MEMORANDUM

TO: MI

FROM: SCM

DATE: 11/21/05

RE: BETH ELLENWOOD AND SUZANNE WOLFE v. CONDELL – COMPENSABILITY

FACTUAL BACKROUND

Ms. Beth Ellenwood was employed by Condell as an exercise physiologist at the Gurnee Center Club in Gurnee, Illinois. Ms. Suzanne Wolfe was employed by Condell as a secretary at the Gurnee Center Club. Ms. Ellenwood worked from 7 A.M. to 3 P.M., and Ms. Wolfe worked from 8 A.M. to 4 P.M. Both were part of the Health Promotions Department. According to the information contained within the claim file notes, the manager for these two women, Ms. Sharon Duo, advised Ms. Emmie Lyng that they live across the street from one another and that they were good friends. It was also noted that they "always car pool."

In addition to the Gurnee Center Club, Condell has another facility in Libertyville that is called the Libertyville Center Club. The Libertyville Center Club is located on the Condell Medical Center campus. Monthly meetings are held at the Libertyville Center Club for all Condell employees who are part of the Health Promotions Department. The Health Promotions Department is comprised of seven employees. The distance between the Gurnee Center Club and the Libertyville Center Club is 9.48 miles.

On November 8, 2005 Ms. Ellenwood and Ms. Wolfe drove separate cars to work at the Gurnee Center Club. Later in the day, Ms. Ellenwood and Ms. Wolfe departed in Ms. Wolfe's car for the monthly meeting at the Libertyville Center Club. Ms. Wolfe was the driver. The meeting at the Libertyville Center Club lasted from 2 P.M. to 3 P.M. Once the meeting ended, Ms. Ellenwood punched out for the day. Thereafter, both employees went to the Condell Medical Center (hospital). Ms. Ellenwood went into the hospital in order to obtain "something from the lab." Ms. Wolfe went into the hospital in order to go to the Human Resources Department and "update her insurance." It is not clear whether Ms. Ellenwood and Ms. Wolfe walked over to the hospital or drove. Ms. Ellenwood and Ms. Wolfe then departed in Ms. Wolfe's car and embarked upon a return trip to the Gurnee Center Club. Again, Ms. Wolfe was the driver. Ms. Wolfe needed to return to the Gurnee Center Club in order to check her messages. She also needed to drop Ms. Ellenwood off at her car.

Instead of traveling directly back to the Gurnee Center Club, Ms. Wolfe decided to stop at her parent's house, where she was going to "drop something off before returning to work." Ms. Wolfe's parent's home is located 5.36 miles away from the Libertyville

Center Club. While she was en rout to her parent's home, her vehicle was rear ended by a seventeen year old in a Chevy Blazer. Ms. Wolfe's car was struck from behind while she was waiting at a stop light before turning left into her parent's subdivision. It appears that Ms. Wolfe was taken to Lake Forest Hospital and that Ms. Ellenwood was airlifted to Lutheran General Hospital.

Ms. Lyng obtained Ms. Wolfe's recorded statement. According to the information contained within the claim file notes, Ms. Wolfe confirmed that she deviated from her route back to the Gurnee Center Club from the Libertyville Center Club. She also stated that she did not remember the accident, and that her director was not aware of the stop she was planning to make at her parent's house.

It appears that Ms. Sharon Duo, Ms. Ellenwood's and Ms. Wolfe's manager, advised Ms. Lyng that she was unaware that Ms. Ellenwood and Ms. Wolfe were planning to stop at Ms. Wolfe's parent's home before returning to the Gurnee Center Club.

COMPENSABILITY

At issue is whether Ms. Ellenwood and Ms. Wolfe sustained injuries arising out of and in the course of their employment.

The general rule is that accidents that occur while an employee is going to or from his place of employment do not arise out of or in the course of employment. Urban v. Industrial Commission, 34 Ill.2d 159 (1966). However, this rule is inapplicable where an employee's trip or travel is necessitated by the demands of his employment. U.S. Industries v. Industrial Commission, 40 Ill.2d 469 (1968).

In Ace Pest Control, Inc. v. Industrial Commission, 32 Ill.2d 386 (1965), the Illinois Supreme Court wrote that the Illinois Workers' Compensation Act was intended to insure employees against accidental injuries that arise out of acts which an employee might reasonably be expected to perform incident to his assigned duties. Under this rationale, the Illinois Supreme Court has held compensable injuries suffered by traveling employees who were engaged in activities other than those they were specifically instructed to perform by their employers. Robinson v. Industrial Commission, 96 Ill.2d 87 (1983). The test for determining whether an injury to a traveling employee arose out of and in the course of his employment is the reasonableness of the conduct in which he was engaged and whether it might normally be anticipated or foreseen by the employer. (Id.). The key factors of this test are "reasonableness" and "foreseeability." Wright v. Industrial Commission, 62 Ill.2d 65 (1975).

There is no legally defined test for determining whether an employee is a "traveling employee." However, in Wright v. Industrial Commission, 62 Ill.2d 65 (1975), the Illinois Supreme Court refused to distinguish between an employee who is continuously traveling and one who travels to a job location only to return when the work is completed.

