration in her neck. Petitioner was also examined by Dr. Marc Soriano at her employer's request. He opined the injury of March 15, 2009, was the proximal cause of Petitioner's herniated disc at C6-C7, aggravating the pre-existing degenerative disc disease at C6-C7 and resulting in her need for surgery. However, he felt only the portion of the surgery at C6/7 was related to the accident.

The arbitrator found Petitioner's claim compensable and noted that she was at an increased risk of injury as a result of the placement of the soap dish under the showerhead where suds could result. He also wrote that holding a patient with one hand to prevent a fall while assisting with a shower was something she reasonably could be expected to do as part of her job and that this, along with bending and reaching in an awkward manner increased her risk of injury above that of the general public. The Commission and circuit court affirmed, as did the appellate court. The appellate court found the record supported a finding that Petitioner was hurt while attempting to ensure the safety of a resident at the assisted living facility, something she might reasonably be expected to do as part of her job. Thus, the court rejected the employer's argument that the evidence showed only that Petitioner was reaching when she felt her neck pop and distinguished the cases relied on by respondent as

involving injuries that were unrelated to the petitioner's employment.

**Kawa v. IWCC (Ford Motor Co.), 2013 IL App (1st) 120469WC, 991 N.E.2d 430, 372 Ill. Dec. 123 (App. Ct. 1st Dist., 2013).
Causal connection, MMI**

The petitioner was involved in a motor vehicle accident resulting in injuries to his neck, back, chest, right shoulder, and right knee on Feb. 13, 2007. At the time he was working for respondent as a launch engineer. After the accident, the petitioner's care focused on his right shoulder and he was diagnosed with a high-grade A/C joint separation. He testified he was in extreme pain. Petitioner began treating with Dr. Koh who noted the petitioner's pain, recommended surgery and prescribed pain medication. The surgery was performed on May 10, 2007. After surgery, Petitioner had physical therapy for his right shoulder and saw doctors for his right knee and low back. He was also taking high doses of Norco every four to six hours and continued to wear a sling. Dr. Koh performed a second surgery, an arthroscopic capsular release of the right shoulder on Sept. 10, 2007. Petitioner was examined by Dr. Rhode at his employer's request three times with respect to his right shoulder, right knee and low back. Following his exam of Nov. 26, 2007, Dr. Rhode noted petitioner continued to suffer pain in all three areas and opined there was a psychological component to his condition that would require management. He recommended a psychiatric evaluation.

Respondent retained a vocational rehabilitation consultant, Julie Bose, who met with Dr. Koh. She testified

he also recommended a psychiatric evaluation and agreed with her suggestion that Petitioner be referred to the Rehabilitation Institute of Chicago (RIC) for a multi-disciplinary pain management program. Petitioner was evaluated there on February 28, 2008. He was uncomfortable with the questions he was asked there and with the distance between his home in Indiana and the RIC facility. He returned to Dr. Koh who suggested a pain management program in Indiana. Respondent did not approve that treatment, but filed a motion to suspend benefits arguing petitioner's refusal to participate in the RIC program constituted an "injurious practice" as defined by section 19(d) of the Act.

As of May 28, 2008, Dr. Koh felt claimant could do only sedentary work and could drive for only 10 to 15 minutes due to right shoulder pain. On June 2, 2008, respondent's attorney wrote a letter indicating the employer could accommodate Petitioner's restrictions. Petitioner met with a representative of his employer who told him the only position that was open was as a production supervisor. Petitioner did not think he could do this job or that he could drive the distance from his home to work; he wanted an engineering job.

On June 9, 2008, Petitioner was examined by Dr. Bare at respondent's request. Dr. Bare thought Petitioner's pain complaints did not correlate with objective findings, a multi-disciplinary pain management program would no longer be helpful, that Petitioner did not need any further physical therapy and that he was at MMI. On July 10, 2008,

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respondent provided Petitioner with a list of job openings. He did not apply for any of them, testifying he was still in treatment and did not think he could drive the distance required. He began pain management treatment at St. Margaret Mercy Hospital on September 18, 2008 and underwent right knee arthroscopic surgery for medial plica syndrome on October 27, 2008. Petitioner underwent an FCE on June 4, 2009 and then began work hardening. In a report of August 13, 2009, Dr. Koh stated Petitioner was at MMI and that he had permanent restrictions to his right shoulder and his ability to stand, stoop, squat, and kneel.

