ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020018 [17-INC-00159]
Case Name	INSURANCE COMPLIANCE v. LOLITA'S MEXICAN FOOD & TAMALES
Consolidated Cases	
Proceeding Type	Insurance Compliance
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Benjamin Pryde
Respondent Attorney	N/A

DATE FILED: 2/11/2025

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF Cook)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

State of Illinois
Department of Insurance,
Insurance Compliance Department[1], Case # **20WC200018**
Petitioner,

v. **Chicago, IL**

Misael Pena, d/b/a Lolita's Mexican Food and Tamales
Employers/Respondents.

CORRECTED DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the State of Illinois Department of Insurance, Insurance Compliance Department, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents alleging violation of Section 4(a) of the Illinois Workers' Compensation Act for failure to procure mandatory workers' compensation insurance. Petitioner alleges that Respondents knowingly and willfully lacked workers' compensation insurance for 1,525 days. On October 2, 2024, after timely notice to Respondents, a hearing was held before Commissioner Simonovich in Chicago, Illinois. Petitioner was represented by the Office of the Illinois Attorney General. Respondent did not appear in person or through counsel. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 1525 days during the periods of September 11, 2012 to October 29, 2015 and December 19, 2016 to January 3, 2018, when Respondents did business and failed to provide coverage for its employees.

The Commission, after considering the record in its entirety, and being advised of the applicable law, finds that Respondents knowingly and willfully violated §4 of the Act and §9100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the claimed periods in question. As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondents under §4 of the Act in the sum of $457,500.00, representing $300.00 per day for each of the 1,525 days.

I. Findings of Fact

The State of Illinois, Department of Insurance, Insurance Compliance Department, initiated an insurance compliance investigation in 2017 after the Injured Workers' Benefit Fund (IWBF) had been named as an additional party in the matter of *Rocio Rodriguez v. Lolita's*

[1] Formerly the Illinois Workers' Compensation Commission, Insurance Compliance Department

Restaurant & IWBF, No. 11 WC 044583. The department's investigation determined that Respondents' business was subject to the Worker's Compensation Act by virtue of Section 3 of the Act and had failed to provide insurance coverage for its employees. The department further determined Respondents' business was not self-insured.

Respondent was initially served with Notice of Compliance Hearing on February 10, 2023. (PX1). The matter was continued to allow Respondent to obtain counsel. No counsel entered their appearance and Respondent did not appear for any subsequent Webex conferences. *Id*. On December 11, 2023, Petitioner was served Notice of Non-Compliance Hearing via USPS mail to the same address where personal service had previously been made. *Id*. An Order of Default was issued on February 27, 2024. *Id*. An affidavit of Service showed that Respondent was personally served with a Notice of Insurance Compliance via substitute service through Elizabeth Bias Pena, Misael Pena's daughter and manager of Lolita's Mexican Food and Tamales, at the business address on 8605 Ogden Avenue, Lyons, IL on March 15, 2024. (PX2). On March 25, 2024, an additional copy of the Notice of Insurance Compliance and Order of Default was sent to Respondent via USPS mail. *Id*.

Notice of a Scheduled Hearing on the Merits was sent via certified mail to Respondent at his business address at 8605 Ogden Avenue, Lyons, IL. (PX2A). On September 11, 2024, the Notice was received by an individual at the Respondents address. *Id*.

On October 2, 2024, the Scheduled Hearing on the Merits was conducted before Commissioner Simonovich in Chicago, Illinois. Petitioner appeared via their attorney. Respondent did not appear in person or through counsel.

At the time of hearing, Petitioner called Antonio Smith, an investigator for the Illinois Department of Insurance, Insurance Compliance Department, to testify regarding his investigation.

He testified that on January 3, 2018, a State of Illinois Notice of Non-Compliance was sent via certified mail by his office to Respondent at 6340 Ogden Avenue, Berwyn, Illinois, 60402. PX3. The Notice stated that according to Commission records, the Respondent was not in compliance with the requirements of §4(a) of the Act for the period beginning September 11, 2012 to October 29, 2015 and December 19, 2016 through January 3, 2018. *Id*. On January 27, 2021, Petitioner sent a State of Illinois Notice to Employer of Insurance Compliance Informal Conference, set for February 16, 2021 at 10:00 a.m. PX4. Neither Respondent nor any proxy appeared on that date. On March 16, 2021, Petitioner sent a State of Illinois Notice of Insurance Compliance Hearing, set for May 12, 2021. PX5. The period of non-compliance alleged was from September 11, 2012 to October 29, 2015 and December 19, 2016 through September 24, 2018. *Id*.

Investigator Smith testified he had requested corporation records from the Illinois Secretary of State. In response, the Illinois Secretary of State certified that an examination of their records demonstrated Respondent was not an incorporated entity. PX6. Investigator Smith identified Petitioner's Exhibit 7 and 8 as Illinois Workers' Compensation Commission Case Docket case detail printouts for 11WC044583 and 15WC28404, respectively. The case detail printouts showed two pending workers' compensation cases naming Lolita's Restaurant and the Injured Workers' Benefit Fund as the Respondents.

Investigator Smith testified to his belief that Respondent was required by the Act to provide workers' compensation insurance coverage for its employees under the automatic coverage provisions of §3 of the Act, in that they serve food to the public and provide goods or services which are sold to the public.

Investigator Smith conducted an inquiry into whether Respondent was self-insured by making a request to the Commission's Office of Self-Insurance Administration. In response to his request, he received a sworn certification by Maria Sarli-Dehlin of the Commission's Office of Self-Insurance Administration, which stated that no certificate of approval to self-insure was issued by the Commission to Lolita's Mexican Food & Tamales a/k/a Misael Pena Lolitas Mexican Food & Tamales from September 11, 2012 to October 29, 2015 and December 19, 2016 to June 12, 2018. PX9. The certification also identified Misael Pena as Respondent's President. *Id.*

Investigator Smith also requested insurance information from the National Council on Compensation Insurance (NCCI). He received a certification from Corey Brown, the NCCI agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers. The certification showed which showed no record of Respondent having filed policy information showing proof of workers' compensation insurance from September 11, 2012 to October 29, 2015 or December 19, 2016 to the date of filing, February 9, 2019. PX10. NCCI records showed Respondent had filed proof a workers' compensation insurance policy from December 15, 2011 to December 15, 2012, but noted the policy had been cancelled effective September 11, 2012. *Id.* Records also showed Respondent had filed proof of a workers' compensation insurance policy from October 30, 2016 to October 30, 2017, but noted it had been cancelled effective December 19, 2016. *Id.*

Investigator Smith requested records from the Illinois Department of Revenue for tax return information from 2012 through 2018. He received certification that the department had processed Illinois withholding income tax returns for periods ending September 2015, December 2015, and December 2016 through June 2018. PX11.

Lastly, Investigator Smith requested records from the Illinois Department of Employment Security who certified copies of the Employer's Quarterly Wage Reports for the third quarter of 2015 through the third quarter of 2018. PX12. Those records demonstrated employment of a number of employees during this period, with the exception of quarters September 30, 2016 and March 31, 2018. *Id*.

II. Conclusions of Law

The Commission first considers whether Respondents are subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: "the distribution of any commodity by… motor vehicle where the employer employs more than 2 employees in the enterprise or business." 820 ILCS 305/3(3).

The Commission recognizes investigator Smith's testimony that Respondent's company fell under §3(14) and §3(17) of the Act. Pursuant to §3(14) of the Act, certain employers and their

employees are automatically subject to the provisions of the Act if they engage in specific businesses, including those "engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely:

> 14. Any business or enterprise serving food to the public for consumption on the premises wherein any employee as a substantial part of the employee's work uses handcutting instruments or slicing machines or other devices for the cutting of meat or other food or wherein any employee is in the hazard of being scalded or burned by hot grease, hot water, hot foods, or other hot fluids, substances or objects…
>
> 17. (a) any business or enterprise in which goods, wares or merchandise are sold or in which services are rendered to the public at large, provided that this paragraph shall not apply to such business or enterprise unless the annual payroll during the year next preceding the date of injury shall be in excess of $1,000.
>
> *820 ILCS 305/3(14) and (17) (West 2016).*

Further, Petitioner exhibits 11 and 12 demonstrate the exception under §3(17) does not apply to Respondent, as the wages from 2015 through 2018 all exceeded $1,000. Based upon investigator Smith's testimony and Petitioner's exhibits 11 and 12, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to §4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2004). Section 9100.90(a) of the Rules similarly provides that any employer subject to §3 of the Act shall insure payment of compensation required by §4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of the Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of the Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986).

The Commission analyzes here the culpability of Respondents and the applicability of §4(a). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under §2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Respondent from September 11, 2012 to October 29, 2015 and December 19, 2016 to June 12, 2018. PX9. The NCCI certification provided by Petitioner shows Respondent did not file policy information showing proof of workers' compensation insurance for the period from September 11, 2012 to October 29, 2015 or

December 19, 2016 to February 5, 2019. PX10. Records did show Respondent had a workers' compensation insurance policy from December 15, 2011 to December 15, 2012, but that it was cancelled effective September 11, 2012. Records did show Respondent had a workers' compensation insurance policy from October 30, 2016 to October 30, 2017, but that it was cancelled effective December 19, 2016., to August 3, 2016. *Id*. Investigator Smith concluded that Respondent did not have workers' compensation insurance, nor was Respondent self-insured during the relevant time period. Accordingly, the Commission concludes that Petitioner has proved, by a preponderance of the evidence, that Respondents failed to comply with the legal obligations imposed by section 4(a) of the Act from September 11, 2012 to October 29, 2015 and December 19, 2016 to January 3, 2018.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states:

> "Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d) (West 2004).

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers 'Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the length of time that Respondent was in violation of the Act in failing to obtain workers' compensation insurance was significant. Respondent failed to have insurance for 1,525 days from September 11, 2012 to October 29, 2015 and December 19, 2016 to January 3, 2018. As Respondent failed to have workers' compensation insurance, the Injured

Workers' Benefit Fund was named as co-Respondent in two pending cases. Having reviewed the record, the Commission finds no evidence as to the inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The evidence established that Respondent on two separate occasions had a workers' compensation policy but cancelled it prematurely. The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of $300.00 per each day of non-compliance. The Commission assesses a penalty of $457,500.00 ($300.00 x 1,525 days) against Respondent Misael Pena, doing business as Lolita's Mexican Food and Tamales.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent Misael Pena, doing business as Lolita's Mexican Food and Tamales, pay to the Illinois Workers' Compensation Commission the sum of $457,500.00 pursuant to §4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that pursuant to Commission Rule 9100.90(e) payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Workers' Compensation Commission, Fiscal Department
69 West Washington Street, Suite 900
Chicago, Illinois 60602

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 11, 2025

H: 10/02/2024
AHS/kjj
051

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC005185
Case Name	INSURANCE COMPLIANCE v. PRO MOVERS INC
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	***Corrected Decision***
Commission Decision Number	25IWCC0043/19INC00015
Number of Pages of Decision	7
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Chris Zarek
Respondent Attorney	

DATE FILED: 2/3/2025

/s/Deborah Simpson,Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF KANE)

ILLINOIS WORKERS' COMPENSATION COMMISSION
COMMISSION DECISION

Illinois Department of Insurance[1],
Petitioner

Case No. 20WC005185
INC No. 19INC00015

v.

Geneva, IL

Pro Movers, Incorporated,
Employers/Respondent

DECISION AND OPINION ON REVIEW AFTER RECALL OF ORDER
FOR CLERICAL ERROR PURSUANT TO §19(F) OF THE ACT

Petitioner brings this action by and though the Office of the Illinois Attorney General, against Respondent, alleging violations of §4(a) of the Illinois Workers' Compensation Act ("Act") and §9100 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission ("Rules") for failure to procure mandatory workers' compensation insurance. Petitioner alleges Respondent knowingly and willfully lacked workers' compensation insurance for 2,639 days from August 4th, 2007 to October 19th, 2007 (77 days), August 19th, 2008 to September 3rd, 2008 (16 days), May 9th, 2011 to January 13th, 2017 (2077 days), November 2nd, 2017 to November 6th, 2017 (5 days), January 15th 2018 to January 17th 2018 (3 days), and February 8, 2018 to May 4th, 2019 (461 days). Proper and timely notice was provided to Respondent and a hearing was held before Commissioner Deborah Simpson in Geneva, Illinois on November 21st, 2024. Petitioner was represented by the Office of the Illinois Attorney General. Respondent did not appear in person or through counsel.

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondent knowingly and willfully violated §4(a) of the Act and §9100 of the Rules from August 4th, 2007 to October 19th, 2007 (77 days), August 19th, 2008 to September 3rd, 2008 (16 days), May 9th, 2011 to January 13th, 2017 (2077 days), November 2nd, 2017 to November 6th, 2017 (5 days), January 15th 2018 to January 17th 2018 (3 days), and February 8, 2018 to May 4th, 2019 (461 days). Accordingly, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with §4(d) of the Act in the sum of $1,319,500.00. The Commission further orders Respondent to reimburse the Injured Workers' Benefit Fund in the amount of $20,189.91, for a total amount of $1,339,689.91.

I. Findings of Fact

On January 25th, 2022, personal service was made on Respondent Pro Movers, Inc., via its registered agent, William Volk. PX2. Investigator Michael Cadman delivered a Notice of Insurance Compliance Hearing upon William Volk at his residence at 9:08 a.m. *Id.* Assistant Attorney General

[1] Formerly the Illinois Workers' Compensation Commission's Insurance Compliance Department

Jake Snowman further stated on the record that notice of the hearing date was given in person on July 25th, 2024, where registered agent William Volk appeared on behalf of Pro Movers, Incorporated and agreed to the November 21, 2024, date. Furthermore, Assistant Attorney General Snowman stated that he had emailed Mr. Volk two days prior to hearing and received no response, nor had he received communication from Mr. Volk since the July 25th hearing. (T at 6).

George Sweeney, the Assistant Deputy Director of the Illinois Department of Insurance, Insurance Compliance Department, testified that their investigation of Respondent began in 2019. (T at 15). On May 14, 2019, a State of Illinois Notice of Non-Compliance was sent via certified mail by his office to Respondent individually as the registered agent of the Respondent corporation to 2136 Country Lakes Drive, Naperville, Illinois as well as to 340 Marshall Avenue, Unit 105 in Aurora. (PX3, T at 16). The Notice stated that according to Commission records, the Respondent was not in compliance with the requirements of Section 4(a) of the Act for the period beginning July 20, 2007, through the date of the notice. *Id.* Also on May 14, 2019, Petitioner sent a notice for an Insurance Compliance Informal Conference, set for June 13, 2020. PX4. Neither Respondent nor any proxy appeared on that date. (T at 17).

Assistant Deputy Director Sweeney testified that their investigation concluded that Respondent was required by the Act to provide workers' compensation insurance coverage for its employees. In support of this, Assistant Deputy Director Sweeney identified the arbitration decision of *Aaron Alberico v. Pro Movers, Inc.; Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund*, Ill. Workers' Comp. Commission, No. 18WC013238 (April 22, 2019), PX11. In the decision, which was issued on April 22, 2019, the Commission found that an employer-employee relationship did exist between the parties. *Id.* Additionally, the Commission found that, as part of its operation, Respondent's employees drove box trucks to carry loads and that therefore Respondent was automatically subject to the mandatory coverage provisions of §3 of the Act. *Id.* at 5. The Commission also found that Respondent was uninsured on the accident date of January 3, 2017. *Id.* at 10. An award for permanent partial disability benefits was entered on behalf of the Petitioner. *Id.* at 4. The award was entered against the Injured Workers' Benefit Fund to the extent permitted and allowed under section 4(d) of the Act. *Id.* at 4. On January 31, 2020, The Injured Workers' Benefit Fund issued payment to Petitioner in the amount of $20,189.91 in the form of a check. PX12. The check indicated this was the full and final workers' compensation benefit award for case 18WC013238. *Id.*

Assistant Deputy Director Sweeney investigated whether Respondent was self-insured by making a request to the Commission's Office of Self-Insurance Administration. A sworn certification by Maria Sarli-Dehlin of the Commission's Office of Self-Insurance Administration stated that Respondent was not authorized to self-insure and that no certificate of approval to self-insure was issued by the Commission to Pro Movers, Inc. from July 20, 2007, to May 14, 2019. PX8.

Assistant Deputy Director Sweeney also requested insurance information from the National Council on Compensation Insurance (NCCI). Topaz Bertino certified that the NCCI is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that Respondent did not file policy information showing proof of workers' compensation insurance from August 4th, 2007 to October 19th, 2007, August 19th, 2008 to September

3rd, 2008, May 9th, 2011 to January 13th, 2017, November 2nd, 2017 to November 6th, 2017, January 15th 2018 to January 17th 2018, and February 8, 2018 to May 4th, 2019. PX7.

Per the NCCI Certification and the first exhibit contained therein, Respondent Pro Movers, Inc., with FEIN 421537959 did file policy information showing proof of workers' compensation insurance for the following dates:

a) October 29, 2006, through October 29, 2007, with a policy cancellation effective date of March 28, 2007;
b) March 30, 2007, through October 29, 2007, with a policy cancellation effective date of August 4, 2007;
c) October 19, 2007, through October 19, 2008, with a policy cancellation effective date of August 19, 2008;
d) September 4, 2008, through October 19, 2008;
e) October 19, 2008, through October 19, 2009;
f) October 19, 2009, through October 19, 2010;
g) October 19, 2010, through October 19, 2011, with a policy cancellation effective date of May 9, 2011;
h) January 14, 2017, through January 14, 2018, with a policy cancellation effective date of November 2, 2017;
i) November 7, 2017, through January 14, 2018; and
j) January 18, 2018, through January 14, 2019, with a policy cancellation effective date of February 8, 2018.

Assistant Deputy Director Sweeney noted on the record that the policies not showing a policy cancellation effective date (represented by lines d, e, f, and i above) were in effect for the entirety of the policy period, but those policies with policy cancellation effective dates (represented by lines a, b, c, g, h, and j above) were not reinstated and ended on the policy cancellation effective date listed in Exhibit 1 of Petitioner's Exhibit 7. PX7.

Assistant Deputy Director Sweeney also requested records from the Illinois Secretary of State, which indicated Respondent was incorporated on May 29, 2002, and was dissolved on October 14, 2022. PX5. Further, the Secretary of State records list Respondent's registered agent as William Volk, whose address was 2136 Country Lakes Dr., Naperville IL 60563.

