



Illinois Appellate Court Interprets Exclusive Remedy Provision of the Illinois Workers' Compensation Act in Co- Employee Assault Case

In a recent decision, *Kordas v. Bob's All Bright Electric Inc.*, 2025 IL App (3d) 240482, the Illinois Appellate Court determined that a broad interpretation of the exclusive remedy provision was appropriate when analyzing a work-related accident and subsequent civil suit.

Plaintiff filed suit against his employer, claiming intentional misconduct and negligence after his coworker, Thomas Clarizio, struck him over the head with a shovel while having a psychotic episode. Plaintiff alleged that the company was owned and operated by Clarizio's father, and he knew or should have known that Clarizio had mental health issues, negligently hired and supervised Clarizio and intentionally concealed Clarizio's dangerous propensities.

Defendant moved for summary judgment, asserting that Plaintiff's claims were barred by the exclusive remedy provision of the Act. The circuit court granted Defendant's motion and Plaintiff appealed. The appellate court affirmed the circuit court's decision.



Plaintiff had worked with Clarizio for five years and was his direct supervisor. Over those five years, there was an instance where Clarizio was sent home for insubordination. Plaintiff indicated that they had several arguments over the years, but nothing ever became heated. Plaintiff and Clarizio never had a physical altercation, nor did Plaintiff ever feel threatened by Clarizio. Plaintiff was aware that Clarizio had mental health issues and received mental health treatment twice prior to the incident in November 2020.

The owner of the business and father of Clarizio testified that he had no knowledge of his son's mental health issues, though he did note one instance where Clarizio was hospitalized for suspected drug use. The owner noted that Clarizio and Plaintiff worked together fine, but Plaintiff often had difficulties giving directions.

Clarizio testified that he and Plaintiff were installing an electrical panel. When Plaintiff kneeled down, Clarizio hit him over the head with a shovel. He admitted that he struck Plaintiff more than once and then ran away. Clarizio attributed his behavior to his January 2020 bipolar disorder diagnosis and his antipsychotic medication. Clarizio testified that he was hospitalized four times in 2020 for mental health treatment, most recently in October 2020, one month before the incident. Clarizio also claimed that his father knew about his involuntary commitment, bipolar diagnosis, medication and four hospitalizations.

The appellate court analyzed both the Workers' Compensation Act and copious case law in determining that the claim was barred by the exclusive remedy provision of the Act. The court cited *Collier v. Wagner Castings Co.*, 81 Ill. 2d 229, 237 (1980) for the proposition that to avoid the bar of the exclusive remedy provision, the employee must demonstrate that the injury:

1. was not accidental
2. did not arise from his or her employment
3. was not received during the course of employment, or
4. was not compensable under the Act

On the issue of accidental injury, Plaintiff argued that Defendant knew that Clarizio was violent and knowingly concealed his violent tendencies. The court disagreed and found that Plaintiff's action was barred because he did not allege that Defendant committed or expressly authorized Clarizio to commit an intentional tort against him. Carelessly and recklessly allowing an employee to work unsupervised on a job site with other employees, even though the employer knew or should have known of his dangerous propensities is not an intentional tort.

On the issue of an injury arising out of his employment, the court found that where a physical confrontation between two employees is *purely personal* in nature, the resulting injuries cannot be said to have arisen out of the employment. Plaintiff unsuccessfully argued that the dispute arose out of personal animosity and had nothing to do with Plaintiff's scope of employment. The court was not swayed and noted that it was clear from deposition testimony that Plaintiff and Clarizio did not have a personal relationship outside of work. Plaintiff and the owner testified that Clarizio had refused to complete tasks and that Plaintiff did not appreciate having to mentor employees. Clarizio testified that he did not target Plaintiff for personal reasons and Plaintiff did not provoke the attack. As a result, the court found that the Plaintiff's injury did arise out of his employment.

Finally, because Plaintiff's claim was otherwise compensable under the Act, the fourth exception did not apply.

While the court affirmed the circuit court's decision, we have defended cases where the trial courts have determined a sufficient factual basis exists to preclude summary judgment based on the exclusive remedy doctrine. *Kordas* will prove to be a valuable precedent in getting such courts to take a more appropriate and expansive view of when the exclusive remedy doctrine should be applied.

Illinois Appellate Court Sets Tough Standard for Plaintiffs to Prove Unnatural Accumulation of Ice

In *Lee v. Rock Corner Marathon*, 2026 IL App (2d) 250004 (January 15, 2026), the Illinois Appellate Court for the Second District held that the fact that ice accumulated in a concavity in a parking lot does not meet a Plaintiff's burden of establishing that the ice was an unnatural accumulation for which the landowner could be held liable.



In *Lee*, Plaintiff slipped and fell in a gas station parking lot. The parking lot had been plowed a few hours before the incident, and at the time of the incident, it appeared to have a light layer of snow over it. It was determined that Plaintiff actually slipped on an accumulation of ice under the snow.