The arbitrator found that there was no dispute Petitioner sustained injuries to his neck, back, chest, right shoulder, and right knee as a result of the work-related vehicle accident. The arbitrator also concluded Petitioner's current condition may be entirely related to psychological and emotional issues that "may or may not" be related to his accident. The arbitrator also found that the petitioner's refusal to participate in a multidisciplinary pain management program made it impossible to identify or treat any psycho-emotional conditions and therefore constituted an injurious practice preventing his recovery and his return to work. He found Petitioner at MMI as of February 25, 2008 and held that any treatment after that date was neither reasonable nor necessary. The Commission agreed Petitioner's failure to attend the RIC multi-disciplinary program meant he was at MMI and made it impossible to determine whether his psychological issues were causally related to his accident. However, the Commission rejected the arbitrator's finding that

the refusal to participate in multi-disciplinary pain treatment constituted an injurious practice. The circuit court confirmed the Commission's decision.

The appellate court found the Commission's decision was against the manifest weight of the evidence. The court relied on what it described as an "unbroken chain of events" beginning with the motor vehicle accident, leading to extensive medical treatment and to continuous right shoulder, right knee and low back pain. The court relied on this chain of events to find both Petitioner's physical and emotional conditions causally related to the accident. The court next determined that Petitioner's failure to attend the RIC program could not be the basis for finding MMI writing that "(t)he employer failed to prove that the RIC program was either reasonably essential to promote the claimant's recovery or that the claimant's refusal to attend the RIC's program was in bad faith or outside the bounds of reason." *Kawa*, 2013 IL App (1st) 120469WC at 20. The court remanded the case to the Commission for reconsideration of Petitioner's right to TTD, vocational rehabilitation, maintenance and medical benefits. The court affirmed the Commission's denial of penalties and attorneys' fees and its calculation of Petitioner's average weekly wage. Justice Turner wrote separately that he agreed with the appellate court majority that the Commission erred in holding claimant's failure to treat at RIC broke the chain of causal connection. However, he thought the Commission implicitly found the RIC program was essential to Petitioner's recovery so that his refusal to participate constituted an injurious practice.

Mlynarczyk v. IWCC, 2013 Ill. App.3d 120411 WC, 2013 Ill.App. LEXIS 341

Traveling employee

On Dec. 7, 2007, Petitioner slipped and fell on a snow-covered sidewalk leading from her home to her driveway, fracturing her left wrist. At the time, both Petitioner and her husband were working for a cleaning service. Petitioner did the cleaning and her husband drove her and others to and from various jobs, using a mini-van provided by Respondent, although nothing on the van identified Respondent. Furthermore, because they did not have their own car, Petitioner's husband also used the van to run personal errands and testified he paid for the gas he used on personal business. Respondent's owner also reimbursed Petitioner's husband for gas and paid for insurance and maintenance on the vehicle. The couple usually worked from 6:00 or 6:30 AM until 4:00 PM but at the time of her fall, they were leaving their home after a 90 minute lunch break and going to the van to drive to an evening job. Petitioner was paid by the job, not the hour, and was not paid for time spent traveling between jobs.

The arbitrator found Petitioner was a traveling employee and that her fall and left wrist fracture arose out of her job duties. He awarded benefits as well as penalties and attorneys' fees. The Commission reversed, finding first that Petitioner's injuries did not arise out of her employment because she was not exposed to a risk of falling on a snowy sidewalk as the general public. The Commission also found Petitioner's fall did

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not occur in the course of her employment because she was on a time off period between jobs, was on her own driveway and had not even entered the van so that she was not yet subject to any risk of the street. The Commission concluded petitioner was not a traveling employee. The circuit court confirmed the Commission decision.