Assistant Deputy Director Sweeney requested records from the Illinois Department of Revenue who certified that the department had processed Illinois corporation income and replacement tax returns for the years 2002 through 2022 but not thereafter. PX9.

I. Conclusions of Law

The Commission's authority and jurisdiction over insurance non-compliance cases is authorized by Section 4(d) of the Act, as well as the Rules. Under Section 4 of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance, whether this is done through being self-insured, through security, indemnity, or bond or through a purchased policy. Section 9100.90 of the Rules codifies the language of the Act, and additionally

describes the notice of non-compliance required, as well as the procedures of the Insurance Compliance Division, and how hearings are to be conducted. Reasonable and proper notice of the proceedings, as noted above, was provided to Respondent.

The Commission first addresses whether Respondent is subject to the Act. Pursuant to §3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including those "engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely:

> 15. Any business or enterprise in which electric, gasoline or other power-driven equipment is used in the operation thereof."
>
> *820 ILCS 305/3(15) (West 2016).*

The Commission finds that Respondent's business falls within these provisions of the Act. Assistant Deputy Director Sweeney's testimony that Respondent was subject to the Act is supported by the Commission's decision in *Alberico*, wherein the Commission concluded that, as part of its operation, Respondent's employees drove box trucks to transport loads, which was sufficient to subject Respondent to the automatic coverage provisions of §3 of the Act. PX11 at 7. Sweeney testified that the employees drove box trucks as part of their job duties. Accordingly, the Commission finds that Respondent's business engaged in work which automatically fell within the provisions of the Act.

Pursuant to §4(a) of the Act, all employers who come within the provisions of the Act are required to provide workers' compensation insurance. 820 ILCS 305/4(a) (West 2016). Section 9100.90(a) of our Rules similarly provides that any employer subject to Section §3 of the Act shall insure payment of compensation required by §4 of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a). The Rules also provide that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(E). Additionally, "A certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D).

Here, Petitioner submitted a certification from the Department of Self-Insurance that no certificate of approval to self-insure was issued by the Commission to Pro Movers, Inc. from July 20, 2007, to May 14, 2019. Petitioner also submitted the NCCI certification that Respondent did not file policy information showing proof of workers' compensation insurance at any time for the periods of August 4th, 2007, to October 19th, 2007, August 19th, 2008 to September 3rd, 2008, May 9th, 2011 to January 13th, 2017, November 2nd, 2017 to November 6th, 2017, January 15th 2018 to January 17th 2018, and February 8, 2018 to May 4th, 2019. Assistant Deputy Director Sweeney concluded that Respondent did not have workers' compensation insurance, nor was it self-insured during the relevant time period(s). Accordingly, the Commission concludes that Respondent failed to comply with the legal obligations imposed by §4(a) of the Act from August 4th, 2007, to October 19th, 2007, August

19th, 2008, to September 3rd, 2008, May 9th, 2011, to January 13th, 2017, November 2nd, 2017 to November 6th, 2017, January 15th 2018 to January 17th 2018, and February 8, 2018 to May 4th, 2019.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states in pertinent part:

> Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section . . . the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty. *820 ILCS 305/4(d)(West 2016).*

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. *See State of Illinois v. Murphy Container Service*, 03 INC 00155, 07 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the length of time that Respondent was in violation of the Act in failing to obtain workers' compensation insurance was significant. Respondent failed to have insurance for 2,639 days from August 4th, 2007, to October 19th, 2007, August 19th, 2008, to September 3rd, 2008, May 9th, 2011, to January 13th, 2017, November 2nd, 2017, to November 6th, 2017, January 15th, 2018, to January 17th 2018, and February 8, 2018 to May 4th, 2019. Further, the Commission, in case 18WC013238, has determined that Respondent had employees, one of whom sustained a work injury on January 3, 2017. Respondent failed to have workers' compensation insurance to protect that employee, or any of its other employees, and failed to pay any benefits to same. The Injured Workers' Benefit Fund was required to pay benefits on behalf of this employer to its employees, and the Fund has the right to recover the benefits paid on this employer's behalf. Further, the periods during which the Respondent purchased workers' compensation insurance coverage show clear knowledge by the Respondent of the need to obtain same and the knowing disregard during the periods they did not. This clear knowledge of the requirement and disregard for their employees is further shown by Respondent not having insurance in January 2017 at the time

their employee was injured, procuring insurance immediately thereafter and then cancelling that policy a few months later. Having reviewed the record, the Commission finds no evidence as to the inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission finds Respondent knowingly and willfully failed to comply with the Act for a significant period. Based on the record before us, the Commission finds the appropriate penalty to be $500.00 per each day of noncompliance. The Commission assesses a penalty of $1,319,500.00 ($500.00 x 2,639 days) against Respondent William Volk, individually and as president of Pro Movers, Inc., a dissolved corporation. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondent Volk in the amount of $20,189.91 representing the liability imposed on the Injured Workers' Benefit Fund in the *Alberico* case (18WC013238).

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent William Volk, individually and as president of Pro Movers, Inc., a dissolved corporation, pay to the Illinois Workers' Compensation Commission the sum of $1,339,689.91 pursuant to Section 4(d) of the Act and Section 9100.85(a)(1) of the Rules.

Pursuant to Commission Rule 9100.90(e), once the Commission assesses a penalty against an employer in accordance with Section 4(d) of the Act, payment shall be made according to the following procedure: 1) payment of the penalty shall be made by certified check or money order payable to the Illinois Workers' Compensation Commission, or by an electronic format prescribed by the Commission and accepted by the Illinois Office of the Comptroller; and 2) payment shall be mailed or presented within 30 days after the final order of the Commission or the order of the court on review after final adjudication to:

Illinois Workers' Compensation Commission
Fiscal Department
69 W. Washington Street, Suite 900
Chicago, Illinois 60602

Bond for the removal of this case to the Circuit Court by respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 3, 2025

s/Deborah L. Simpson
Deborah L. Simpson

/s/Raychel A. Wesley
Raychel A. Wesley

s/Stephen J. Mathis
Stephen J. Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018188
Case Name	Amanda Pozniak (Individually and as Guardian of Dependent Children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, Deceased) v. Pactiv Corporation.
Consolidated Cases	16WC018189;
Proceeding Type	***Remand from the Circuit Court of Cook County***
Decision Type	***Corrected Decision***
Commission Decision Number	25IWCC0076
Number of Pages of Decision	61
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Matthew Rokusek

DATE FILED: 2/26/2025

/s/Carolyn Doherty,Commissioner

Signature

25IWCC0076-Corrected

STATE OF ILLINOIS	)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	)SS.	☐ Affirm with changes	☒ Rate Adjustment Fund (§8(g))
COUNTY OF COOK	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
	)	☐ Modify	☐ PTD/Fatal denied.
		☒ ON REMAND FROM CIRCUIT COURT	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMANDA POZNIAK, as Independent Administrator of the Estate of Charles Lawton, deceased, et al.,

Petitioner,

vs.

NO: 16 WC 18188 and 16 WC 18189
2024 L 050047

PACTIV CORPORATION and AEROTEK,

Respondents.

CORRECTED DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County. In accordance with the Circuit Court Order filed on January 27, 2025, the Commission on remand considers the issues of accident, earnings/benefit rates, marital status and dependents, medical expenses, temporary benefits, nature and extent, death benefits pursuant to 820 ILCS 305/7(a) and 305/7(f), and Pactiv's Motion to Dismiss.

I. PROCEDURAL BACKGROUND

Petitioner, as an Independent Administrator of the Estate of Charles Lawton (deceased), filed two claims for benefits under the Illinois Workers' Compensation Act against the Respondents, Pactiv Corporation and Aerotek, for the fatal injuries Mr. Lawton sustained a result of an accident on June 13, 2013. The first Application for Adjustment, case number 16 WC 18188, was filed against Pactiv Corporation. The second Application for Adjustment, case number 16 WC 18189 was filed against Aerotek. The Circuit Court's Order acknowledges in a foot note that "[i]t was stipulated that the Respondents, Aerotek and Pactiv, had a borrowing-lending relationship with regard to Lawton's employment." The Applications were consolidated before trial. After trial, the Arbitrator issued a decision on July 27, 2023 concluding that Mr. Lawton had not

sustained an accident arising out of and in the course of his employment and no benefits were awarded under either case number.

The Commission notes that no finding under Section 1(a)4 of the Act, covering borrowing and lending employers, was made by the Arbitrator in either decision. In case number 16WC18188, the Arbitrator granted Respondent Pactiv's Motion to Dismiss. As his basis for dismissal, the Arbitrator relied upon a written indemnity agreement and the stipulation entered into at trial between Respondent's Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner, that Aerotek retains full liability for any and all benefits, including but not limited to medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency. Because benefits were denied, the stipulation and indemnity agreement were not given effect.

Petitioner then filed timely Petitions for Review before the Illinois Workers' Compensation Commission. The Commission agreed that Petitioner failed to prove an accident that arose out of and in the course of his employment. On review of case 16 WC 18188 filed against Pactiv, the Commission vacated the portion of the Arbitrator's Order granting Pactiv's Motion to Dismiss in case number 16 WC 18188 on procedural grounds while affirming and adopting the remainder of the Arbitrator's Decision in Case 16 WC 18188. On review, the Commission affirmed and adopted the Arbitrator's Decision in Case 16 WC 18189 filed against Respondent Aerotek.

Petitioner then sought administrative review in the Circuit Court of Cook County on both matters. On January 27, 2025, the Circuit Court issued one Order for both cases stating, "[t]he court finds the Arbitrator's analysis with regard to compensability of the accident, as adopted by the Commission, to have been contrary to law." Accordingly, the court ordered "that the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O," "[t]hat the Commission's Decisions and Opinions on Review dated January 19, 2024 are CONFIRMED as to Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability," and "[t]hat the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award." The Order also directs"[t]hat, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 307/7(a) and 820 ILCs 305/7(f)."

The Commission finds the entirety of the record sufficient to comply with Order and instructions given on remand.

II. FINDINGS OF FACT

The Commission hereby incorporates by reference the "Findings of Facts" and findings included in the "Conclusions of Law" contained in the Arbitrator's Decisions filed on July 27, 2023, attached hereto and made a part hereof, to the extent they do not conflict with the

Commission's Decisions and Opinions filed on January 19, 2024, which are attached hereto and made a part hereof, to the extent these decisions do not conflict with the Circuit Court of Cook County's Order filed on January 27, 2025. The Commission also incorporates by reference the January 27, 2025, Circuit Court Order, attached hereto and made a part hereof. Finally, any additional facts from the record that are relied on by the Commission in order to comply with the remand and instructions of the Circuit Court are cited below and incorporated.

III. CONCLUSIONS OF LAW

In an effort to comply with the Circuit Court order on remand, the Commission is charged with following the court's order. *See Noonan v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152300WC, ¶ 11. The Commission initially observes that a reviewing court's mandate vests a lower court with jurisdiction only to take action that complies with the reviewing court's mandate. *See Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28. On remand, the Commission lacks the authority to exceed the scope of the mandate and must follow the court's precise and unambiguous directions. *Id*. If the direction is to proceed in conformity with the opinion, then, of course, the content of the opinion is significant. *Id*.

In this case, on January 27, 2025, the Circuit Court found and ordered:

"The court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to law. However, the court finds the parties' dispute concerning compensability of the claim to have been in good faith and confirms the denial of penalties."

"The court also set aside the findings made by the Arbitrator unnecessary for the determination that the accident was non-compensable, including the findings as to Lawton's average weekly wage, the identity of his minor dependents, whether medical services were reasonable and necessary and the duration of any temporary total disability to which he was entitled. (Disputed Issues G, I, J and K)."

"The court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co*., 315 Ill.App.3d 823, 826-27 (2000)("[*Lachona v. Industrial Commission,* 87 Ill.2d 208 (1981)]does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")."

Accordingly, the Circuit Court ultimately ordered:

"That the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O;"

"That the Commission's Decisions and Opinions on Review dated January 19, 2024 are

CONFIRMED as to the Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability;"

"That the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss;"

"That, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 307/7(a) and 820 ILCs 305/7(f)."

C. Accident:

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue C—Accident.

The Commission observes the Circuit Court Order stating "[t]he court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to the law." The Commission observes that in the Order, the court's accident discussion and finding focuses on the "hero/emergency doctrine" as argued by Petitioner, citing *Dragovich v. Iroquois Co*., 269 Ill. 478 (1915), *Baum v. Indus. Com.,* 288 Ill. 516 (1919), and *Metropolitan Water Reclamation District of Greater Chicago v. Industrial Comm'n*, 272 Ill. App. 3d 372 (1995). Therefore, on remand, the Commission concludes that Mr. Lawton's accident on June 13, 2013, which resulted in fatal injuries, is compensable pursuant to the "hero/emergency doctrine" and pursuant to the Remand Order of the Circuit Court dated January 27, 2025.

G. Earnings/Average Weekly Wage

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue G—Earnings/Average Weekly Wage.

The Commission observes that on the Request for Hearing Forms, AX 1 and AX 2, Petitioner claimed an AWW of $823.75 and Respondent claimed an AWW of $780.04. *See* AX 1 and AX 2.

The Commission notes that Aerotek RX 1, the payroll register, provides only the "check dates" and not the actual days, dates, or time periods worked by Mr. Lawton. It appears Mr. Lawton was paid weekly and was paid $21.00 per hour. The first check date listed is November 8, 2012 and the last two check dates listed are June 20, 2013 and July 2, 2013. The last check date of July 2, 2013 should not be included in the weeks and parts thereof calculation as it appears be payment for something other than work actual hours worked before the accident. The check date of June 20th is presumably for work performed the previous week, which is the week the accident

occurred. The accident occurred on Thursday, July 13, 2013 and the register indicates 32 hours were worked that week. The decedent did not return to work after the accident; thus, it can be reasonably presumed he worked only 4 days that week and not a full week. However, given the lack of information provided on the register, it is difficult to determine for the other weeks of less than 40 hours worked, what days were worked in order to determine the parts thereof.

At trial, Petitioner's claimed average weekly wage of $823.75, which included overtime hours. *See* AX 1 and AX 2; *see also* Aerotek RX 1. However, in this case, there was no testimony or evidence provided as to whether overtime was mandatory or a condition of employment. In addition, RX 1, the payroll register shows that overtime hours were not a set number of hours worked consistently each week. Therefore, pursuant to *Airborne*, overtime wages should not be included in this case. Airborne Express, Inc. v. Illinois Workers' Compensation, 372 III. App. 3d 549, 554-555 (1st Dist. 2007)(stating "[o]vertime includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week).

After review of Aerotek RX 1, the payroll register, the Commission finds that Mr. Lawton worked 27 and 4/7 weeks prior to the accident. Pursuant to Section 10 of the Act, the Commission uses the weeks and parts thereof method to calculate AWW. The Commission notes that the total earnings for the check dates of 11/8/12 through 06/20/13 were $21,261.00, not including $84.00 of overtime wages (4 hours x $21/hour). The total earnings of $21,261.00 divided by 27-4/7 weeks or 27.571 computes to an average weekly wage of $771.14.

Nevertheless, the Commission is unable to utilize the average weekly wage of $771.14 as the Commission is bound by the *Walker* case. Walker v. Industrial Comm'n, 345 Ill.App.3d 1084 at 1088 (4th Dist. 2004) (holding it has been held that the language of section 7030.40, now 9030.40, provides that the request for hearing is binding on the parties as to the claims made therein). Therefore, the Commission finds the average weekly wage to be $780.04 as claimed by Respondent. *See* AX 1 and AX 2.

I. Marital Status and Number of Dependents

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue I—Marital Status and Number of Dependents.

Regarding marital status, the Commission observes that Petitioner, Amanda Pozniak testified that Mr. Lawton was her boyfriend at the time of the incident on June 13, 2013. They had lived together for about one year. Therefore, the Commission concludes that at the time of the incident on June 13, 2013, Mr. Lawton was single and not married.

Regarding dependents, the Commission notes that Petitioner, Amanda Pozniak testified that PX 17 was an order entered on June 9, 2015, declaring heirship for Mr. Lawton's children. The Commission observes that the "Order Declaring Heirship" was entered in the Circuit Court on June 9, 2015 and while instructive, is not binding on the Commission. The first child listed is

Elaina Lawton, born on 02/11/1997. The second child listed is Ashley Lawton, born on 07/14/2002. Petitioner testified that Elaina and Ashley were sisters and children from Mr. Lawton's previous marriage. The third child listed on the on the order was Grace Orstadt, born on 01/08/2001. Petitioner testified that Grace was also Mr. Lawton's child, "but she was adopted at a way earlier time" and she never lived with Petitioner and Mr. Lawton. The Commission notes there was no documentation or proof of legal adoption entered into evidence nor was there evidence or testimony regarding any dependency of Grace Orstadt on Lawson. The fourth child listed on the order is Addison Pozniak, born on 05/19/13. Petitioner testified that she and Mr. Lawton are the biological parents of Addison. Petitioner testified that Addison requires an IEP at school and has been diagnosed with ADHD, ODD (oppositional defiance disorder), and sensory concerns. Ms. Pozniak also testified that while Addison is under a doctor's care for her various diagnoses, there is no medical opinion outlining how long the diagnoses will be in effect or if they will continue into adulthood.

Accordingly, the Commission concludes that at the time of the accident on June 13, 2013, Mr. Lawton had 3 dependent children, Elaina Lawton, Ashley Lawton and Addison Pozniak.

J. Medical Expenses

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue J—Medical Expenses.

Having found the June 13, 2013 incident compensable pursuant to the Circuit Court remand order, the Commission also finds the medical expenses in PX 14 to be related, reasonable and necessary. The Commission observes that in AX 1 and AX 2, the parties agreed that there is no credit pursuant to Section 8(j) of the Act.

The Commission further notes that Section 8(a) of the Act provides that employers are obligated to provide and pay "the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is necessary to cure or relieve from effects of the accidental injury." 820 ILCS 305/8(a) (West 2006); *see also Tower Auto. v. Ill. Workers' Comp. Comm'n,* 407 Ill. App. 3d 427, 438-39, 347 Ill. Dec. 863, 873-74, 943 N.E.2d 153, 163-64 (2011). "By limiting an employer's obligation under section 8(a) of the Act to the amount actually paid to the providers of the first aid, medical, surgical, and hospital services necessary to cure or relieve an injured employee from the effects of an accidental injury, the purpose of the Act has been satisfied." *Tower Auto. v. Ill. Workers' Comp. Comm'n*, 407 Ill. App. 3d 427, 438 (2011). Accordingly, the Commission awards the medical bills pursuant to Sections 8(a) and 8.2 of the Act.