In response to the lawsuit, Defendant filed a motion for summary judgment claiming that Plaintiff could not establish that the ice was an unnatural accumulation for which there could be liability.

Plaintiff responded with evidence from her expert suggesting that the parking lot did not have the quarter inch per foot slope required under the applicable building code and that the area in which Plaintiff slipped was flat except for the slight concavity in which water had accumulated and froze. The trial court granted the motion for summary judgment, finding Plaintiff had not met her burden of establishing that the accumulation of ice in the concavity was unnatural.

On appeal, Plaintiff again argued that the existence of the concavity and the inadequate slope resulted in an unnatural accumulation of ice. Plaintiff also argued that Defendant should have had actual or constructive notice of the condition, given the long-standing duration of the concavity.

The appellate court rejected both arguments. First, the court held that the concavity merely permitted a natural accumulation of water which turned into ice. Noting that Plaintiff would not be able to establish that the water that eventually ended up in the concavity came from any unnatural source (such as a leaky roof). Specifically, the court held that the accumulation was unnatural and that Plaintiff needs to establish how the ice was formed in the first place in order to make the step that the existence of ice was unnatural.

With regard to the second argument, that Defendant had actual constructive notice of the condition. Plaintiff failed to come forward with any evidence that the accumulation of ice in the concavity was obvious to the Defendant or had been there for such a length of time that the Defendant should have recognized it. Knowledge of the existence of a concavity would not be the same as ice in the concavity.

This Second District opinion is a terrific decision for defense counsel and carriers to have handy in any case in which an accumulation of ice is at issue, as it reiterates the strict burden of proof on plaintiffs to establish that the source of the accumulation was unnatural.

Indiana Court of Appeals Strictly Applies Journey's Account Statute to Bar Refiling of Improvidently Filed Federal Lawsuit



Indiana has an interesting statute that allows a plaintiff who incorrectly files a cause of action in one court to dismiss and refile the action in the correct court even though the original statute of limitations has expired. This "Journey's Account Statute" states as follows:

A. This section applies if a plaintiff commences an action and:

1. the plaintiff fails in the action from any cause except negligence in the prosecution of the action;
2. the action abates or is defeated by the death of a party; or
3. a judgment is arrested or reversed on appeal.

B. If subsection (a) applies, a new action may be brought not later than the later of:

1. three (3) years after the date of the determination under subsection (a); or
2. the last date an action could have been commenced under the statute of limitations governing the original action;

and be considered a continuation of the original action commenced by the plaintiff.

I.C. § 34-11-8-1.

The statute was intended to preserve the right of a "diligent suitor" to pursue a judgment on the merits and Indiana courts have consistently held that it is to be liberally construed to protect such a "diligent suitor."

In *Parsley v. Marasco*, 25 A-PL-352 (December 31, 2025), the Indiana Court of Appeals zeroed in on the language of the statute that excludes causes of action that fail because of "negligence in the prosecution."

In *Parsley*, Plaintiff's counsel originally filed a federal lawsuit claiming that diversity between Plaintiff and all Defendants existed such that the federal court would have subject matter jurisdiction. The Complaint, however, clearly referenced the fact that Plaintiff and two of the three Defendants were, in fact, residents of the State of Indiana.

Defendants filed a motion to dismiss the Complaint for lack of subject matter jurisdiction based upon this defect in diversity jurisdiction.

Noting the failure of diversity jurisdiction, Plaintiff then filed the same action in state court and dismissed the federal complaint. By the time Plaintiff did this, however, the applicable two-year statute of limitations had run.

In the state court proceedings, Defendants asserted that the two-year statute of limitations had expired. Plaintiff, relying on the Journey's Account Statute, maintained that the refiled action was a continuation of the first action under the statute and, therefore, was timely filed. The trial court disagreed and dismissed the cause of action.

On appeal, the Court of Appeals focused on the fact that Plaintiff's counsel knew from the allegations in the federal Complaint that there never was diversity jurisdiction over the matter. Because of this, the Court of Appeals held that the failure of the federal court's cause of action was the result of negligence of Plaintiff's counsel. As such, the Journey's Account Statute did not apply to save the refiled state court action.

Illinois Appellate Court Holds that Tow Truck Operator is not a Common Carrier who Owes a Special Duty to a Passenger-Motorist

In *Tolentino v. Clifford's Towing & Recovery*, 2026 IL App. (3d) 240618 (January 14, 2026), the Illinois Appellate Court for the Third District held that a tow truck company and its operator, who was dispatched to recover a motorist's vehicle, were not a common carrier that owed a special duty to a motorist when the motorist was also being transported by the tow truck operator.

