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## The exclusive remedy of workers' compensation lives

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One of the enduring questions of political philosophy, that must come before the decision of what should be done, is who is to decide. In the area of injuries to workers in Illinois, those decisions are usually made by the Workers' Compensation Commission.

In contrast to Public Act 101-0006 [discussed in this space on May 18, 2020](#), and the decision in *Quintana v. Ferrara Candy Company*, 2020 IL App (3d) 190414-U, [addressed here on Sept. 30, 2020](#), the court in the recent decision of *Sampson v. Prairie Farms Dairy Inc.*, 2021 IL App (3d) 200163-U, affirmed the public policy choice made by the General Assembly in the primacy of the exclusive remedy in the Workers' Compensation Commission when it comes to injuries to workers.

The courts have found that the exclusive remedy applies unless one of the following exceptions applies (1) the injury was not accidental; (2) the injury did not arise from his or her employment; (3) the injury was not sustained during the course of employment; or (4) the injury was not compensable under the act. *Folta v. Ferro Engineering*, 2015 IL 118070, Para. 14. Whether any of the exceptions apply is a question for the commission. *Bolingbrook Police Department v. Illinois Workers' Compensation Comm'n*, 2015 IL App (3d) 130869WC, Para. 38.

In *Sampson*, the plaintiff, a maintenance technician, was injured when he was working on a machine at his employer's facility while the machine was still running. He lost a finger as a result and filed an application for adjustment. Before the IWCC, the employer asserted a defense under the Illinois Supreme Court decision of *Saunders v. Industrial Comm'n*, 189 Ill. 2d 623, 631-32 (2000), that the "plaintiff was acting in violation of an established safety rule when the injury occurred and was doing so for no legitimate business interest of defendant." This case potentially implicated the second and third exceptions described above.

Before the matter could be tried by the commission, Sampson filed a civil action against his employer, which Prairie Farms moved to dismiss based upon the exclusive remedy. In response, Sampson moved to strike the motion to dismiss and for sanctions based upon a claim of judicial estoppel. Sampson claimed that the employer was taking an inconsistent position in asserting that he was neither entitled to compensation before the commission nor allowed to pursue recovery in civil court.

Facially, Sampson's argument has appeal. Sampson was injured, and it would seem reasonable that he should either have an avenue of recovery before the commission or in civil court. His counsel contended that he cannot be without any means of recovery. However, in the attempt by his counsel to apply the principle that for every wrong there must be a remedy, Sampson skipped the first step: there must be a wrong. Simply because there is an injury does not mean that the plaintiff will receive compensation because the worker's conduct may have taken him outside of the scope of his employment, but not outside of the reach of the Workers' Compensation Act. The argument of the employer was that the entity to decide that issue is the commission, not a civil court.

The appellate court agreed with the employer and held, consistent with precedent, that it is for the commission to decide and held that “we do not believe that the case law in this area should be read as allowing an employee to file a civil action in the trial court in situations where the employer has opposed the payment of workers’ compensation benefits in the IWCC proceeding because the employer believes that the *Saunders* rule applies or in situations where the IWCC denies the payment of benefits based upon the application of the *Saunders* rule. Interpreting the case law in such a manner would allow employees to circumvent the application of the exclusive remedy provisions.”

This is an important holding, which as a Rule 23 order entered after Jan. 1, 2021, may be used as persuasive authority.

In addition to the substance of the ruling, the court also provided further guidance on the application of the judicial estoppel doctrine. The court held that not only did the employer maintain a consistent position, that the commission should decide whether Sampson’s conduct was within his employment, but that there also was no final decision for which the employer gained benefit that had been entered by the commission.

This ruling is a reaffirmation of the application and scope of the exclusive remedy of workers’ compensation and the rejection of a creative, though unsuccessful, attempt to erode the system that has been fundamental to Illinois employment policy for more than 100 years. Clear rules as to who is to decide benefits all litigants, and while this may seem a harsh result, a contrary policy that allowed employees to seek compensation in civil court for instances in which employees violated safety rules would lead to perverse incentives (as larger recoveries for workers are likely in civil court than through workers’ compensation) and even stranger outcomes.