K. Temporary Benefits

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the

Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue K—Temporary Benefits.

Having concluded that the June 13, 2013 incident is compensable, the Commission awards temporary total disability benefits in the amount of $520.03 per week for the period of June 13, 2013 to July 13, 2013, representing 4 and 2/7ths weeks. *See* AX 1 and AX 2.

L. Nature and Extent

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue L—Nature and Extent.

Having concluded that the June 13, 2013 incident is compensable, the Commission finds that as a result of the incident, Mr. Lawton sustained injuries that resulted in his death on July 13, 2013. Accordingly, on remand the Commission concludes that Petitioner is entitled to death benefits pursuant to Section 7(a) and 7(f) of the Act.

O. Death Benefits pursuant to Section 7(a) and 7(f)

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue O—Death Benefits pursuant to Section 7(a) and 7(f).

Pursuant to the Circuit Court Order, on remand, the Commission concludes that Mr. Lawton sustained fatal injuries as a result of an incident that arose out of and in the course of his employment. Mr. Lawton was injured on June 13, 2013 and died on July 13, 2013. Therefore, the Commission awards sum of $8,000.00 for burial expenses as mandated by Section 7(f).

Accordingly, pursuant to Section 7(a), the Commission finds that weekly benefits in the amount of $520.03 shall be split evenly amongst the three surviving children. The Commission finds that Ashley Lawton was 11 years old at the time of her father's death and concludes that Ashley Lawton is entitled to $173.34/week for the period of July 14, 2013 through July 14, 2020, the date in which she turned 18 years old. Elaina Lawton was 16 years old at the time of her father's death and would have reached age 18 on February 11, 2015. However, pursuant to the Section 7(a) of the Act, the Commission finds Elaina Lawton is entitled to $173.34/week for minimum of 6 years, from July 14, 2013 until July 14, 2019. Finally, the Commission finds that Addison Pozniak is entitled to 1/3 of the weekly benefits, or $173.34/week, beginning July 14, 2013 until she reaches the age of 18 on May 13, 2031, or the age of 25, if she enrolls as a full time student in any accredited educational institution, or in the event that she "shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity."

Other: Pactiv's Motion to Dismiss

In affirming the Commission's decision to vacate the Arbitrator's dismissal of Pactiv, the Circuit Court on remand states "[t]he court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co*., 315 Ill.App.3d 823, 826-27 (2000)("[*Lachona v. Industrial Commission,* 87 Ill.2d 208 (1981)] does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")." The Circuit Court further ordered the Commission to "make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O." In an effort to comply with the Circuit Court remand order, the Commission makes the following additional findings on the issue of borrowing/lending under section 1(a)4 the Act based on the record.

The Commission initially notes that based on the foregoing facts and conclusions, the Arbitrator made no findings in his decisions specific to the issue of the borrowing/lending relationship between the Respondents Pactiv and Aerotek pursuant to Section 1(a)4. Rather, the Arbitrator granted Pactiv's motion to dismiss in reliance on the trial stipulation between the parties indicating that Aerotek assumed any liability as well as the indemnification agreement between the parties, thereby releasing Pactiv from liability. On Review, the Commission vacated the dismissal of Pactiv on procedural grounds in that such motions are not provided for under the Act.

The Commission now further finds that the trial record is sufficient to support a finding under 1(a)4. Specifically, the issue of borrowing/lending was in fact presented to the Arbitrator on the Request for Hearing form for case number 18 WC 18188, wherein the Parties stated and stipulated to the fact that Pactiv was the borrowing employer and Aerotek was the lending employer pursuant Section 1(a)4. *See* AX 1. Further, on the Request for Hearing form for case number 16 WC 118189, Aerotek and Petitioner agree that the relationship between Petitioner and Respondent "was one of employee and employer." *See* AX 2. Moreover, the trial record and Request for Hearing Forms are void of any objections raised by Petitioner as to the status of Aerotek being the lending employer and thus responsible for liability. In addition, the Commission relies on Aerotek's contractual assumption of liability in Aerotek RX 2, the indemnity agreement with Pactiv, that was admitted without objection for the purpose of determining Aerotek's sole responsibility for payment of worker's compensation benefits. Lastly, the Commission relies on Pactiv and Aerotek's oral agreement and stipulation at trial that Aerotek would be responsible for the payment of all awarded benefits should an award have been made and Petitioner's counsel had no objection to the agreement at trial, which was further consistent with the stipulation on the Requestion for Hearing Forms and the indemnity agreement. (T.19-22)

As discussed above, on remand and pursuant to the Circuit Court Order, the Commission concludes that Mr. Lawton's accident on June 13, 2013, which resulted in fatal injuries, is compensable pursuant to the "hero/emergency doctrine." Accordingly, in an effort to comply with the Circuit Court remand Order and with the language of the Act, the Commission finds Respondent Aerotek liable for the benefits now awarded to Petitioner, having concluded that

Aerotek is the lending employer pursuant to Section 1(a)4 of the Act, the trial stipulations and indemnity agreements presented. AX 1, AX2, RX2.

In all other respects, the Commission affirms and adopts the Circuit Court Order on Remand.

IT IS THEREFORE FOUND BY THE COMMISSION that Charles Lawton ("Decedent") sustained an accident on June 13, 2013 that arose out of and in the course of employment. As a result of the accident, Mr. Lawton sustained injuries which resulted in his death on July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decedent's average weekly wage is $780.04.

IT IS THEREFORE ORDERED BY THE COMMISSION that at the time of the June 13, 2013 accident, Decedent was single with 3 dependents.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, Aerotek is liable for payment of all awarded benefits pursuant to the parties' stipulation at trial.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay to the Estate of Charles Lawton, temporary total disability benefits in the amount of $2,228.33 for the period of 4-2/7ths weeks at $520.03/week commencing June 13, 2013 to July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay to the Estate of Charles Lawton the medical expenses in PX 14 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, commencing on July 14, 2013, of $173.34/ week to Amanda Pozniak, on behalf of minor child, Addison Pozniak, born on 05/19/2013 as provided in Section 7(a) of the Act, for the reason that the injuries sustained caused the death of Decedent on July 13, 2013. Respondent shall pay the sum of $173.34/ week until Addison Pozniak reaches the age of 18 on May 13, 2031, or the age of 25, if she enrolls as a full-time student in any accredited educational institution, or in the event that she "shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity."

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, for the period of July 14, 2013 to July 14, 2020, of $173.34/week to the Estate of Charles Lawton, on behalf of surviving child Ashley Lawton, born on 07/14/2002 and turned 18 year old as of July 14, 2020, as provided in Section 7(a) of the Act, for the reason that the injuries sustained caused the death of Decedent on July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, for the period of July 14, 2013 to July 14, 2019, of $173.34/week to the Estate of Charles Lawton, on behalf of surviving child Elaina Lawton, born on 02/11/1997 and turned 18 year old as of February 11, 2015, as provided in Section 7(a) of the Act, for the reason that the

injuries sustained caused the death of Decedent on July 13, 2013.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay $8,000.00 for burial expenses to the person (s) incurring the burial expenses, as provided in Section 7(f) of the Act.

IT IS FURTHER ORDRED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent, Aerotek shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent, Aerotek pay to Petitioner interest under §19(n) of the Act, if any.

Bond for the removal of this cause to the Circuit Court is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 26, 2025

d: 02/25/25
CMD/jjm
045

/s *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018188
Case Name	Amanda Pozniak, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased, v. Pactiv Corporation.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Candice Drew

DATE FILED: 7/27/2023

THE INTEREST RATE FOR THE WEEK OF JULY 25, 2023 5.27%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS

)SS.

COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind.Adm. of the Estate of CHARLES LAWTON, deceased,
Employee/Petitioner

Case # **16 WC 18188**

v.

PACTIV CORPORATION.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **June 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident? How many dependent children did Petitioner have?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☒ Other: Is Petitioner entitled to statutory funeral expenses?

FINDINGS

On **6/13/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On **6/13/2013**, an employee-employer relationship ***did*** exist between Petitioner and Respondent Pactiv. Pactiv was the borrowing employer for purposes of §1(a)4. Aerotek is the lending employer and is the Respondent in case 16 WC 18189. Per the written agreement between Pactiv and Aerotek, Aerotek agrees to indemnify Pactiv for any liability for any benefits under the Act.

On **6/13/2013**, Charles Lawton ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $20,281.00; the average weekly wage was $**780.04**.

On the date of accident, Petitioner was 35 years of age, ***single*** with **3** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $0.

Respondent is entitled to a credit of $0 under §8(j) of the Act.

ORDER

Petitioner's Application for Benefits is denied.

The Arbitrator grants Respondent Pactiv's Motion to Dismiss.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

_____ **JULY 27, 2023**

Signature of Arbitrator

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Pactiv Corporation

16 WC 18188

consolidated with

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Aerotek

16 WC 18189

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

16 WC 18188(Pactiv): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

16 WC 18189 (Aerotek): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

Petitioner claim's Charles Lawton's average weekly wage was $823.75, which Respondents dispute. Respondents claim the average weekly was $780.04.

Petitioner's oral motion to continue the hearing to allow for obtaining evidence from an additional witness was denied for failure to present an offer of proof as to what evidence that witness would provide.

FACTUAL BACKGROUND

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. (borrowing employer) on June 13, 2013 [AerotekX #2]. Mr. Lawton was employed through an Agreement for Temporary Employment Services between Pactiv and Respondent Aerotek (loaning employer) [PactivX #2]. Mr. Lawton was working for Pactiv on June 13, 2013 when he was injured in an incident at or near Pactiv's plant in Bedford Park, IL. Mr. Lawton died on July 13, 2013 from the injuries he sustained on June 13.

STATEMENT OF FACTS

Petitioner displayed video recordings from security cameras capturing the events at the issue (PX #16). The videos recorded a dark SUV entering Pactiv's parking lot and park next to a white van. The SUV then drove off the parking lot and parked on Mason street. Two individuals got out of the SUV and walked onto Pactiv's parking lot. After a time, an individual runs past a second person (presumably Charles Lawton) who began running also. A third person followed close behind the first two. The first 2 individuals ran onto Mason Street where they were followed by the 3 pursuers onto Mason Street. The video does not depict the actual trauma sustained by Mr. Lawton.

Amanda Pozniak testified that she was the girlfriend of Charles Lawton in June 2013. They lived together for a year before the incident at issue. Ms. Pozniak testified Mr. Lawton was sent to work at Pactiv by Aerotek. She identified PX #17, Order Declaring Heirship entered June 9, 2015 in the 18th Judicial Circuit, DuPage County. Ms. Pozniak explained that Elaina Lawton was born February 11, 1997. Elaina lived with her mother at the time in question, but Mr. Lawton " provided for her". Ms. Pozniak also testified that Mr. Lawton provided support for his daughter Ashley Lawton, Elaina 's sister, who was born July 14, 2002. Grace (Ortstadt), born January 8, 2001, is Mr. Lawton's natural child but was adopted. Grace was not living with Ms. Pozniak and Mr. Lawton.

Ms. Pozniak testified that Addison Pozniak is her daughter by Mr. Lawton (PX #5). Ms. Pozniak and Addison were living with Mr. Lawton at the time at issue. She testified that Mr. Lawton was providing support for her and Addison.

Ms. Pozniak testified Addison was in second grade even though she was supposed to be in third grade. She had struggled with meeting milestones ever since she was born. She was in the 50% range for her peers and was the oldest in the class. An Individualized Education Plan ("IEP") had been adopted for Addison (PX #12) The purpose of the IEP was to moderate the standards Addison had to satisfy so she did not have to be held to the higher standards other children were being held to. Addison's formal diagnoses included attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). An adult has to sit with her at lunch to prevent her from choking. Addison also had a

vestibular movement swing in her room at home which settles her mind and to help her focus better.

Ms. Pozniak identified PX #20, the Order appointing her Independent Administrator of the Estate of Charles Lawton deceased, 2015 P 540, 18th Judicial Circuit, DuPage County.

On cross-examination Ms. Pozniak testified that she does not know whether Addison's diagnoses and other problems will continue into adulthood.

Testimony of Gabriel Ybarra (PX #7)

Mr. Ybarra testified by evidence deposition on August 24, 2020 (PX #7). He described the general layout of Pactiv's property. Four buildings were located in the area, three belonging to Pactiv. The two buildings to the west were Pactiv buildings and the northeast building was also Pactiv. He testified Pactiv had its employees take breaks in the parking lot area adjacent to the buildings to the west.

Ybarra took his break at Pactiv's southwest building. He saw Lawton and Brookhouse running across Pactiv's parking lot after two other people. Ybarra testified he joined the pursuit to see what was going on. Lawton and Brookhouse did not ask Ybarra to join them, he just saw them running and followed them. The people they were following got into a Jeep and ran over Lawton.

Ybarra testified he was behind Brookhouse and did not see the people who got into the Jeep. He heard screaming but could not make out any words. Ybarra testified the Jeep was not parked on Pactiv's property. He did not know what the area was used for. Ybarra did not characterize that area as an alleyway as it was a paved area. He did not know whether Pactiv parked its trailers in that area.

Ybarra was not aware of any Pactiv policy which prevented coworkers from helping other coworkers who were in trouble. He was not disciplined or terminated for his involvement in the incident. Pactiv had no fencing to keep non-Pactiv people from accessing the parking lots. There were no security guards to monitor Pactiv's lots. Pactiv hired a security firm to patrol their property after Lawton's incident.

Testimony of John Brookhouse (PX #8)

Mr. Brookhouse testified by evidence deposition on September 28, 2020 (PX #8). Brookhouse knew Mr. Lawton from work, noting that Mr. Lawton helped him out a lot at work by showing him how to do stuff. He and Mr. Lawton were taking a smoking break by Pactiv's 7600 building. Pactiv restricted smoking to a bench area and that is where they took their break. He got halfway through a cigarette when they saw two guys busting up car windows in Pactiv's lot. He did not know whose car it was.

Brookhouse heard windows being smashed and started yelling at the guys who were busting the windows. They started running back across Mason and Brookhouse, Lawton, and Gabe (Ybarra) chased after them. Lawton got in front of the car, and "they ran him over", dragging him through the parking lot.

Brookhouse explained that it was a natural response to follow the guys as he wanted them to get caught for what they were doing. He never intended to beat up the guys. Lawton did not express any interest in doing that either. Brookhouse and Gabriel stopped behind the vehicle. Lawton went to the front of the Jeep with his cellphone out, telling the occupants to "stop man" and that he was "calling the cops." That is when the accident happened.

Mr. Brookhouse testified he had seen this driver in Pactiv's lot during his 7:00 pm break. The driver was sitting in his Jeep in the parking lot. Brookhouse knew the man had no business being there but did not report it to anyone. He did not believe that Pactiv had a system in place to receive such reports about strangers in the lots. Pactiv had no rule which prohibited workers from going to the aid of fellow workers. Pactiv had no fences or security measures other than key fob access to the buildings. Pactiv did not hire security for its lot until Lawton was hurt. Pactiv did not protect its lots with gates, chain link fences or walls. Pactiv did not provide training on what to do when criminal events occurred on its property. Brookhouse testified Pactiv left it up to the employees as to how they should deal with criminal events outside the buildings.

After Mr. Lawton's accident, no supervisor told Brookhouse that he should not have joined Lawton in following the vandals. Brookhouse was not disciplined for assisting Lawton. He did not know if the roadway area where the accident happened was Pactiv property, but he believed it was because Pactiv parked its slip trucks at that location. Pactiv also had big tanks of stuff in that area.

Brookhouse testified Pactiv did not allow its workers to park in that roadway where the accident happened. Pactiv workers had to park in the Pactiv lot to the west. On cross-examination, Brookhouse admitted he did not know what the property lines were between the businesses. Brookhouse clarified that he had walked to his own car and got into it for a brief moment before the guys started breaking out the windows in the other car. He got out of his jumped out to join Lawton and Gabe at that point. He testified about the accident and details were clearer in his mind when it happened.

Brookhouse reiterated he was not going to physically apprehend the vandals, but only make sure they were held responsible for what they had done. Lawton just had time to tell the Jeep occupants "I'm calling the police" as he pulled his phone from his pocket before the Jeep ran over him. 30 to 40 seconds passed from the time Lawton stood in front of the Jeep to when it ran him over. He testified that there was nothing about the

vandals before the event that caused him to feel any need to call the police. He is unaware of any prior incident of vandalism in Pactiv's lot.

Slip trucks are parked in that area where the trucks that Pactiv used in the building he worked out of in the building west of Mason. Those trucks were parked in the alley area. There was no Pactiv policy requiring him to report strangers in the parking lot to supervisors. Pactiv's workers did not wear distinctive uniforms and there were always new people coming to work through staffing companies.

Brookhouse said when he saw the Jeep driver during the earlier shift, he did not think it was something to report to management. Pactiv's slip trucks were parked another 30 feet beyond where the Jeep was located at the time of the accident.

Testimony of Bedford Park Police Sergeant Andrew Smuskiewicz (PX #9)

Sergeant Smuskiewicz testified by evidence deposition on July 21, 2021 (PX #9). He was a Bedford Park police department detective at the time of Lawton's accident on June 13, 2013.

Sergeant Smuskiewicz was called out to Pactiv on the night of the incident. He explained the process of his investigation. where he interviewed a number of witnesses. Respondent Aerotek objected to the testimony on hearsay grounds, which was overruled. Much of Smuskiewicz' s account does consist of hearsay and Aerotek's running objection is well founded, striking this witness's testimony from the case to the extent it was based on what he was told. Aerotek also objected to the Bedford Park police report, which was not offered in evidence. The witness refreshed his memory from the report.

From his investigation, Sergeant Smuskiewicz learned that Lawton was part of a group of people who were trying to stop the crime from taking place and trying to get the offenders to stop so they could be arrested. He found no evidence that Lawton or his companions knew Garcia before the accident.

Respondent Aerotek renewed and reserved its objections to hearsay when it began cross-examination. Sergeant Smuskiewicz testified he never investigated whether Garcia and Ms. Fernandez had an affair. He testified that Bedford Park officers had been called out to Pactiv both before and after Lawton's incident for other incidents. Those calls involved disturbances among employees and supervisors. There was never a call involving an outsider coming onto the property.

Based on what he observed, Sergeant Smuskiewicz understood that that the vehicle involved did not enter Pactiv property after the incident. He agreed that civilians should stay out of police issues and just call 9-1-1. He advised people to not jeopardize their own safety.