The appellate court reversed, applying the de novo standard of review and finding as a matter of law that Petitioner was a traveling employee. The court defined a traveling employee as one who is required to travel away from the employer's premises to perform his or her job. The court went on to apply the manifest weight of the evidence standard to the factual determination whether Petitioner's fall arose in the course of and out of her employment. Because Petitioner had left her home and was on her way to the van to drive to a job, the court found she was in the course of her employment. Because traveling to and between sites was essential to her job and because her conduct was reasonable and foreseeable, the court found her fall arose out of her employment. The court remanded the case to the Commission with directions to reinstate the arbitrator's award of benefits and to reconsider whether Petitioner was entitled to penalties and attorneys' fees.

Freeman United Coal Mining Co. v. IWCC (Bradley Sims), 2013 Il.App. (5th) 120564 WC(Oct. 28, 2013).

Coal miner's pneumoconiosis

During Petitioner's work as an underground coal miner for approximately 31 years, he was exposed to coal and rock dust. He testified

he began to notice a change in his breathing while working, especially while doing heavy lifting and walking long distances. Petitioner last worked for Respondent on August 30, 2007, when he was laid off ; he was 52 years old. At trial, he testified he continues to notice changes in his breathing when he climbs up two flights of stairs or walks one block.

He testified that he smoked a half a pack of cigarettes per day since the late nineties. He now owns a small-engine repair shop and worked there and as a part-time truck driver. He has always done manual labor. There was conflicting medical evidence at trial with Dr. Robert Cohen testifying, based on his exam of April 8, 2008, that Petitioner has coal workers' pneumoconiosis as a result of his 31 years of exposure to coal-mine dust. Dr. Cohen also diagnosed chronic bronchitis caused by exposure to coal-mine dust and his tobacco use. Dr. Cohen opined that, based on the diagnosis of CWP, Petitioner could not have any further exposure to coal-mine dust without endangering his health so that he should not do any work which would expose him to coal-mine dust or any other smoke, dust or fumes without endangering his health.

Dr. Henry Smith, a board certified radiologist and certified B-reader, opined the chest x-ray of August 17, 2006, was positive for pneumoconiosis. Dr. Jerome Wiot, also a radiologist and certified B-reader, reviewed three chest x-rays dated August 17, 2006, October 3, 2007 and March 28, 2008 and found no evidence of CWP. Dr. David Rosenberg agreed with Dr. Wiot. He found no evidence Petitioner's pulmonary

function had been effected by his exposure to coal dust.

The arbitrator found Petitioner failed to prove he suffered an occupational disease. The Commission reversed and found the claim compensable and the circuit court confirmed that opinion. The appellate court, applying a manifest weight of the evidence standard, upheld the Commission's decision, concluding none of the discrepancies cited by Freeman United Coal in its analysis of the medical records required setting aside the Commission's decision.

Suter v. IWCC (Manpower), 2013 Il.App.(4th), 130049WC (Nov. 14, 2013).

Parking lot slip and fall

Petitioner slipped and fell on an icy parking lot when she arrived for work on February 8, 2010. She sustained a comminuted fracture of the intra-articular left distal radius as well as ulnar fractures and underwent an open reduction with internal fixation. Petitioner was working for Manpower at the time and was assigned as a temporary employee for the Illinois Department of Insurance. She was working at a building leased by the State. The lease required the landlord to provide parking and maintain a parking area, including snow removal. Manpower did not tell Petitioner where to park when it sent her to work for the State. Petitioner testified she asked her supervisor where to park and was referred to the building manager, who assigned her to a specific spot in an area reserved for state employees and not available to the general public.

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The arbitrator denied Petitioner's claim, which named Manpower as the loaning employer and the State of Illinois as the borrowing employer, because neither of them provided her with the parking space. That decision was affirmed by the Commission and confirmed by the circuit court. The appellate court reversed.

The appellate court reviewed Petitioner's claim on a de novo basis as a matter of law because there was no factual dispute. The court went on to find Petitioner's injury occurred in the course of her employment based on precedent holding that where an employer provides a parking lot for its employees, the parking lot is considered part of the employer's premises. The court concluded that by requiring its landlord to reserve parking spaces for state employees, the state provided the parking lot. The court then found Petitioner's injury arose out of her employment because she was on the employer's premises, the parking lot the State furnished for its employees, when she fell. The case was remanded to the Commission for proceedings consistent with the court's holding.