In *Tolentino*, Plaintiff's car became disabled and, through AAA, a tow truck was dispatched to pick up the vehicle and transport it to Plaintiff's home. The tow truck driver, through communications with Plaintiff's wife, learned that Plaintiff needed a ride home as well. The dispatch, however, was solely for recovering the stranded vehicle.

In any event, the tow truck driver allowed Plaintiff to ride in the tow truck as well. When the vehicle arrived at Plaintiff's home, Plaintiff went to step out of the vehicle and fell.

Plaintiff filed a lawsuit claiming that Plaintiff was owed a special duty because the tow truck company was a common carrier. Plaintiff alleged that he was injured because of the risk of injury associated with Plaintiff's poor vision, the poor lighting, the

multiple steps on the truck and Plaintiff's unfamiliarity with how to exit a tow truck. Nowhere in the Complaint did Plaintiff allege that the driver was negligent or that any duty was owed other than the special duty that common carriers owed to their passengers.



The tow truck company moved for summary judgment, maintaining that it had no duty to assist the Plaintiff in exiting the cab. In response, Plaintiff argued that the tow truck company owed a higher duty of care as a common carrier and that it breached that duty. Finding that the tow truck company was not a common carrier in this instance, the trial court granted the Motion for Summary Judgment. Plaintiff appealed.

On appeal, the Third District Court of Appeals noted that Plaintiff did not allege that the tow truck operator was negligent. Rather, Plaintiff simply alleged that the operator had a duty to protect Plaintiff from all risks of injury under the theory that the tow truck operator was a common carrier and that a special relationship existed for which a heightened duty of care applied.

The appellate court rejected this argument. The court first noted the distinction between a common carrier and a private carrier. A common carrier is one who undertakes for hire to carry all persons indifferently to all who may apply for passage as long as there is room and there is no legal excuse for refusal. On the other hand, a private carrier is one who transports pursuant to a special agreement. The court also noted the distinction between a common carrier of goods and a common carrier of persons. In this regard, the court focused on the fact that the tow truck had been dispatched to retrieve the vehicle, and that would make the tow truck a private carrier of goods, not people. The court further noted that the tow truck company was not paid to transport the Plaintiff, and the invoice was only for the transport of the vehicle.

Because the tow truck company was not a common carrier of passengers and because Plaintiff had not alleged any duty or breach of duty other than under the special duty, there was no liability under the Complaint.

While not raised in the trial court, Plaintiff argued that the tow truck operator also voluntarily undertook to safely transport Plaintiff and failed to do so. The appellate court held that Plaintiff had forfeited this argument because it was not "part and parcel" with the duty to exercise ordinary care and certainly did not fall within the realm of special duty as alleged in the Complaint.

In many cases, we see plaintiffs alleging the existence of a special duty on the assertion that the defendants are common carriers. *Tolentino* is a good example of how such assertions can be broken down and disposed of.

Firm News

Downey & Lenkov Illinois Attorneys Selected to 2026 Super Lawyers and Rising Stars Lists

We are pleased to announce that 10 Illinois Downey & Lenkov attorneys have been named by Super Lawyers for their excellence in their respective practice areas.

Super Lawyers recognizes attorneys who exhibit excellence in their practice based on professional achievement and peer recognition. The Super Lawyers list recognizes no more than 5% of attorneys in each state. The Rising Stars list recognizes no more than 2.5% of attorneys in each state.

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Welcome to the Team

Please welcome our new Illinois Associates [Derek Bushman](#), [Jack Fritschler](#), [Cassandra Halyko](#), [Jaylen Johnson](#), [Kevin Mouayed](#) and [Nial Vender](#).



Derek brings an aggressive yet collaborative approach to representing employers, insurers and businesses in complex litigation matters. He works closely with claims professionals and clients to efficiently manage exposure, control litigation costs and achieve favorable outcomes.



Before transitioning to defense work, Jack gained valuable experience clerking for a prominent Chicago plaintiffs’ personal injury firm, which provides unique insight into opposing strategies to advocate for his clients.



Cassandra is a dedicated attorney who is known for her strategic and detail-oriented approach. She works closely with employers, insurance carriers and third-party administrators to develop efficient and effective litigation strategies.



Jaylen provides a well-rounded and detail-oriented approach to his practice, working closely with insurance companies, third-party administrators and employers. He has achieved successful results through various dispositive motions.



Kevin possesses strong negotiation skills essential to the employers, insurers and entities he represents. His prior experience in entertainment law and handling estate and trusts contributes to his well-rounded knowledge in various practice areas.



Nial is a dedicated attorney who is committed to representing employers, insurers and businesses in a wide range of litigation matters.

Happy Holidays!

We're serving up some holiday spirit! Our team had a blast celebrating the season at SPIN. Happy Holidays from all of us to you!



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[Jeffrey Kehl](#) and [Taylar Young](#) contributed to this newsletter.

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