Testimony of Jose Gasco Garcia (PX #10)

Jose Garcia testified by evidence deposition on March 28, 2022 (PX #10). He was one of the persons damaging the car in Pactiv's lot and was the driver who ran over Lawton. He testified from prison where he was serving time for Lawton's death.

Garcia had worked at Pactiv for years before the accident and he was still working at Pactiv on the weekends in June 2013. His wife Maria also worked at Pactiv. Garcia did not know Lawton, although he had seen him at work in the past. They worked in different Pactiv buildings.

Garcia identified DepX #1, a daylight photo of the area where he parked the Jeep between the buildings. Garcia parked where the red mark was located on the photo. DepX #2 is an overhead view of the same roadway area. Garcia parked his Jeep where the red X is located on DepX #2. The building at the top of this photo is Pactiv's building and the building at the bottom was some other business. Garcia testified he worked in the building at the top left of the photo with the white roof.

Garcia was not working at Pactiv the night of the accident. He came to Pactiv's property to make sure his wife was at work and to check her car. He parked his Jeep in a dark roadway to make sure that no one got his license plate. He backed his Jeep down the roadway between the buildings with his headlights off. He planned to damage Guadalupe Fernandez's car. He was not going after Lawton's car, and he had no intent to harm Lawton in any way. He was going after Fernandez for bothering his wife and getting involved in their family life.

Garcia testified another Pactiv employee came to assist Garcia that night. Garcia's wife and Fernandez were both working that evening. Fernandez had been harassing Garcia's wife for a long time. Fernandez did this with all the women at the plant. Female workers in that building had been complaining of Fernandez's sexual harassment for years before the accident. Garcia had damaged Fernandez's car on earlier occasions before Lawton's incident.

Garcia knew that Pactiv did not have security guards patrolling its lots before June 2013. He knew there were no security fences which would have stopped him from accessing Fernandez's car. Any person could access the lots, whether they worked there or not. There were no guards in place at Pactiv to keep strangers off the property.

Garcia testified he did not see Lawton in front of his Jeep before accelerating away. He did not intend to run Lawton over. He had nothing against Lawton. He felt something under his vehicle, but he thought it was a piece of concrete which was sometimes in Pactiv's parking lots. Mr. Garcia testified he was trying to get away from the people chasing him and did not see Mr. Lawton standing in front of his car when he drove away.

Garcia testified that during the eight years he worked at Pactiv, Pactiv had no training programs to explain what workers should do about sexual harassers in the plant. He was never told what he was supposed to do when a coworker kept sexually harassing his wife in the plant. Garcia did not intend to hurt anyone when he came to Pactiv on June 13, 2013. He said Lawton's injury was a pure accident.

On cross-examination, Garcia admitted he chose the location where he parked the Jeep because it was dark. There were no lights on the non-Pactiv building to his south. Pactiv had some lights on its building to the north, but not where he parked. He did not park in Pactiv's parking lots to the west because of Pactiv's cameras. He knew Pactiv had cameras on the buildings and did not park there for that reason.

Garcia testified he stopped vandalizing Fernandez's car after he finished what he wanted to do. He and his companion started walking back across Mason and then started to run when people started chasing.

On redirect examination, Garcia admitted that he had also worked in Pactiv's northeast building with the loading docks, shown at the top of DepX #2 with the dark roof. Pactiv used the trailers parked near that building to get the plates out of Pactiv's building. He saw those trailers pulling away from Pactiv's building onto Mason Street many times during the years he worked at Pactiv.

Testimony of Lawrence Liva (PX #19)

Mr. Liva testified by evidence deposition on June 13, 2022 (PX #19). He was a machine shop manager for Pactiv on June 13, 2013. He received a call at home that something had happened to a temporary employee at Pactiv, and that he needed to come into work. Liva did not recall whether he authored the Occupational Incident Report, a diagram, or investigative notes.

Liva testified that if an employee was involved in a major accident, he would meet with Dennis Davidson, Pactiv's Director of Engineering, and Davidson would tell him what to do or who to call. Liva worked the day shift, but he directly supervised Charlie Lawton, John Brookhouse and Gabriel Ybarra. If an incident happened, he would probably handwrite a report, but did not recall much about those reports.

On cross-examination Liva testified Pactiv operated three buildings at that campus, arranged in a L formation: one to the southwest, one to the northwest, and one to the northeast. The building to the southeast had nothing to do with Pactiv. (PX19 p.17) Between that building and the Pactiv building to its north, there was a roadway or a parking area.

Liva was shown the overhead view of the area (Garcia DepX #2). Liva confirmed that the trailers on the photo ran in and out of Pactiv's operations. To access the area where the trailers were, Pactiv would have to use the exit onto Mason. To the right of the

red "X" on Garcia DepX # 2, Liva saw a yellow barrier across the roadway but did not know whether that barrier delineated Pactiv's area of operation from the unrelated business in the south building.

Liva testified he did not know where the property lines were. He also did not know if Mason was a public rather than private road.

Liva did not recall giving Lawton new employee orientation. He did not handle the orientations, but he thought Pactiv's HR would orient new temp employees. He did not recall there being a written handbook of job rules for temporary employees. Liva had never seen a written or oral rule prohibiting workers from going to the aid of other workers who were in peril. He would never have discussed discouraging workers from going to the help of a coworker. In the years he was working at Pactiv, he did not recall there being any kind of rules which prohibited workers from going to the assistance of their coworkers.

Liva testified Brookhouse and Ybarra were not disciplined, written up, or even chastised for joining Lawton in addressing the emergency. He knew of no managers claiming that these workers should not have followed the people who were damaging property in the lot. The police came to him to look at camera footage from the cameras on his building. He saw no photos or video showing what happened down the roadway where Lawton was hurt.

Liva did not recall Pactiv providing training for temp employees as to how they were to address sexual harassment in the plant.

Liva identified the ground level view of the roadway between the buildings from July 2011, Garcia DepX #1. The photo shows pavement running from Pactiv's building on the left to the brick wall of the non-Pactiv building on the right. Liva walked the area a couple of days after the accident but could not recall what he saw.

Liva was asked about the Occupational Incident Report ("OIR"). The OIR listed him as the person receiving notice of Lawton's incident. Pactiv used these OIR forms for various types of incidents. Liva did not prepare this OIR, he would not have typed it up or phrased things the way they were written on the OIR. Brookhouse and Ybarra were both listed as witnesses on the OIR, and they were both reported as having given statements.

Liva was not aware of prior incidents like what happened to Lawton so he did not know who would take the statements or write the report. Even though the OIR said he was a machinist, Lawton did hand finishing work. The OIR said that "Supervisor/Team Lead should complete front page and top of the back of second page." Liva admitted he was Lawton's supervisor at the time, but different leads or supervisors may have completed the report. A box marked "Contributing Factors" was located at the bottom of

the first page. Liva did not know enough about the details of the event to determine who was at fault for the injury.

Liva reiterated that he was not aware of any Pactiv rules which prohibited workers to going to each other's aid to address sudden emergencies on Pactiv property. If something happened inside the building, he would hope that someone called 911. But he did not remember anything happening outside the building before Lawton's injury. Liva also did not author the Investigative Notes document. He had no idea whether other vehicles had been damaged prior to June 13, 2913. at night in Pactiv's lot. OIR forms should be filled out promptly after an event.

Pactiv's workers were given two breaks and a lunch break. Pactiv did require workers in the southwest building to take their breaks at the north end of the building. Workers were not prohibited from taking breaks in their cars. If Lawton and Brookhouse were in the north end of the building during their breaks, that is where the company expected them to be. Lawton was also allowed to take breaks with coworkers. Breaks were not scheduled for exact times. Workers did not have to clock out or notify the supervisor when going to break, but workers did clock out for lunchbreaks.

Testimony of Guadalupe Fernandez (AerotekX #3)

Guadalupe Fernandez testified at Jose Garcia's criminal trial August 28, 2017, People of the State of Illinois vs. Jose Garcia, 13 CR 1552. Mr. Fernandez identified photos of his car showing broken windows and a gang sign scratched into the car. Later, on June 13, 2013 he recognized "Jose" from a picture on TV and called the police about Garcia. Fernandez had worked with Garcia at Pactiv for 3 years before this night. Fernandez was confronted by Garcia in the canteen 2 months before the attack. Garcia said something to him about calling Garcia's wife or girlfriend, which Fernandez said was a lie. Garcia told him to watch his back.

Fernandez admitted he did not know if Garcia damaged his car because he was inside working. Fernandez went to the police station on June 20, 2013 and identified Garcia in a photo array. He also identified Garcia in a physical lineup at the Sheriff's office in Maywood, as well as in open court. During an interview with police, Fernandez talked about the disagreement he had with Garcia. Fernandez admitted he had had disagreements with other people at work.

Medical Records

Mr. Lawton was transported by Bedford Park Fire Department ambulance to Advocate Christ Hospital ("Christ") in Oak Lawn (PX #2). The EMS record identified multiple injuries (PX #1). The Christ trauma notes document significant deep tissue injuries. Procedures performed at Christ included washout of his right face, left upper extremity, right shoulder, and debridement of wounds.

Christ transferred Lawton to the Loyola University Medical Center ("Loyola"), where he was admitted to the burn unit on June 17, 2013 in an intubated and sedated state. He was hemodynamically stable at that point (PX #3). Loyola healthcare providers noted extensive degloving of the right side of the head, amputation of the right ear, right mastoid fracture with complete fracture and disarticulation of the zygomatic arch, fracture and exposure of the temporomandibular joint, and extensive exposure of deep facial muscles in the right side of the face and clavicle fractures. The left upper chest and shoulder also suffered degloving with exposure of muscle and soft tissue. The right upper extremity had dorsum degloving of hand down to the bone and deep muscle. The left upper extremity was extensively degloved from the shoulder down to the wrist, with a brachial artery bypass being done at Advocate. He had deep partial thickness/full thickness burns to his chest. Three surgical procedures were performed at Loyola, during which he remained sedated with mechanical ventilation while undergoing antibiotic treatment and dialysis for acute renal failure.

Mr. Lawton never regained consciousness or function and treatment ultimately failed. Lawton died on July 13, 2013. Loyola records included photos of Lawton's injuries.

Mr. Lawton's Death Certificate was admitted as PX #4.

Pactiv Occupational Incident Report was admitted as PX #18.

Respondent Pactiv's Motion to Dismiss was admitted as PactivX #1.

The temporary employment agreement between Pactiv and Aerotek was admitted as PactivX #2.

Respondent Aerotek's wage statement was admitted as AerotekX #1.

Respondent Aerotek's employment agreement was admitted as AerotekX #2.

The trial testimony of Guadalupe Fernandez was admitted as AerotekX #3.

CONCLUSIONS OF LAW

Respondent Pactiv filed a Motion to Dismiss, citing the written agreement between Pactiv and Respondent Aerotek, PactivX #2. The agreement states in pertinent part:

- [Aerotek] will, at its own expense, provide and keep in full force and effect during the term of this Agreement…Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the Services are performed.
- [Aerotek] will indemnify, defend and hold Pactiv and its subsidiaries, affiliates, directors, officers, employees and agents from and against all demands, claims, actions, suits, losses, damages (including, but not limited to, property damage, bodily injury and wrongful death), judgments, costs

> and expenses…imposed upon or incurred by Pactiv arising out of…[a]ny claim of any nature asserted against Pactiv or workers compensation carriers by any [Aerotek] employee or agent of [Aerotek], or, in the event of death, by their personal representatives.

The facts here are similar to those in *Lachona v. Industrial Commission*, 87 Ill.2d 208, 427 N.E.2d 858 (1981), where a similar agreement was upheld. The Arbitrator finds that Pactiv is a borrowing employer and Aerotek is a loaning employer in accord with §1(a)4 of the Act. The Arbitrator also notes the stipulation at trial between Respondents Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner as a result of the June 13, 2013 incident, that Aerotek retains full liability for any and all benefits, including, but not limited to, medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency.

Respondent Pactiv's Motion to Dismiss is granted.

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator finds that Petitioner failed to prove that an accident arose out of and in the course of the decedent's employment by Respondents Pactiv Corp. or Aerotek.

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. on June 13, 2013. Mr. Lawton was employed as a temporary CNC Machinist through referral from Respondent Aerotek. On the evening of June 13 Mr. Lawton was taking a break with coworkers in an area abutting Pactiv's employee parking lot. Mr. Lawton and the others heard the sound of breaking glass and went to investigate. They discovered two individuals vandalizing a coworker's car. Jose Garcia was one of the individuals vandalizing the car. Mr. Lawton and coworkers John Brookhouse and Gabriel Ybarra gave chase of Mr. Garcia and the other vandal across the parking lot and onto Mason street which was the public way. Mr. Lawton placed himself in front of a Jeep operated by Mr. Garcia. In an effort to get away Mr. Garcia ran over and dragged Mr. Lawton down the roadway, causing fatal injuries to Mr. Lawton. Mr. Garcia was criminally charged and convicted for his actions.

An injury arises out of one's employment if its origin is from a risk connected with or incidental to employment activities. "Arising out of the employment" refers to the origin or cause of the claimant's injury. A risk is distinctly associated with employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform,

or acts which the employee might reasonably be expected to perform incident to his assigned duties.

An injury occurs "in the course of" of employment if it refers to the time, place, and circumstances of the accident. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, a resulting injury will not be within the course of employment unless the employer had knowledge or acquiesced in such unreasonable conduct.

Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized hey coworkers private vehicle Was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, We're not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties. There is no evidence that his employer had knowledge or acquiesced to the decedent assuming this type of risk. There was no evidence that Aerotek or Pactiv expected, required, or encouraged its employees or temporary employees to stop any sort of criminal activity that occurred on company property.

The Arbitrator finds that Mr. Lawton took himself outside the scope of his employment as a machinist not only when he chased the offenders off Pactiv's property and across Mason Street, but also when he placed himself in front of Mr. Garcia's vehicle in an attempt to stop the offenders from fleeing. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, as here, the resultant injury is not within the course of the employment.

Also, the Arbitrator does not find the Good Samaritan doctrine applicable to this case. In determining whether an accident is compensable under the Good Samaritan Doctrine, courts have focused on whether the conduct is reasonably foreseeable. It was not reasonably foreseeable by Respondents that Mr. Lawton what put himself in harm's way when a criminal act did not involve damage to the employers property or equipment or harm to a coworker.

The Arbitrator does not find the alleged relationship and/or harassment between Mr. Garcia, Mr. Garcia's wife, and Guadalupe Fernandez relevant because it did not involve Mr. Lawton whatsoever.

The Arbitrator also does not find it relevant that Pactiv placed security in the parking lot after the June 13, 2013 incident. There was no evidence that Bedford Park is a high crime area or that there was a pattern of vandalism or other criminal acts in the Pactiv parking lot. On the contrary, this incident appears to be isolated to the issues between Mr. Garcia and Mr. Fernandez.

G: *What were Petitioner's earnings?*

Petitioner's wage statement, PX #11, shows Mr. Lawton's earnings from November 8, 2012 through June 13, 2013. During that time, the decedent had regular earnings of $20,013.00 and $84.00 of overtime earnings at straight time pay, for a total of $20,097.00. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $772.96.

Respondent Aerotek wage statement, AerotekX #1, showed earnings of $20,281.00. and the Petitioner's average weekly wage, calculated pursuant to section 10 of the Act was $780.04. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $780.04.

The Arbitrator adopts the average weekly wage computation of Respondent Aerotek, $780.04.

H: *Whether the deceased had any dependent children***.**

The evidence established that Mr. Lawton was not married at the time of the incident at issue. According to the June 8, 2015 Order of Heirship, PX #17, the decedent had the following minor dependents at the time of his death: Addison Pozniak (DOB May 19, 2013), Ashley Lawton (DOB July 14, 2002), and Elaina Lawton (DOB February 11, 1997). Elaina Lawton was emancipated by age on February 11, 2015. There was evidence that Grace Orsatdt, decedent's natural child, had been adopted but there was no evidence of when the adoption took place and, therefore, no evidence of whether Grace was a minor dependent at the time of Mister Lawton 's death.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the medical services provided to Mr. Lawton were reasonable and necessary and there is no evidence to the contrary.

K: *What temporary benefits are in dispute? TTD*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the correct disputed period of TTD would be from June 14, 2013 through July 13, 2013, or a period of 4 & 2/7 weeks.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, Respondents had good faith bases for denying benefits. It was neither vexatious nor frivolous to deny Petitioner's claim for benefits when Mr. Lawton exposed himself to a personal risk of harm that was outside the scope of his employment.

O: *Whether Petitioner is entitled to statutory funeral expenses.*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

_____ _____

Steven J. Fruth, Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018188
Case Name	Amanda Pozniak (Individually and as Guardian of Dependent Children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, Deceased) v. Pactiv Corporation.
Consolidated Cases	16WC018189;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0026
Number of Pages of Decision	22
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Matthew Rokusek

DATE FILED: 1/19/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☒ PTD/Fatal denied
☐ Modify	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMANDA POZNIAK, individually
And as guardian of dependent children
Addison Pozniak and Ashley Lawton,
and as Ind. Adm. of the ESTATE of
CHARLES LAWTON, deceased,
Petitioner,

vs. NO: 16 WC 18188

PACTIV CORPORATION,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, employment, jurisdiction, causal connection, benefit rates, temporary total disability, medical expenses, prospective medical care, permanent partial disability, penalties and fees and "Other: procedural violations by IWCC" and being advised of the facts and law, affirms, and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, with the changes stated as follows.

While affirming and adopting the Decision of the Arbitrator, the Commission writes additionally to address the Motion to Dismiss filed by Respondent, Pactiv Corporation. The Commission notes the Arbitrator granted the Motion to Dismiss in favor of Respondent and so ruled in the Arbitration Decision. The Commission writes to vacate that ruling in that a Motion to Dismiss is not a procedure available under the Illinois Workers' Compensation Act. As such, the Commission vacates the portion of the Arbitrator's order granting Pactiv's Motion to Dismiss, while affirming the Arbitrator's denial of the claims against Respondent Pactiv Corporation.

Accordingly, the Commission vacates the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 27, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 19, 2024

o: 12/21/23
CMD/jjm
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018188
Case Name	Amanda Pozniak, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased, v. Pactiv Corporation.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Candice Drew

DATE FILED: 7/27/2023

THE INTEREST RATE FOR THE WEEK OF JULY 25, 2023 5.27%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS

)SS.

COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind.Adm. of the Estate of CHARLES LAWTON, deceased,
Employee/Petitioner

Case # **16 WC 18188**

v.

PACTIV CORPORATION.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **June 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident? How many dependent children did Petitioner have?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☒ Other: Is Petitioner entitled to statutory funeral expenses?

FINDINGS

On **6/13/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On **6/13/2013**, an employee-employer relationship ***did*** exist between Petitioner and Respondent Pactiv. Pactiv was the borrowing employer for purposes of §1(a)4. Aerotek is the lending employer and is the Respondent in case 16 WC 18189. Per the written agreement between Pactiv and Aerotek, Aerotek agrees to indemnify Pactiv for any liability for any benefits under the Act.

On **6/13/2013**, Charles Lawton ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $20,281.00; the average weekly wage was $**780.04**.

On the date of accident, Petitioner was 35 years of age, ***single*** with **3** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $0.

Respondent is entitled to a credit of $0 under §8(j) of the Act.

ORDER

Petitioner's Application for Benefits is denied.

The Arbitrator grants Respondent Pactiv's Motion to Dismiss.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

_____ **JULY 27, 2023**

Signature of Arbitrator

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Pactiv Corporation

16 WC 18188

consolidated with

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Aerotek

16 WC 18189

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

16 WC 18188(Pactiv): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

16 WC 18189 (Aerotek): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

Petitioner claim's Charles Lawton's average weekly wage was $823.75, which Respondents dispute. Respondents claim the average weekly was $780.04.

Petitioner's oral motion to continue the hearing to allow for obtaining evidence from an additional witness was denied for failure to present an offer of proof as to what evidence that witness would provide.

FACTUAL BACKGROUND

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. (borrowing employer) on June 13, 2013 [AerotekX #2]. Mr. Lawton was employed through an Agreement for Temporary Employment Services between Pactiv and Respondent Aerotek (loaning employer) [PactivX #2]. Mr. Lawton was working for Pactiv on June 13, 2013 when he was injured in an incident at or near Pactiv's plant in Bedford Park, IL. Mr. Lawton died on July 13, 2013 from the injuries he sustained on June 13.

STATEMENT OF FACTS

Petitioner displayed video recordings from security cameras capturing the events at the issue (PX #16). The videos recorded a dark SUV entering Pactiv's parking lot and park next to a white van. The SUV then drove off the parking lot and parked on Mason street. Two individuals got out of the SUV and walked onto Pactiv's parking lot. After a time, an individual runs past a second person (presumably Charles Lawton) who began running also. A third person followed close behind the first two. The first 2 individuals ran onto Mason Street where they were followed by the 3 pursuers onto Mason Street. The video does not depict the actual trauma sustained by Mr. Lawton.

Amanda Pozniak testified that she was the girlfriend of Charles Lawton in June 2013. They lived together for a year before the incident at issue. Ms. Pozniak testified Mr. Lawton was sent to work at Pactiv by Aerotek. She identified PX #17, Order Declaring Heirship entered June 9, 2015 in the 18th Judicial Circuit, DuPage County. Ms. Pozniak explained that Elaina Lawton was born February 11, 1997. Elaina lived with her mother at the time in question, but Mr. Lawton " provided for her". Ms. Pozniak also testified that Mr. Lawton provided support for his daughter Ashley Lawton, Elaina 's sister, who was born July 14, 2002. Grace (Ortstadt), born January 8, 2001, is Mr. Lawton's natural child but was adopted. Grace was not living with Ms. Pozniak and Mr. Lawton.

Ms. Pozniak testified that Addison Pozniak is her daughter by Mr. Lawton (PX #5). Ms. Pozniak and Addison were living with Mr. Lawton at the time at issue. She testified that Mr. Lawton was providing support for her and Addison.

Ms. Pozniak testified Addison was in second grade even though she was supposed to be in third grade. She had struggled with meeting milestones ever since she was born. She was in the 50% range for her peers and was the oldest in the class. An Individualized Education Plan ("IEP") had been adopted for Addison (PX #12) The purpose of the IEP was to moderate the standards Addison had to satisfy so she did not have to be held to the higher standards other children were being held to. Addison's formal diagnoses included attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). An adult has to sit with her at lunch to prevent her from choking. Addison also had a

vestibular movement swing in her room at home which settles her mind and to help her focus better.

Ms. Pozniak identified PX #20, the Order appointing her Independent Administrator of the Estate of Charles Lawton deceased, 2015 P 540, 18th Judicial Circuit, DuPage County.

On cross-examination Ms. Pozniak testified that she does not know whether Addison's diagnoses and other problems will continue into adulthood.

Testimony of Gabriel Ybarra (PX #7)

Mr. Ybarra testified by evidence deposition on August 24, 2020 (PX #7). He described the general layout of Pactiv's property. Four buildings were located in the area, three belonging to Pactiv. The two buildings to the west were Pactiv buildings and the northeast building was also Pactiv. He testified Pactiv had its employees take breaks in the parking lot area adjacent to the buildings to the west.

Ybarra took his break at Pactiv's southwest building. He saw Lawton and Brookhouse running across Pactiv's parking lot after two other people. Ybarra testified he joined the pursuit to see what was going on. Lawton and Brookhouse did not ask Ybarra to join them, he just saw them running and followed them. The people they were following got into a Jeep and ran over Lawton.

Ybarra testified he was behind Brookhouse and did not see the people who got into the Jeep. He heard screaming but could not make out any words. Ybarra testified the Jeep was not parked on Pactiv's property. He did not know what the area was used for. Ybarra did not characterize that area as an alleyway as it was a paved area. He did not know whether Pactiv parked its trailers in that area.

Ybarra was not aware of any Pactiv policy which prevented coworkers from helping other coworkers who were in trouble. He was not disciplined or terminated for his involvement in the incident. Pactiv had no fencing to keep non-Pactiv people from accessing the parking lots. There were no security guards to monitor Pactiv's lots. Pactiv hired a security firm to patrol their property after Lawton's incident.

Testimony of John Brookhouse (PX #8)

Mr. Brookhouse testified by evidence deposition on September 28, 2020 (PX #8). Brookhouse knew Mr. Lawton from work, noting that Mr. Lawton helped him out a lot at work by showing him how to do stuff. He and Mr. Lawton were taking a smoking break by Pactiv's 7600 building. Pactiv restricted smoking to a bench area and that is where they took their break. He got halfway through a cigarette when they saw two guys busting up car windows in Pactiv's lot. He did not know whose car it was.

Brookhouse heard windows being smashed and started yelling at the guys who were busting the windows. They started running back across Mason and Brookhouse, Lawton, and Gabe (Ybarra) chased after them. Lawton got in front of the car, and "they ran him over", dragging him through the parking lot.

Brookhouse explained that it was a natural response to follow the guys as he wanted them to get caught for what they were doing. He never intended to beat up the guys. Lawton did not express any interest in doing that either. Brookhouse and Gabriel stopped behind the vehicle. Lawton went to the front of the Jeep with his cellphone out, telling the occupants to "stop man" and that he was "calling the cops." That is when the accident happened.

Mr. Brookhouse testified he had seen this driver in Pactiv's lot during his 7:00 pm break. The driver was sitting in his Jeep in the parking lot. Brookhouse knew the man had no business being there but did not report it to anyone. He did not believe that Pactiv had a system in place to receive such reports about strangers in the lots. Pactiv had no rule which prohibited workers from going to the aid of fellow workers. Pactiv had no fences or security measures other than key fob access to the buildings. Pactiv did not hire security for its lot until Lawton was hurt. Pactiv did not protect its lots with gates, chain link fences or walls. Pactiv did not provide training on what to do when criminal events occurred on its property. Brookhouse testified Pactiv left it up to the employees as to how they should deal with criminal events outside the buildings.

After Mr. Lawton's accident, no supervisor told Brookhouse that he should not have joined Lawton in following the vandals. Brookhouse was not disciplined for assisting Lawton. He did not know if the roadway area where the accident happened was Pactiv property, but he believed it was because Pactiv parked its slip trucks at that location. Pactiv also had big tanks of stuff in that area.

Brookhouse testified Pactiv did not allow its workers to park in that roadway where the accident happened. Pactiv workers had to park in the Pactiv lot to the west. On cross-examination, Brookhouse admitted he did not know what the property lines were between the businesses. Brookhouse clarified that he had walked to his own car and got into it for a brief moment before the guys started breaking out the windows in the other car. He got out of his jumped out to join Lawton and Gabe at that point. He testified about the accident and details were clearer in his mind when it happened.

Brookhouse reiterated he was not going to physically apprehend the vandals, but only make sure they were held responsible for what they had done. Lawton just had time to tell the Jeep occupants "I'm calling the police" as he pulled his phone from his pocket before the Jeep ran over him. 30 to 40 seconds passed from the time Lawton stood in front of the Jeep to when it ran him over. He testified that there was nothing about the

vandals before the event that caused him to feel any need to call the police. He is unaware of any prior incident of vandalism in Pactiv's lot.

Slip trucks are parked in that area where the trucks that Pactiv used in the building he worked out of in the building west of Mason. Those trucks were parked in the alley area. There was no Pactiv policy requiring him to report strangers in the parking lot to supervisors. Pactiv's workers did not wear distinctive uniforms and there were always new people coming to work through staffing companies.

Brookhouse said when he saw the Jeep driver during the earlier shift, he did not think it was something to report to management. Pactiv's slip trucks were parked another 30 feet beyond where the Jeep was located at the time of the accident.

Testimony of Bedford Park Police Sergeant Andrew Smuskiewicz (PX #9)

Sergeant Smuskiewicz testified by evidence deposition on July 21, 2021 (PX #9). He was a Bedford Park police department detective at the time of Lawton's accident on June 13, 2013.

Sergeant Smuskiewicz was called out to Pactiv on the night of the incident. He explained the process of his investigation. where he interviewed a number of witnesses. Respondent Aerotek objected to the testimony on hearsay grounds, which was overruled. Much of Smuskiewicz' s account does consist of hearsay and Aerotek's running objection is well founded, striking this witness's testimony from the case to the extent it was based on what he was told. Aerotek also objected to the Bedford Park police report, which was not offered in evidence. The witness refreshed his memory from the report.

From his investigation, Sergeant Smuskiewicz learned that Lawton was part of a group of people who were trying to stop the crime from taking place and trying to get the offenders to stop so they could be arrested. He found no evidence that Lawton or his companions knew Garcia before the accident.

Respondent Aerotek renewed and reserved its objections to hearsay when it began cross-examination. Sergeant Smuskiewicz testified he never investigated whether Garcia and Ms. Fernandez had an affair. He testified that Bedford Park officers had been called out to Pactiv both before and after Lawton's incident for other incidents. Those calls involved disturbances among employees and supervisors. There was never a call involving an outsider coming onto the property.

Based on what he observed, Sergeant Smuskiewicz understood that that the vehicle involved did not enter Pactiv property after the incident. He agreed that civilians should stay out of police issues and just call 9-1-1. He advised people to not jeopardize their own safety.

Testimony of Jose Gasco Garcia (PX #10)

Jose Garcia testified by evidence deposition on March 28, 2022 (PX #10). He was one of the persons damaging the car in Pactiv's lot and was the driver who ran over Lawton. He testified from prison where he was serving time for Lawton's death.

Garcia had worked at Pactiv for years before the accident and he was still working at Pactiv on the weekends in June 2013. His wife Maria also worked at Pactiv. Garcia did not know Lawton, although he had seen him at work in the past. They worked in different Pactiv buildings.

Garcia identified DepX #1, a daylight photo of the area where he parked the Jeep between the buildings. Garcia parked where the red mark was located on the photo. DepX #2 is an overhead view of the same roadway area. Garcia parked his Jeep where the red X is located on DepX #2. The building at the top of this photo is Pactiv's building and the building at the bottom was some other business. Garcia testified he worked in the building at the top left of the photo with the white roof.

Garcia was not working at Pactiv the night of the accident. He came to Pactiv's property to make sure his wife was at work and to check her car. He parked his Jeep in a dark roadway to make sure that no one got his license plate. He backed his Jeep down the roadway between the buildings with his headlights off. He planned to damage Guadalupe Fernandez's car. He was not going after Lawton's car, and he had no intent to harm Lawton in any way. He was going after Fernandez for bothering his wife and getting involved in their family life.

Garcia testified another Pactiv employee came to assist Garcia that night. Garcia's wife and Fernandez were both working that evening. Fernandez had been harassing Garcia's wife for a long time. Fernandez did this with all the women at the plant. Female workers in that building had been complaining of Fernandez's sexual harassment for years before the accident. Garcia had damaged Fernandez's car on earlier occasions before Lawton's incident.

Garcia knew that Pactiv did not have security guards patrolling its lots before June 2013. He knew there were no security fences which would have stopped him from accessing Fernandez's car. Any person could access the lots, whether they worked there or not. There were no guards in place at Pactiv to keep strangers off the property.

Garcia testified he did not see Lawton in front of his Jeep before accelerating away. He did not intend to run Lawton over. He had nothing against Lawton. He felt something under his vehicle, but he thought it was a piece of concrete which was sometimes in Pactiv's parking lots. Mr. Garcia testified he was trying to get away from the people chasing him and did not see Mr. Lawton standing in front of his car when he drove away.

Garcia testified that during the eight years he worked at Pactiv, Pactiv had no training programs to explain what workers should do about sexual harassers in the plant. He was never told what he was supposed to do when a coworker kept sexually harassing his wife in the plant. Garcia did not intend to hurt anyone when he came to Pactiv on June 13, 2013. He said Lawton's injury was a pure accident.

On cross-examination, Garcia admitted he chose the location where he parked the Jeep because it was dark. There were no lights on the non-Pactiv building to his south. Pactiv had some lights on its building to the north, but not where he parked. He did not park in Pactiv's parking lots to the west because of Pactiv's cameras. He knew Pactiv had cameras on the buildings and did not park there for that reason.

Garcia testified he stopped vandalizing Fernandez's car after he finished what he wanted to do. He and his companion started walking back across Mason and then started to run when people started chasing.

On redirect examination, Garcia admitted that he had also worked in Pactiv's northeast building with the loading docks, shown at the top of DepX #2 with the dark roof. Pactiv used the trailers parked near that building to get the plates out of Pactiv's building. He saw those trailers pulling away from Pactiv's building onto Mason Street many times during the years he worked at Pactiv.

Testimony of Lawrence Liva (PX #19)

Mr. Liva testified by evidence deposition on June 13, 2022 (PX #19). He was a machine shop manager for Pactiv on June 13, 2013. He received a call at home that something had happened to a temporary employee at Pactiv, and that he needed to come into work. Liva did not recall whether he authored the Occupational Incident Report, a diagram, or investigative notes.

Liva testified that if an employee was involved in a major accident, he would meet with Dennis Davidson, Pactiv's Director of Engineering, and Davidson would tell him what to do or who to call. Liva worked the day shift, but he directly supervised Charlie Lawton, John Brookhouse and Gabriel Ybarra. If an incident happened, he would probably handwrite a report, but did not recall much about those reports.

On cross-examination Liva testified Pactiv operated three buildings at that campus, arranged in a L formation: one to the southwest, one to the northwest, and one to the northeast. The building to the southeast had nothing to do with Pactiv. (PX19 p.17) Between that building and the Pactiv building to its north, there was a roadway or a parking area.

Liva was shown the overhead view of the area (Garcia DepX #2). Liva confirmed that the trailers on the photo ran in and out of Pactiv's operations. To access the area where the trailers were, Pactiv would have to use the exit onto Mason. To the right of the

red "X" on Garcia DepX # 2, Liva saw a yellow barrier across the roadway but did not know whether that barrier delineated Pactiv's area of operation from the unrelated business in the south building.

Liva testified he did not know where the property lines were. He also did not know if Mason was a public rather than private road.

Liva did not recall giving Lawton new employee orientation. He did not handle the orientations, but he thought Pactiv's HR would orient new temp employees. He did not recall there being a written handbook of job rules for temporary employees. Liva had never seen a written or oral rule prohibiting workers from going to the aid of other workers who were in peril. He would never have discussed discouraging workers from going to the help of a coworker. In the years he was working at Pactiv, he did not recall there being any kind of rules which prohibited workers from going to the assistance of their coworkers.

Liva testified Brookhouse and Ybarra were not disciplined, written up, or even chastised for joining Lawton in addressing the emergency. He knew of no managers claiming that these workers should not have followed the people who were damaging property in the lot. The police came to him to look at camera footage from the cameras on his building. He saw no photos or video showing what happened down the roadway where Lawton was hurt.

Liva did not recall Pactiv providing training for temp employees as to how they were to address sexual harassment in the plant.

Liva identified the ground level view of the roadway between the buildings from July 2011, Garcia DepX #1. The photo shows pavement running from Pactiv's building on the left to the brick wall of the non-Pactiv building on the right. Liva walked the area a couple of days after the accident but could not recall what he saw.

Liva was asked about the Occupational Incident Report ("OIR"). The OIR listed him as the person receiving notice of Lawton's incident. Pactiv used these OIR forms for various types of incidents. Liva did not prepare this OIR, he would not have typed it up or phrased things the way they were written on the OIR. Brookhouse and Ybarra were both listed as witnesses on the OIR, and they were both reported as having given statements.

Liva was not aware of prior incidents like what happened to Lawton so he did not know who would take the statements or write the report. Even though the OIR said he was a machinist, Lawton did hand finishing work. The OIR said that "Supervisor/Team Lead should complete front page and top of the back of second page." Liva admitted he was Lawton's supervisor at the time, but different leads or supervisors may have completed the report. A box marked "Contributing Factors" was located at the bottom of

the first page. Liva did not know enough about the details of the event to determine who was at fault for the injury.

Liva reiterated that he was not aware of any Pactiv rules which prohibited workers to going to each other's aid to address sudden emergencies on Pactiv property. If something happened inside the building, he would hope that someone called 911. But he did not remember anything happening outside the building before Lawton's injury. Liva also did not author the Investigative Notes document. He had no idea whether other vehicles had been damaged prior to June 13, 2913. at night in Pactiv's lot. OIR forms should be filled out promptly after an event.

Pactiv's workers were given two breaks and a lunch break. Pactiv did require workers in the southwest building to take their breaks at the north end of the building. Workers were not prohibited from taking breaks in their cars. If Lawton and Brookhouse were in the north end of the building during their breaks, that is where the company expected them to be. Lawton was also allowed to take breaks with coworkers. Breaks were not scheduled for exact times. Workers did not have to clock out or notify the supervisor when going to break, but workers did clock out for lunchbreaks.