Ms. Ellenwood and Ms. Wolfe were traveling employees on November 8, 2005. At issue with be whether the deviation from the route between the Libertyville Center Club and the Gurnee Center Club to Ms. Wolfe's parent's home "to drop something off" was reasonable and foreseeable. In order to prevail, we would need to convince the court that this conduct was unreasonable and unforeseeable. The following cases illustrate the analysis employed the Illinois courts when determining whether a deviation by a traveling employee severs the connection to employment.

In Robinson v. Industrial Commission, 96 Ill.2d 87 (1983), the employee left his principal office and was on the way to a subdivision in order to perform some work for his employer. He deviated from his route to the subdivision in order to pick up his son. (Id.). The employee intended to take is son Christmas shopping after completing his duties at the subdivision. (Id.). While on this deviation to his home, he was involved in a fatal accident. (Id.). The Court held that the deviation was a reasonable and foreseeable act. (Id.). In reaching this decision, the Court noted that the deviation to pick up his son was insubstantial in relation to the direct route he would follow to the subdivision. (Id.). The Court also noted that the petitioner's action in stopping to get his son on the way to the job site did not violate any of the respondent's rules. (Id.).

In Buchino v. Industrial Commission, 172 Ill.App.3d 162 (1988), a city employee sought workers' compensation benefits for injuries he sustained in a car accident while returning home from an annual St. Patrick's Day parade in which he had marched as a representative of the city. (Id.). When the parade ended, the employee drank in a bar for three hours with co-workers before getting in his car to return home. (Id.). The Court noted that employees were prohibited from drinking alcohol during business hours. (Id.). The Court noted that the employee made an extended deviation which was neither reasonable nor foreseeable in relation to the employment purpose of participating in a parade. (Id.). In so noting, the Court held that the petitioner's deviation severed any relationship to the employment. (Id.).

In Ronald McLain v. Roadway Express, 00 IIC 135, 98 WC 47579, the petitioner was employed by the respondent as a truck driver, and he made regular runs between Chicago and Memphis, Tennessee. Halfway through his run on May 3, 1998, the petitioner exited the freeway and parked his truck in a McDonald's parking lot that was one block off of the interstate. (Id.). Thereafter, the petitioner left his truck and drove with his son, in his son's vehicle, to the petitioner's parent's home. (Id.). The petitioner testified that the trip to his parents' home took about twenty minutes and that his dinner lasted no more than an hour. (Id.). As the petitioner's son was driving the petitioner back to the McDonald's parking lot, they were involved in a motor vehicle accident in which the petitioner sustained injuries. (Id.). The Commission found that the petitioner's personal side trip was a substantial deviation from his normal predetermined route and was thus unreasonable and unforeseeable. The Commission noted that the petitioner's conduct, i.e.; leaving his truck unattended for over an hour and traveling twelve miles away from his predetermined route was unreasonable and unforeseeable. (Id.).

In Hogan v. Village of Glendale 01 IIC 391, 96 WC 56060, the petitioner was employed by the respondent as a building inspector. The respondent provided the Petitioner with a truck and a two way radio to perform his duties. (Id.). The petition testified that he would get his schedule at 8:00 a.m., gather his "stuff," and leave the office in the village hall around 9:00 a.m. (Id.). He testified that he would return to the office around 4:30 p.m. (Id.). On June 25, 1996 at 3:00 p.m. the petitioner went to a gas station about a mile from the village hall to buy a pack of cigarettes. (Id.). After buying the cigarettes, the petitioner's pants ripped from the crotch down to a little bit below the knee when he was getting back into the vehicle. (Id.). Thereafter, without telling any village personnel, the petitioner drove to his house that was 13 minutes away from the gas station and outside of the village in order to change his pants. (Id.). After he changed his pants, he was leaving his subdivision to return to work when he was struck by another vehicle. (Id.). Although there was evidence that indicated that the village had a policy whereby employees must request permission to take vehicles outside of the village, the Commission found that it was reasonable and foreseeable that petitioner would change his pants before returning to work in a position that exposed him to the general public. (Id.). The Commission also noted that an appropriate appearance was a benefit to respondent. (Id.).

Based upon the foregoing case law, there are three major factors considered by Illinois Courts in deciding whether a deviation was reasonable and foreseeable. The first factor is the purpose of the deviation. In this case, we need to determine exactly what Ms. Wolfe was going to drop off at her parent's house before returning to work. The second factor is the extent of the deviation from the normal route. If the deviation was extended or substantial, then the greater chance that it will be found to be unreasonable and unforeseeable. Here, Ms. Wolfe acknowledged that she deviated from the route she was going to take back to the Libertyville Center Club. We know that the total distance between the Libertyville Center Club and the Gurnee Center Club was 9.48 miles. We also know that Mr. Wolfe's parent's home was 5.36 miles away from the Libertyville Center Club and in the opposite direction from the Gurnee Center Club. As such, we can deduct that Ms. Wolfe went 5 36 miles out of her way in order to "drop something off" at her parent's house before returning to work. The third factor that Ilinois Courts take into account is whether an employment rule or policy was violated during the deviation. We need to know if Ms. Wolfe and Ms. Ellenwood were in violation of any rules or polices of Condell.