Testimony of Guadalupe Fernandez (AerotekX #3)

Guadalupe Fernandez testified at Jose Garcia's criminal trial August 28, 2017, People of the State of Illinois vs. Jose Garcia, 13 CR 1552. Mr. Fernandez identified photos of his car showing broken windows and a gang sign scratched into the car. Later, on June 13, 2013 he recognized "Jose" from a picture on TV and called the police about Garcia. Fernandez had worked with Garcia at Pactiv for 3 years before this night. Fernandez was confronted by Garcia in the canteen 2 months before the attack. Garcia said something to him about calling Garcia's wife or girlfriend, which Fernandez said was a lie. Garcia told him to watch his back.

Fernandez admitted he did not know if Garcia damaged his car because he was inside working. Fernandez went to the police station on June 20, 2013 and identified Garcia in a photo array. He also identified Garcia in a physical lineup at the Sheriff's office in Maywood, as well as in open court. During an interview with police, Fernandez talked about the disagreement he had with Garcia. Fernandez admitted he had had disagreements with other people at work.

Medical Records

Mr. Lawton was transported by Bedford Park Fire Department ambulance to Advocate Christ Hospital ("Christ") in Oak Lawn (PX #2). The EMS record identified multiple injuries (PX #1). The Christ trauma notes document significant deep tissue injuries. Procedures performed at Christ included washout of his right face, left upper extremity, right shoulder, and debridement of wounds.

Christ transferred Lawton to the Loyola University Medical Center ("Loyola"), where he was admitted to the burn unit on June 17, 2013 in an intubated and sedated state. He was hemodynamically stable at that point (PX #3). Loyola healthcare providers noted extensive degloving of the right side of the head, amputation of the right ear, right mastoid fracture with complete fracture and disarticulation of the zygomatic arch, fracture and exposure of the temporomandibular joint, and extensive exposure of deep facial muscles in the right side of the face and clavicle fractures. The left upper chest and shoulder also suffered degloving with exposure of muscle and soft tissue. The right upper extremity had dorsum degloving of hand down to the bone and deep muscle. The left upper extremity was extensively degloved from the shoulder down to the wrist, with a brachial artery bypass being done at Advocate. He had deep partial thickness/full thickness burns to his chest. Three surgical procedures were performed at Loyola, during which he remained sedated with mechanical ventilation while undergoing antibiotic treatment and dialysis for acute renal failure.

Mr. Lawton never regained consciousness or function and treatment ultimately failed. Lawton died on July 13, 2013. Loyola records included photos of Lawton's injuries.

Mr. Lawton's Death Certificate was admitted as PX #4.

Pactiv Occupational Incident Report was admitted as PX #18.

Respondent Pactiv's Motion to Dismiss was admitted as PactivX #1.

The temporary employment agreement between Pactiv and Aerotek was admitted as PactivX #2.

Respondent Aerotek's wage statement was admitted as AerotekX #1.

Respondent Aerotek's employment agreement was admitted as AerotekX #2.

The trial testimony of Guadalupe Fernandez was admitted as AerotekX #3.

CONCLUSIONS OF LAW

Respondent Pactiv filed a Motion to Dismiss, citing the written agreement between Pactiv and Respondent Aerotek, PactivX #2. The agreement states in pertinent part:

- [Aerotek] will, at its own expense, provide and keep in full force and effect during the term of this Agreement…Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the Services are performed.
- [Aerotek] will indemnify, defend and hold Pactiv and its subsidiaries, affiliates, directors, officers, employees and agents from and against all demands, claims, actions, suits, losses, damages (including, but not limited to, property damage, bodily injury and wrongful death), judgments, costs

> and expenses…imposed upon or incurred by Pactiv arising out of…[a]ny claim of any nature asserted against Pactiv or workers compensation carriers by any [Aerotek] employee or agent of [Aerotek], or, in the event of death, by their personal representatives.

The facts here are similar to those in *Lachona v. Industrial Commission*, 87 Ill.2d 208, 427 N.E.2d 858 (1981), where a similar agreement was upheld. The Arbitrator finds that Pactiv is a borrowing employer and Aerotek is a loaning employer in accord with §1(a)4 of the Act. The Arbitrator also notes the stipulation at trial between Respondents Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner as a result of the June 13, 2013 incident, that Aerotek retains full liability for any and all benefits, including, but not limited to, medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency.

Respondent Pactiv's Motion to Dismiss is granted.

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator finds that Petitioner failed to prove that an accident arose out of and in the course of the decedent's employment by Respondents Pactiv Corp. or Aerotek.

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. on June 13, 2013. Mr. Lawton was employed as a temporary CNC Machinist through referral from Respondent Aerotek. On the evening of June 13 Mr. Lawton was taking a break with coworkers in an area abutting Pactiv's employee parking lot. Mr. Lawton and the others heard the sound of breaking glass and went to investigate. They discovered two individuals vandalizing a coworker's car. Jose Garcia was one of the individuals vandalizing the car. Mr. Lawton and coworkers John Brookhouse and Gabriel Ybarra gave chase of Mr. Garcia and the other vandal across the parking lot and onto Mason street which was the public way. Mr. Lawton placed himself in front of a Jeep operated by Mr. Garcia. In an effort to get away Mr. Garcia ran over and dragged Mr. Lawton down the roadway, causing fatal injuries to Mr. Lawton. Mr. Garcia was criminally charged and convicted for his actions.

An injury arises out of one's employment if its origin is from a risk connected with or incidental to employment activities. "Arising out of the employment" refers to the origin or cause of the claimant's injury. A risk is distinctly associated with employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform,

or acts which the employee might reasonably be expected to perform incident to his assigned duties.

An injury occurs "in the course of" of employment if it refers to the time, place, and circumstances of the accident. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, a resulting injury will not be within the course of employment unless the employer had knowledge or acquiesced in such unreasonable conduct.

Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized hey coworkers private vehicle Was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, We're not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties. There is no evidence that his employer had knowledge or acquiesced to the decedent assuming this type of risk. There was no evidence that Aerotek or Pactiv expected, required, or encouraged its employees or temporary employees to stop any sort of criminal activity that occurred on company property.

The Arbitrator finds that Mr. Lawton took himself outside the scope of his employment as a machinist not only when he chased the offenders off Pactiv's property and across Mason Street, but also when he placed himself in front of Mr. Garcia's vehicle in an attempt to stop the offenders from fleeing. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, as here, the resultant injury is not within the course of the employment.

Also, the Arbitrator does not find the Good Samaritan doctrine applicable to this case. In determining whether an accident is compensable under the Good Samaritan Doctrine, courts have focused on whether the conduct is reasonably foreseeable. It was not reasonably foreseeable by Respondents that Mr. Lawton what put himself in harm's way when a criminal act did not involve damage to the employers property or equipment or harm to a coworker.

The Arbitrator does not find the alleged relationship and/or harassment between Mr. Garcia, Mr. Garcia's wife, and Guadalupe Fernandez relevant because it did not involve Mr. Lawton whatsoever.

The Arbitrator also does not find it relevant that Pactiv placed security in the parking lot after the June 13, 2013 incident. There was no evidence that Bedford Park is a high crime area or that there was a pattern of vandalism or other criminal acts in the Pactiv parking lot. On the contrary, this incident appears to be isolated to the issues between Mr. Garcia and Mr. Fernandez.

G: *What were Petitioner's earnings?*

Petitioner's wage statement, PX #11, shows Mr. Lawton's earnings from November 8, 2012 through June 13, 2013. During that time, the decedent had regular earnings of $20,013.00 and $84.00 of overtime earnings at straight time pay, for a total of $20,097.00. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $772.96.

Respondent Aerotek wage statement, AerotekX #1, showed earnings of $20,281.00. and the Petitioner's average weekly wage, calculated pursuant to section 10 of the Act was $780.04. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $780.04.

The Arbitrator adopts the average weekly wage computation of Respondent Aerotek, $780.04.

H: *Whether the deceased had any dependent children***.**

The evidence established that Mr. Lawton was not married at the time of the incident at issue. According to the June 8, 2015 Order of Heirship, PX #17, the decedent had the following minor dependents at the time of his death: Addison Pozniak (DOB May 19, 2013), Ashley Lawton (DOB July 14, 2002), and Elaina Lawton (DOB February 11, 1997). Elaina Lawton was emancipated by age on February 11, 2015. There was evidence that Grace Orsatdt, decedent's natural child, had been adopted but there was no evidence of when the adoption took place and, therefore, no evidence of whether Grace was a minor dependent at the time of Mister Lawton 's death.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the medical services provided to Mr. Lawton were reasonable and necessary and there is no evidence to the contrary.

K: *What temporary benefits are in dispute? TTD*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the correct disputed period of TTD would be from June 14, 2013 through July 13, 2013, or a period of 4 & 2/7 weeks.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, Respondents had good faith bases for denying benefits. It was neither vexatious nor frivolous to deny Petitioner's claim for benefits when Mr. Lawton exposed himself to a personal risk of harm that was outside the scope of his employment.

O: *Whether Petitioner is entitled to statutory funeral expenses.*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

_____ _____

Steven J. Fruth, Arbitrator Date

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

AMANDA POZNIAK, as Independent Administrator of the Estate of Charles Lawton, deceased, et al., **Plaintiffs,** **v.** **PACTIV CORPORATION, et al.,** **Defendants.**	**Case No.: 2024L050047**

ORDER

Charles Lawton witnessed a car being vandalized while outside in the employee parking lot on a break from work. Lawton chased the vandals, who fled back to their own car, which had been parked just off-property. He stood in front of the vandals' car in an effort to prevent their escape. The vandals – who, it later turned out, were fellow employees, off-duty, seeking to avenge a grievance with the vandalized car's owner – drove over Lawton and dragged him under the car, critically injuring him. Lawton would later die of his injuries. The driver, Jose Garcia, was subsequently apprehended and imprisoned for Lawton's death.

Amanda Pozniak, the mother of one of Lawton's children and the administrator of his estate, filed a claim against his employers[1] under the Workers' Compensation Act on behalf of the estate and Lawton's minor children. The claim proceeded to arbitration, following which the Arbitrator determined that the Lawton's death was non-compensable:

> Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized [their] coworker[r's] private vehicle was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, [were] not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his

[1] It was stipulated that the Respondents, Aerotek and Pactiv, had a borrowing-lending relationship with regard to Lawton's employment. The two Respondents are referenced throughout as the "employer" or "employers" for simplicity's sake.

> employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties.

The principle of law applicable to the circumstances of Lawton's death, according to the Arbitrator, dictates that an injury is not considered to have occurred in the course of employment "if an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties . . ."

The Commission affirmed and adopted the Arbitrator's Decision.

Pozniak has filed a Petition for Review arguing, in the main, that the accident should be found compensable under the "hero/emergency doctrine."

To be compensable under the Workers' Compensation Act, the injury complained of must be one "arising out of and in the course of the employment." 820 ILCS 305/2. An injury "arises out of one's employment if its origin is in some risk connected with or incidental to the employment, so that there is a causal connection between the employment and the accidental injury. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995). An injury occurs "'in the course of employment [if] it occurs within a period of employment, at a place where the worker may reasonably be in the performance of his duties, and while he is fulfilling those duties or engaged in something incidental thereto.'" *Parro*, 167 Ill. 2d at 393 (quoting *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 367 (1977)).

Whether an injury arose out of and in the course of employment are questions of fact for the Commission and may not be set aside unless against the manifest weight of the evidence. *Litchfield Healthcare Ctr. v. Indus. Comm'n*, 349 Ill. App. 3d 486 (5th Dist. 2004). In applying a manifest weight of the evidence standard, courts of review should be "reluctant to set aside the Commission's decision on a factual question," but "should not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion." *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993); See also *Roberson v. Indus. Comm'n*, 225 Ill. 2d 159, 173 (2007) ("A reviewing court will not set aside the Commission's decision unless its analysis is contrary to law or its factual determinations are against the manifest weight of the evidence.")

The principle of law relied upon by the Arbitrator and adopted by the Commission has been referenced by courts of review as the "unnecessary personal risk doctrine."

Application of the "unnecessary personal risk" doctrine seems to have generally been limited, by Illinois courts of review, to three circumstances. The first involve situations in which the claimant is injured while engaged in "performing an act of a personal nature solely for his own convenience." The second centers around cases involving a claimant who "voluntarily exposes himself to a known hazard." And the third category of cases concern injuries that occur

during the course of an employee "minister[ing] to his personal comfort" in an unreasonable or unforeseeable manner.

Orsini v. Industrial Comm'n, 117 Ill. 2d 38 (1987), illustrates the first type. There, the claimant was adjusting the carburetor on his own car at the Texaco where he worked when it lurched forward and pinned him against a workbench, breaking his legs. The Supreme Court held that the injury was non-compensable because it did not "arise from" the claimant's employment, framing the doctrine of "unnecessary personal risk" as involving a "danger entirely separate from the activities and responsibilities of [the employee's] job":

> [U]nder the terms of his employment, Orsini was not required to work on his personal automobile during working hours, and Wilmette Texaco could just as well have permitted him to do nothing while he was waiting for the additional brake parts needed to complete the job he was performing for his employer. . . . Orsini's car served no purpose relative to his employment duties at Wilmette Texaco. Thus, we find here that Orsini voluntarily exposed himself to an unnecessary danger entirely separate from the activities and responsibilities of his job, and was performing an act of a personal nature solely for his own convenience, an act outside of any risk connected with his employment. Clearly, there is no evidence here of a causal connection between Orsini's employment at Wilmette Texaco and the accidental injury.

Orsini, 117 Ill. 2d at 47; See also *Sekora v. Indus. Com*., 198 Ill. App. 3d 584, (1990) (employee injured while riding dealership ATV in a field after work); *Curtis v. Indus. Comm'n*, 158 Ill. App. 3d 344 (1987) (claimant burned transferring gasoline to container for his personal use); *Segler v. Indus. Com*., 81 Ill. 2d 125 (1980) (claimant injured by conveyer while attempting to heat his lunch in industrial oven); *Yost v. Indus. Com.*, 76 Ill. 2d 548, 550 (1979) (claimant injured attempting to pry lid off candy tin).

This, first type, of "unnecessary personal risk" centers on the "personal" aspect of the risk – and the "arising out of" prong of analysis. Courts of review assign particular significance to whether, as in *Orsini,* the claimant was "performing an act of a personal nature solely for his own convenience" at the time of his injury. See e.g. *Fisher Body Division, General Motors Corp. v. Industrial Com*., 40 Ill.2d 514 (1968) (employee injured by car battery explosion while re-charging in employee parking lot); *Mazursky v. Industrial Com.,* 364 Ill. 445 (1936) (employee injured while attempting to repair wheel of his car on employer's premises).

The second type of case in which the "unnecessary personal risk" doctrine has been applied are cases that involve employees injured while voluntarily confronting known hazards for their own convenience – typically by taking a "shortcut" on the way to or from work. See e.g., *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, ¶ 23 (claimant injured while attempting to hop over barrier); *Hatfill v. Industrial Comm'n,* 202 Ill.

App. 3d 547 (1990) (jumping over a ditch *en* route to parking deck); *General Steel Castings Corp. v. Industrial Comm 'n*, 388 Ill. 66 (1944) (crossing railroad tracks instead of using pedestrian tunnel on way to employee parking lot); *Terminal R. Ass'n v. Indus. Com.*, 309 Ill. 203 (1923) (attempting to crawl under a freight train to get to work station in railroad roundhouse).

Courts confronted with these cases typically focus on the "unnecessary" aspect of the activity and the "in the course of employment" prong of the analysis. Injuries that occur while employees are engaged in confronting a known hazard, like operating train tracks, are said to be acting for their own personal convenience – rather than acting with some interest of the employer in mind – and, consequently, acting outside the course of employment.

The third category of cases concern limitations on employees seeking "personal comfort." As set out by the Supreme Court, "the course of employment is not considered broken by certain acts relating to the personal comfort of the employee," but, "if the employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, the resultant injury will not be deemed to have occurred within the course of the employment." *Eagle Discount Supermarket v. Industrial Comm'n*, 82 Ill.2d 331, 339-40 (1980); See also *Union Starch v. Industrial Comm'n*, 56 Ill.2d 272, 277 (1974) ("Our courts have found that incidental, or nonessential acts of the employment, such as seeking personal comfort, may not be within the course of employment if done in an unusual, unreasonable, or unexpected manner")[2]

The facts at issue here fall outside each of the three circumstances in which Illinois courts of review have applied the "unnecessary personal risk" doctrine. This wasn't a case that involved Lawton's personal interest. It wasn't *his* car that was being vandalized. Neither was this a circumstance involving Lawton confronting a known risk for his personal convenience – nor a case concerning the limits of the "personal comfort doctrine." While Lawton was on break, he was doing nothing to advance his own interest, convenience or comfort in confronting the vandals in the employee parking lot.[3]

Petitioner argues that the case is one that is controlled by the "hero/emergency doctrine" citing *Dragovich v. Iroquois Iron Co.*, 269 Ill. 478 (1915), *Baum v. Indus. Com.*, 288 Ill. 516 (1919), *Metropolitan Water Reclamation District of Greater Chicago v. Industrial Comm'n*, 272 Ill. App. 3d 732 (1995), and other cases.

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[2] Other states have adopted constructs requiring employee "misconduct" to be "unusual or extraordinary" or "unconventional and perilous" to be disqualifying. See 3 Larson's Workers' Compensation Law § 32.02D (collecting cases).

[3] See e.g. *Chicago Extruded Metals v. Indus. Comm'n*, 77 Ill. 2d 81, 85 (1979) (killing an insect in the employer's shower facility considered to be an act in the employer's interest).

In *Dragovich*, Frank Markusic, working on Christmas Eve 1912, was burned to death in scalding water after he fell into an open hole on the factory floor while coming to the aid of a fellow employee who was screaming for help – having fallen into a different part of the same hole, himself. Construing "arising out of and in the course of the employment" of the newly enacted Workers' Compensation Act for the first time, the Illinois Supreme Court found that an employee's duties at work extend to attempts to save the lives of his fellow employees:

> Section 1 of the act requires that compensation may be had for accidental injuries sustained by any employee "arising out of and in the course of the employment," etc. From the facts already stated, counsel for appellant argues that it was not shown that the accident arose out of and in the course of deceased's employment. This provision of the statute has never been construed by this court but somewhat similar acts have been construed by the courts in other jurisdictions. Under these authorities it is clear that it is the duty of an employer to save the lives of his employees, if possible, when they are in danger while in his employment, and therefore it is the duty of a workman in his employ, when occasion presents itself, to do what he can to save the lives of his fellow-employees when all are at the time working in the line of their employment. Any other rule of law would be not only inhuman but unreasonable and uneconomical, and would, in the end, result in financial loss to employers on account of injuries to their employees. From every point of view it was the duty of the deceased, as a fellow-employee, in the line of his duty to his employer, to attempt to save the life of his fellow-employee under the circumstances here shown. That he failed in his attempt does not in the slightest degree change the legal situation.

Dragovich, 269 Ill. at 484.

In *Baum*, striking workers from the International Garment Workers' Union stormed the Nora Shirtwaist Company, a non-union shop owned by Simon Baum. Edward Tomczyk, an "assistant cutter" and one of only a few male employees, attempted to stop the strikers from advancing onto the factory floor and was stabbed to death. The Supreme Court, affirming an award of workers' compensation benefits, found that Tomczyk's stabbing arose out of his employment because he was performing a voluntary act during an emergency that he believed to be in the interest of his employer:

> While there must be some causal relation between the employment and the injury, it is not necessary that the injury be one which ought to have been foreseen or expected. It must, however, be one which after the event may be seen to have had its origin in the nature of the employment. . . . Where a workman voluntarily performs an act during an emergency which he has

> reason to believe is in the interest of his employer and is injured thereby, he is not acting beyond the scope of his employment.

Baum, 288 Ill. at 518-19.

Metropolitan Water Reclamation District involved a lockmaster, who – while waiting to be relieved from working in the station house where the Chicago River meets Lake Michigan – suffered a heart attack after assisting in rescuing a man who had fallen into the lake from an adjacent property. Affirming the Commission's finding that the injury was compensable, the Appellate Court determined that – despite the rescue taking place after the lockmaster's shift and off property – the fact the lockmaster's actions were in response to a "sudden emergency" brought it within the course of his employment:

> [C]laimant had signed out, but was not supposed to leave until his replacement arrived. After hearing a commotion in the parking lot, claimant went there to make sure his replacement was not in danger. At that point, claimant was still on the respondent's time and premises. Once in the parking lot, claimant heard a woman's call for help and proceeded to the adjacent property in response to the "sudden emergency" to rescue a stranger. Giving aid as claimant did is natural and expected and did not remove him from the course of his employment.

Metropolitan Water Reclamation District, 272 Ill. App. 3d at 735-36 (citing *Puttkammer v. Industrial Comm'n*, 371 Ill. 497, 501 (1939) ("If a servant in the course of his master's business has to pass along a public street, whether it be on foot or on a bicycle or on an omnibus or car, and he sustains an accident by reason of the risks incidental to the streets, the accident arises out of as well as in the course of his employment." (quoting *Dennis v. A.J. White and Co*. 15 N.C.C.A. 294)).

Dragovich, *Baum* and *Metropolitan Water Reclamation District* stand for three general principles: (1) "in the course of employment" is not constrained to an employee's job duties for purposes of the emergency doctrine; (2) voluntary acts performed in the interest of the employer during an emergency "arise from" the employment; and (3) as long as the act is "in the course of" and "arising from" the employment, it is irrelevant if the act occurs on or off the employer's premises.

Professor Larson summarizes the rule, which he calls the "General Rescue Rule," as extending to emergencies involving both life and property: [4]

> Under familiar doctrines in the law relating to emergencies generally, the scope of an employee's employment is impliedly extended in an emergency to include the performance of any act designed to save life or property in which the employer has an interest. . . . It is too obvious for discussion that emergency efforts to save the employer's property from fire, theft, runaway horses, destruction by strikers, or other hazards are within the course of employment.

3 Larson's Workers' Compensation Law § 28.01 (citing, among other cases, *Deutsch v. Heritage Automotive Enters*., 939 So.2d 259 (Fla. Dist. Ct. App. 2006) (employee awarded benefits after chasing thief and being run over by her car)).

If Jose Garcia, the offender in this case, had – upon being confronted in his act of vandalizing the car – pulled out a gun and shot Lawton in the employee parking lot, there would be no question that the incident would be considered to have "arisen out of" and "in the course of the employment." See *Rodriguez v. Frankie's Beef/Pasta & Catering*, 2012 IL App (1st) 113155 (employee shot to death by fellow employee over dispute over promotion covered by exclusivity provisions of Workers' Compensation Act); *Price v. Lunan Roberts, Inc*., 2023 IL App (1st) 220742 (employee stabbed to death by fellow employee while at work for unknown reasons covered by exclusivity provisions of the Workers' Compensation Act).[5]

Significant to the analysis would be the fact that Garcia was, himself, an employee of Pactiv Corporation, rather than a stranger. Significant, too, would be the fact that the vandalism stemmed from a work-related dispute: the harassment of Garcia's wife (and other employees) by the car's owner while at work. And it would not have mattered if the shooting occurred after Lawton pursued Garcia across the street from the employee parking lot.

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[4] Respondents cite *Pearson v. Industrial Comm'n*, 318 Ill. App. 3d 932 (2001), for the proposition that the "emergency doctrine" is limited to "life-threatening" circumstances. The "emergency doctrine" discussed in *Pearson*, however, is a doctrine differing from that at issue and pertains to extending "employment" status to non-employees during a life-threatening emergency. See *Wolverine Insurance Co. v. Jockish*, 83 Ill.App.3d 411, 38 Ill. Dec. 686, 403 N.E.2d 1290 (1980). See also *Conveyors' Corp. of America v. Industrial Comm'n*, 200 Wis. 512, 228 N.W. 118 (1929); *Tipper v. Great Lakes Chemical Co.* 281 So.2d 10 (Fla. 1973).

[5] See also *Hooks v. Cee Bee Mfg. Corp*., 80 A.D.2d 687 (NY 1981) (workers' compensation coverage found under New York's version of workers' compensation law for claimant shot and killed after confronting vandals in employee parking lot).

The compensability or non-compensability of the claim cannot hinge on the fact that Garcia killed Lawton with a car instead of a gun.

As Petitioner points out, the Arbitrator here improperly injected elements of contributory negligence and assumption of the risk into the analysis. Construing the "emergency doctrine" in a manner that would include such negligence concepts would bring the doctrine into stark conflict with the public policy objectives underlying the Workers' Compensation Act:

> It has long been recognized that one of the [Illinois Workers' Compensation Act's] objectives was to do away with defenses of contributory negligence or assumed risk. Recklessly doing something persons are employed to do which is incidental to their work differs considerably from doing something totally unconnected to the work. It matters not how negligently the employee acted, if at the time he was injured he was still within the sphere of his employment and if the accident arose out of it.

Gerald D. Hines Interests v. Industrial Comm'n, 191 Ill. App. 3d 913, 917 (1989) (citations omitted).

The court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to law. However, the court finds the parties' dispute concerning the compensability of the claim to have been in good faith and confirms the denial of penalties.

The court also sets aside the findings made by the Arbitrator unnecessary for the determination that the accident was non-compensable, including the findings as to Lawton's average weekly wage, the identity of his minor dependents, whether medical services were reasonable and necessary and the duration of any temporary total disability to which he was entitled. (Disputed Issues G, I, J and K).

The court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss – any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co.*, 315 Ill.App.3d 823, 826-27 (2000) ("[*Lachona v. Industrial Commission*, 87 Ill.2d 208 (1981)] does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")

IT IS THEREFORE ORDERED:

That the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O;

That the Commission's Decisions and Opinions on Review dated January 19, 2024 are CONFIRMED as to Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability;

That the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss;

That, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 305/7(a) and 820 ILCS 305/7(f);

That the Commission is authorized to conduct further hearings, remand the matter further for such hearings, or employ whatever methods it deems necessary to comply with this order;

That the matter is disposed. See *Kudla v. Indus. Comm'n*, 336 Ill. 279, 282 (1929) (holding that, following review, the circuit court exhausts its statutorily-conferred jurisdiction and any "attempt to retain further jurisdiction [is] void.")

Judge Daniel P. Duffy
JAN 27 2025
Circuit Court - 2103

Hon. Daniel P. Duffy
Circuit Court of Cook County
Law Division -
Tax and Miscellaneous Section
50 West Washington, Room 2505
Chicago, Illinois 60602

Enter:_____

_____
Judge Judge's No.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018189
Case Name	Amanda Pozniak (Individually and as Guardian of Dependent Children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased) v. Aeortek
Consolidated Cases	16WC018188;
Proceeding Type	***Remand from the Circuit Court of Cook County***
Decision Type	***Corrected Decision***
Commission Decision Number	25IWCC0077
Number of Pages of Decision	61
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Anthony Gattuso

DATE FILED: 2/26/2025

/s/Carolyn Doherty, Commissioner

Signature

25IWCC0077-Corrected

STATE OF ILLINOIS	)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	)SS.	☐ Affirm with changes	☒ Rate Adjustment Fund (§8(g))
COUNTY OF COOK	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
	)	☐ Modify	☐ PTD/Fatal denied.
		☒ ON REMAND FROM CIRCUIT COURT	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMANDA POZNIAK, as Independent Administrator of the Estate of Charles Lawton, deceased, et al.,

Petitioner,

vs.

NO: 16 WC 18188 and 16 WC 18189
2024 L 050047

PACTIV CORPORATION and AEROTEK,

Respondents.

CORRECTED DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County. In accordance with the Circuit Court Order filed on January 27, 2025, the Commission on remand considers the issues of accident, earnings/benefit rates, marital status and dependents, medical expenses, temporary benefits, nature and extent, death benefits pursuant to 820 ILCS 305/7(a) and 305/7(f), and Pactiv's Motion to Dismiss.

I. PROCEDURAL BACKGROUND

Petitioner, as an Independent Administrator of the Estate of Charles Lawton (deceased), filed two claims for benefits under the Illinois Workers' Compensation Act against the Respondents, Pactiv Corporation and Aerotek, for the fatal injuries Mr. Lawton sustained a result of an accident on June 13, 2013. The first Application for Adjustment, case number 16 WC 18188, was filed against Pactiv Corporation. The second Application for Adjustment, case number 16 WC 18189 was filed against Aerotek. The Circuit Court's Order acknowledges in a foot note that "[i]t was stipulated that the Respondents, Aerotek and Pactiv, had a borrowing-lending relationship with regard to Lawton's employment." The Applications were consolidated before trial. After trial, the Arbitrator issued a decision on July 27, 2023 concluding that Mr. Lawton had not

sustained an accident arising out of and in the course of his employment and no benefits were awarded under either case number.

The Commission notes that no finding under Section 1(a)4 of the Act, covering borrowing and lending employers, was made by the Arbitrator in either decision. In case number 16WC18188, the Arbitrator granted Respondent Pactiv's Motion to Dismiss. As his basis for dismissal, the Arbitrator relied upon a written indemnity agreement and the stipulation entered into at trial between Respondent's Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner, that Aerotek retains full liability for any and all benefits, including but not limited to medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency. Because benefits were denied, the stipulation and indemnity agreement were not given effect.

Petitioner then filed timely Petitions for Review before the Illinois Workers' Compensation Commission. The Commission agreed that Petitioner failed to prove an accident that arose out of and in the course of his employment. On review of case 16 WC 18188 filed against Pactiv, the Commission vacated the portion of the Arbitrator's Order granting Pactiv's Motion to Dismiss in case number 16 WC 18188 on procedural grounds while affirming and adopting the remainder of the Arbitrator's Decision in Case 16 WC 18188. On review, the Commission affirmed and adopted the Arbitrator's Decision in Case 16 WC 18189 filed against Respondent Aerotek.

Petitioner then sought administrative review in the Circuit Court of Cook County on both matters. On January 27, 2025, the Circuit Court issued one Order for both cases stating, "[t]he court finds the Arbitrator's analysis with regard to compensability of the accident, as adopted by the Commission, to have been contrary to law." Accordingly, the court ordered "that the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O," "[t]hat the Commission's Decisions and Opinions on Review dated January 19, 2024 are CONFIRMED as to Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability," and "[t]hat the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award." The Order also directs"[t]hat, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 307/7(a) and 820 ILCs 305/7(f)."

The Commission finds the entirety of the record sufficient to comply with Order and instructions given on remand.

II. FINDINGS OF FACT

The Commission hereby incorporates by reference the "Findings of Facts" and findings included in the "Conclusions of Law" contained in the Arbitrator's Decisions filed on July 27, 2023, attached hereto and made a part hereof, to the extent they do not conflict with the

Commission's Decisions and Opinions filed on January 19, 2024, which are attached hereto and made a part hereof, to the extent these decisions do not conflict with the Circuit Court of Cook County's Order filed on January 27, 2025. The Commission also incorporates by reference the January 27, 2025, Circuit Court Order, attached hereto and made a part hereof. Finally, any additional facts from the record that are relied on by the Commission in order to comply with the remand and instructions of the Circuit Court are cited below and incorporated.

III. CONCLUSIONS OF LAW

In an effort to comply with the Circuit Court order on remand, the Commission is charged with following the court's order. *See Noonan v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152300WC, ¶ 11. The Commission initially observes that a reviewing court's mandate vests a lower court with jurisdiction only to take action that complies with the reviewing court's mandate. *See Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28. On remand, the Commission lacks the authority to exceed the scope of the mandate and must follow the court's precise and unambiguous directions. *Id*. If the direction is to proceed in conformity with the opinion, then, of course, the content of the opinion is significant. *Id*.

In this case, on January 27, 2025, the Circuit Court found and ordered:

"The court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to law. However, the court finds the parties' dispute concerning compensability of the claim to have been in good faith and confirms the denial of penalties."

"The court also set aside the findings made by the Arbitrator unnecessary for the determination that the accident was non-compensable, including the findings as to Lawton's average weekly wage, the identity of his minor dependents, whether medical services were reasonable and necessary and the duration of any temporary total disability to which he was entitled. (Disputed Issues G, I, J and K)."

"The court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co*., 315 Ill.App.3d 823, 826-27 (2000)("[*Lachona v. Industrial Commission,* 87 Ill.2d 208 (1981)]does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")."

Accordingly, the Circuit Court ultimately ordered:

"That the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O;"

"That the Commission's Decisions and Opinions on Review dated January 19, 2024 are

CONFIRMED as to the Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability;"

"That the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss;"

"That, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 307/7(a) and 820 ILCs 305/7(f)."

C. Accident:

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue C—Accident.

The Commission observes the Circuit Court Order stating "[t]he court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to the law." The Commission observes that in the Order, the court's accident discussion and finding focuses on the "hero/emergency doctrine" as argued by Petitioner, citing *Dragovich v. Iroquois Co*., 269 Ill. 478 (1915), *Baum v. Indus. Com.,* 288 Ill. 516 (1919), and *Metropolitan Water Reclamation District of Greater Chicago v. Industrial Comm'n*, 272 Ill. App. 3d 372 (1995). Therefore, on remand, the Commission concludes that Mr. Lawton's accident on June 13, 2013, which resulted in fatal injuries, is compensable pursuant to the "hero/emergency doctrine" and pursuant to the Remand Order of the Circuit Court dated January 27, 2025.

G. Earnings/Average Weekly Wage

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue G—Earnings/Average Weekly Wage.

The Commission observes that on the Request for Hearing Forms, AX 1 and AX 2, Petitioner claimed an AWW of $823.75 and Respondent claimed an AWW of $780.04. *See* AX 1 and AX 2.

The Commission notes that Aerotek RX 1, the payroll register, provides only the "check dates" and not the actual days, dates, or time periods worked by Mr. Lawton. It appears Mr. Lawton was paid weekly and was paid $21.00 per hour. The first check date listed is November 8, 2012 and the last two check dates listed are June 20, 2013 and July 2, 2013. The last check date of July 2, 2013 should not be included in the weeks and parts thereof calculation as it appears be payment for something other than work actual hours worked before the accident. The check date of June 20th is presumably for work performed the previous week, which is the week the accident

occurred. The accident occurred on Thursday, July 13, 2013 and the register indicates 32 hours were worked that week. The decedent did not return to work after the accident; thus, it can be reasonably presumed he worked only 4 days that week and not a full week. However, given the lack of information provided on the register, it is difficult to determine for the other weeks of less than 40 hours worked, what days were worked in order to determine the parts thereof.

At trial, Petitioner's claimed average weekly wage of $823.75, which included overtime hours. *See* AX 1 and AX 2; *see also* Aerotek RX 1. However, in this case, there was no testimony or evidence provided as to whether overtime was mandatory or a condition of employment. In addition, RX 1, the payroll register shows that overtime hours were not a set number of hours worked consistently each week. Therefore, pursuant to *Airborne*, overtime wages should not be included in this case. Airborne Express, Inc. v. Illinois Workers' Compensation, 372 III. App. 3d 549, 554-555 (1st Dist. 2007)(stating "[o]vertime includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week).

After review of Aerotek RX 1, the payroll register, the Commission finds that Mr. Lawton worked 27 and 4/7 weeks prior to the accident. Pursuant to Section 10 of the Act, the Commission uses the weeks and parts thereof method to calculate AWW. The Commission notes that the total earnings for the check dates of 11/8/12 through 06/20/13 were $21,261.00, not including $84.00 of overtime wages (4 hours x $21/hour). The total earnings of $21,261.00 divided by 27-4/7 weeks or 27.571 computes to an average weekly wage of $771.14.

Nevertheless, the Commission is unable to utilize the average weekly wage of $771.14 as the Commission is bound by the *Walker* case. Walker v. Industrial Comm'n, 345 Ill.App.3d 1084 at 1088 (4th Dist. 2004) (holding it has been held that the language of section 7030.40, now 9030.40, provides that the request for hearing is binding on the parties as to the claims made therein). Therefore, the Commission finds the average weekly wage to be $780.04 as claimed by Respondent. *See* AX 1 and AX 2.

I. Marital Status and Number of Dependents

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue I—Marital Status and Number of Dependents.

Regarding marital status, the Commission observes that Petitioner, Amanda Pozniak testified that Mr. Lawton was her boyfriend at the time of the incident on June 13, 2013. They had lived together for about one year. Therefore, the Commission concludes that at the time of the incident on June 13, 2013, Mr. Lawton was single and not married.

Regarding dependents, the Commission notes that Petitioner, Amanda Pozniak testified that PX 17 was an order entered on June 9, 2015, declaring heirship for Mr. Lawton's children. The Commission observes that the "Order Declaring Heirship" was entered in the Circuit Court on June 9, 2015 and while instructive, is not binding on the Commission. The first child listed is

Elaina Lawton, born on 02/11/1997. The second child listed is Ashley Lawton, born on 07/14/2002. Petitioner testified that Elaina and Ashley were sisters and children from Mr. Lawton's previous marriage. The third child listed on the on the order was Grace Orstadt, born on 01/08/2001. Petitioner testified that Grace was also Mr. Lawton's child, "but she was adopted at a way earlier time" and she never lived with Petitioner and Mr. Lawton. The Commission notes there was no documentation or proof of legal adoption entered into evidence nor was there evidence or testimony regarding any dependency of Grace Orstadt on Lawson. The fourth child listed on the order is Addison Pozniak, born on 05/19/13. Petitioner testified that she and Mr. Lawton are the biological parents of Addison. Petitioner testified that Addison requires an IEP at school and has been diagnosed with ADHD, ODD (oppositional defiance disorder), and sensory concerns. Ms. Pozniak also testified that while Addison is under a doctor's care for her various diagnoses, there is no medical opinion outlining how long the diagnoses will be in effect or if they will continue into adulthood.

Accordingly, the Commission concludes that at the time of the accident on June 13, 2013, Mr. Lawton had 3 dependent children, Elaina Lawton, Ashley Lawton and Addison Pozniak.

J. Medical Expenses

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue J—Medical Expenses.

Having found the June 13, 2013 incident compensable pursuant to the Circuit Court remand order, the Commission also finds the medical expenses in PX 14 to be related, reasonable and necessary. The Commission observes that in AX 1 and AX 2, the parties agreed that there is no credit pursuant to Section 8(j) of the Act.

The Commission further notes that Section 8(a) of the Act provides that employers are obligated to provide and pay "the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is necessary to cure or relieve from effects of the accidental injury." 820 ILCS 305/8(a) (West 2006); *see also Tower Auto. v. Ill. Workers' Comp. Comm'n,* 407 Ill. App. 3d 427, 438-39, 347 Ill. Dec. 863, 873-74, 943 N.E.2d 153, 163-64 (2011). "By limiting an employer's obligation under section 8(a) of the Act to the amount actually paid to the providers of the first aid, medical, surgical, and hospital services necessary to cure or relieve an injured employee from the effects of an accidental injury, the purpose of the Act has been satisfied." *Tower Auto. v. Ill. Workers' Comp. Comm'n*, 407 Ill. App. 3d 427, 438 (2011). Accordingly, the Commission awards the medical bills pursuant to Sections 8(a) and 8.2 of the Act.

K. Temporary Benefits

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the

Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue K—Temporary Benefits.

Having concluded that the June 13, 2013 incident is compensable, the Commission awards temporary total disability benefits in the amount of $520.03 per week for the period of June 13, 2013 to July 13, 2013, representing 4 and 2/7ths weeks. *See* AX 1 and AX 2.

L. Nature and Extent

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue L—Nature and Extent.

Having concluded that the June 13, 2013 incident is compensable, the Commission finds that as a result of the incident, Mr. Lawton sustained injuries that resulted in his death on July 13, 2013. Accordingly, on remand the Commission concludes that Petitioner is entitled to death benefits pursuant to Section 7(a) and 7(f) of the Act.

O. Death Benefits pursuant to Section 7(a) and 7(f)

The Circuit Court has ordered "[t]hat the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O." Accordingly, on remand, the Commission was ordered to make findings regarding Issue O—Death Benefits pursuant to Section 7(a) and 7(f).

Pursuant to the Circuit Court Order, on remand, the Commission concludes that Mr. Lawton sustained fatal injuries as a result of an incident that arose out of and in the course of his employment. Mr. Lawton was injured on June 13, 2013 and died on July 13, 2013. Therefore, the Commission awards sum of $8,000.00 for burial expenses as mandated by Section 7(f).

Accordingly, pursuant to Section 7(a), the Commission finds that weekly benefits in the amount of $520.03 shall be split evenly amongst the three surviving children. The Commission finds that Ashley Lawton was 11 years old at the time of her father's death and concludes that Ashley Lawton is entitled to $173.34/week for the period of July 14, 2013 through July 14, 2020, the date in which she turned 18 years old. Elaina Lawton was 16 years old at the time of her father's death and would have reached age 18 on February 11, 2015. However, pursuant to the Section 7(a) of the Act, the Commission finds Elaina Lawton is entitled to $173.34/week for minimum of 6 years, from July 14, 2013 until July 14, 2019. Finally, the Commission finds that Addison Pozniak is entitled to 1/3 of the weekly benefits, or $173.34/week, beginning July 14, 2013 until she reaches the age of 18 on May 13, 2031, or the age of 25, if she enrolls as a full time student in any accredited educational institution, or in the event that she "shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity."

Other: Pactiv's Motion to Dismiss

In affirming the Commission's decision to vacate the Arbitrator's dismissal of Pactiv, the Circuit Court on remand states "[t]he court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss—any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co*., 315 Ill.App.3d 823, 826-27 (2000)("[*Lachona v. Industrial Commission,* 87 Ill.2d 208 (1981)] does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")." The Circuit Court further ordered the Commission to "make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O." In an effort to comply with the Circuit Court remand order, the Commission makes the following additional findings on the issue of borrowing/lending under section 1(a)4 the Act based on the record.

The Commission initially notes that based on the foregoing facts and conclusions, the Arbitrator made no findings in his decisions specific to the issue of the borrowing/lending relationship between the Respondents Pactiv and Aerotek pursuant to Section 1(a)4. Rather, the Arbitrator granted Pactiv's motion to dismiss in reliance on the trial stipulation between the parties indicating that Aerotek assumed any liability as well as the indemnification agreement between the parties, thereby releasing Pactiv from liability. On Review, the Commission vacated the dismissal of Pactiv on procedural grounds in that such motions are not provided for under the Act.

The Commission now further finds that the trial record is sufficient to support a finding under 1(a)4. Specifically, the issue of borrowing/lending was in fact presented to the Arbitrator on the Request for Hearing form for case number 18 WC 18188, wherein the Parties stated and stipulated to the fact that Pactiv was the borrowing employer and Aerotek was the lending employer pursuant Section 1(a)4. *See* AX 1. Further, on the Request for Hearing form for case number 16 WC 118189, Aerotek and Petitioner agree that the relationship between Petitioner and Respondent "was one of employee and employer." *See* AX 2. Moreover, the trial record and Request for Hearing Forms are void of any objections raised by Petitioner as to the status of Aerotek being the lending employer and thus responsible for liability. In addition, the Commission relies on Aerotek's contractual assumption of liability in Aerotek RX 2, the indemnity agreement with Pactiv, that was admitted without objection for the purpose of determining Aerotek's sole responsibility for payment of worker's compensation benefits. Lastly, the Commission relies on Pactiv and Aerotek's oral agreement and stipulation at trial that Aerotek would be responsible for the payment of all awarded benefits should an award have been made and Petitioner's counsel had no objection to the agreement at trial, which was further consistent with the stipulation on the Requestion for Hearing Forms and the indemnity agreement. (T.19-22)

As discussed above, on remand and pursuant to the Circuit Court Order, the Commission concludes that Mr. Lawton's accident on June 13, 2013, which resulted in fatal injuries, is compensable pursuant to the "hero/emergency doctrine." Accordingly, in an effort to comply with the Circuit Court remand Order and with the language of the Act, the Commission finds Respondent Aerotek liable for the benefits now awarded to Petitioner, having concluded that

Aerotek is the lending employer pursuant to Section 1(a)4 of the Act, the trial stipulations and indemnity agreements presented. AX 1, AX2, RX2.

In all other respects, the Commission affirms and adopts the Circuit Court Order on Remand.

IT IS THEREFORE FOUND BY THE COMMISSION that Charles Lawton ("Decedent") sustained an accident on June 13, 2013 that arose out of and in the course of employment. As a result of the accident, Mr. Lawton sustained injuries which resulted in his death on July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decedent's average weekly wage is $780.04.

IT IS THEREFORE ORDERED BY THE COMMISSION that at the time of the June 13, 2013 accident, Decedent was single with 3 dependents.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, Aerotek is liable for payment of all awarded benefits pursuant to the parties' stipulation at trial.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay to the Estate of Charles Lawton, temporary total disability benefits in the amount of $2,228.33 for the period of 4-2/7ths weeks at $520.03/week commencing June 13, 2013 to July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay to the Estate of Charles Lawton the medical expenses in PX 14 pursuant to Sections 8(a) and 8.2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, commencing on July 14, 2013, of $173.34/ week to Amanda Pozniak, on behalf of minor child, Addison Pozniak, born on 05/19/2013 as provided in Section 7(a) of the Act, for the reason that the injuries sustained caused the death of Decedent on July 13, 2013. Respondent shall pay the sum of $173.34/ week until Addison Pozniak reaches the age of 18 on May 13, 2031, or the age of 25, if she enrolls as a full-time student in any accredited educational institution, or in the event that she "shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity."

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, for the period of July 14, 2013 to July 14, 2020, of $173.34/week to the Estate of Charles Lawton, on behalf of surviving child Ashley Lawton, born on 07/14/2002 and turned 18 year old as of July 14, 2020, as provided in Section 7(a) of the Act, for the reason that the injuries sustained caused the death of Decedent on July 13, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay death benefits, for the period of July 14, 2013 to July 14, 2019, of $173.34/week to the Estate of Charles Lawton, on behalf of surviving child Elaina Lawton, born on 02/11/1997 and turned 18 year old as of February 11, 2015, as provided in Section 7(a) of the Act, for the reason that the

injuries sustained caused the death of Decedent on July 13, 2013.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent, Aerotek shall pay $8,000.00 for burial expenses to the person (s) incurring the burial expenses, as provided in Section 7(f) of the Act.

IT IS FURTHER ORDRED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent, Aerotek shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent, Aerotek pay to Petitioner interest under §19(n) of the Act, if any.

Bond for the removal of this cause to the Circuit Court is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 26, 2025

d: 02/25/25
CMD/jjm
045

/s *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018189
Case Name	Amanda Pozniak, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased, v. Aeortek
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Anthony Gattuso

DATE FILED: 7/27/2023

THE INTEREST RATE FOR THE WEEK OF JULY 27, 2023 5.27%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of CHARLES LAWTON, deceased,
Employee/Petitioner

Case # **16 WC 18189**

v.

AEROTEK
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **June 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident? How many dependent children did deceased Petitioner have?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other: Is Petitioner entitled to statutory funeral expenses?

FINDINGS

On **6/13/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On **6/13/2013**, an employee-employer relationship ***did*** exist between Petitioner and Respondent Pactiv. Pactiv was the borrowing employer for purposes of §1(a)4. Aerotek is the lending employer and is the Respondent in case 16 WC 18189. Per the written agreement between Pactiv and Aerotek, Aerotek agrees to indemnify Pactiv for any liability for any benefits under the Act.

On **6/13/2013**, Charles Lawton ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $20,281.00; the average weekly wage was $**780.04**.

On the date of accident, Petitioner was 35 years of age, ***single*** with **3** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $0.

Respondent is entitled to a credit of $0 under §8(j) of the Act.

ORDER

Petitioner's Application for Benefits is denied.

The Arbitrator grants Respondent Pactiv's Motion to Dismiss.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

_____ **JULY 27, 2023**

Signature of Arbitrator

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Pactiv Corporation

16 WC 18188

consolidated with

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Aerotek

16 WC 18189

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

16 WC 18188(Pactiv): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

16 WC 18189 (Aerotek): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

Petitioner claim's Charles Lawton's average weekly wage was $823.75, which Respondents dispute. Respondents claim the average weekly was $780.04.

Petitioner's oral motion to continue the hearing to allow for obtaining evidence from an additional witness was denied for failure to present an offer of proof as to what evidence that witness would provide.

FACTUAL BACKGROUND

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. (borrowing employer) on June 13, 2013 [AerotekX #2]. Mr. Lawton was employed through an Agreement for Temporary Employment Services between Pactiv and Respondent Aerotek (loaning employer) [PactivX #2]. Mr. Lawton was working for Pactiv on June 13, 2013 when he was injured in an incident at or near Pactiv's plant in Bedford Park, IL. Mr. Lawton died on July 13, 2013 from the injuries he sustained on June 13.

STATEMENT OF FACTS

Petitioner displayed video recordings from security cameras capturing the events at the issue (PX #16). The videos recorded a dark SUV entering Pactiv's parking lot and park next to a white van. The SUV then drove off the parking lot and parked on Mason street. Two individuals got out of the SUV and walked onto Pactiv's parking lot. After a time, an individual runs past a second person (presumably Charles Lawton) who began running also. A third person followed close behind the first two. The first 2 individuals ran onto Mason Street where they were followed by the 3 pursuers onto Mason Street. The video does not depict the actual trauma sustained by Mr. Lawton.

Amanda Pozniak testified that she was the girlfriend of Charles Lawton in June 2013. They lived together for a year before the incident at issue. Ms. Pozniak testified Mr. Lawton was sent to work at Pactiv by Aerotek. She identified PX #17, Order Declaring Heirship entered June 9, 2015 in the 18th Judicial Circuit, DuPage County. Ms. Pozniak explained that Elaina Lawton was born February 11, 1997. Elaina lived with her mother at the time in question, but Mr. Lawton " provided for her". Ms. Pozniak also testified that Mr. Lawton provided support for his daughter Ashley Lawton, Elaina 's sister, who was born July 14, 2002. Grace (Ortstadt), born January 8, 2001, is Mr. Lawton's natural child but was adopted. Grace was not living with Ms. Pozniak and Mr. Lawton.

Ms. Pozniak testified that Addison Pozniak is her daughter by Mr. Lawton (PX #5). Ms. Pozniak and Addison were living with Mr. Lawton at the time at issue. She testified that Mr. Lawton was providing support for her and Addison.

Ms. Pozniak testified Addison was in second grade even though she was supposed to be in third grade. She had struggled with meeting milestones ever since she was born. She was in the 50% range for her peers and was the oldest in the class. An Individualized Education Plan ("IEP") had been adopted for Addison (PX #12) The purpose of the IEP was to moderate the standards Addison had to satisfy so she did not have to be held to the higher standards other children were being held to. Addison's formal diagnoses included attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). An adult has to sit with her at lunch to prevent her from choking. Addison also had a

vestibular movement swing in her room at home which settles her mind and to help her focus better.

Ms. Pozniak identified PX #20, the Order appointing her Independent Administrator of the Estate of Charles Lawton deceased, 2015 P 540, 18th Judicial Circuit, DuPage County.

On cross-examination Ms. Pozniak testified that she does not know whether Addison's diagnoses and other problems will continue into adulthood.

Testimony of Gabriel Ybarra (PX #7)

Mr. Ybarra testified by evidence deposition on August 24, 2020 (PX #7). He described the general layout of Pactiv's property. Four buildings were located in the area, three belonging to Pactiv. The two buildings to the west were Pactiv buildings and the northeast building was also Pactiv. He testified Pactiv had its employees take breaks in the parking lot area adjacent to the buildings to the west.

Ybarra took his break at Pactiv's southwest building. He saw Lawton and Brookhouse running across Pactiv's parking lot after two other people. Ybarra testified he joined the pursuit to see what was going on. Lawton and Brookhouse did not ask Ybarra to join them, he just saw them running and followed them. The people they were following got into a Jeep and ran over Lawton.

Ybarra testified he was behind Brookhouse and did not see the people who got into the Jeep. He heard screaming but could not make out any words. Ybarra testified the Jeep was not parked on Pactiv's property. He did not know what the area was used for. Ybarra did not characterize that area as an alleyway as it was a paved area. He did not know whether Pactiv parked its trailers in that area.

Ybarra was not aware of any Pactiv policy which prevented coworkers from helping other coworkers who were in trouble. He was not disciplined or terminated for his involvement in the incident. Pactiv had no fencing to keep non-Pactiv people from accessing the parking lots. There were no security guards to monitor Pactiv's lots. Pactiv hired a security firm to patrol their property after Lawton's incident.

Testimony of John Brookhouse (PX #8)

Mr. Brookhouse testified by evidence deposition on September 28, 2020 (PX #8). Brookhouse knew Mr. Lawton from work, noting that Mr. Lawton helped him out a lot at work by showing him how to do stuff. He and Mr. Lawton were taking a smoking break by Pactiv's 7600 building. Pactiv restricted smoking to a bench area and that is where they took their break. He got halfway through a cigarette when they saw two guys busting up car windows in Pactiv's lot. He did not know whose car it was.

Brookhouse heard windows being smashed and started yelling at the guys who were busting the windows. They started running back across Mason and Brookhouse, Lawton, and Gabe (Ybarra) chased after them. Lawton got in front of the car, and "they ran him over", dragging him through the parking lot.

Brookhouse explained that it was a natural response to follow the guys as he wanted them to get caught for what they were doing. He never intended to beat up the guys. Lawton did not express any interest in doing that either. Brookhouse and Gabriel stopped behind the vehicle. Lawton went to the front of the Jeep with his cellphone out, telling the occupants to "stop man" and that he was "calling the cops." That is when the accident happened.

Mr. Brookhouse testified he had seen this driver in Pactiv's lot during his 7:00 pm break. The driver was sitting in his Jeep in the parking lot. Brookhouse knew the man had no business being there but did not report it to anyone. He did not believe that Pactiv had a system in place to receive such reports about strangers in the lots. Pactiv had no rule which prohibited workers from going to the aid of fellow workers. Pactiv had no fences or security measures other than key fob access to the buildings. Pactiv did not hire security for its lot until Lawton was hurt. Pactiv did not protect its lots with gates, chain link fences or walls. Pactiv did not provide training on what to do when criminal events occurred on its property. Brookhouse testified Pactiv left it up to the employees as to how they should deal with criminal events outside the buildings.

After Mr. Lawton's accident, no supervisor told Brookhouse that he should not have joined Lawton in following the vandals. Brookhouse was not disciplined for assisting Lawton. He did not know if the roadway area where the accident happened was Pactiv property, but he believed it was because Pactiv parked its slip trucks at that location. Pactiv also had big tanks of stuff in that area.

Brookhouse testified Pactiv did not allow its workers to park in that roadway where the accident happened. Pactiv workers had to park in the Pactiv lot to the west. On cross-examination, Brookhouse admitted he did not know what the property lines were between the businesses. Brookhouse clarified that he had walked to his own car and got into it for a brief moment before the guys started breaking out the windows in the other car. He got out of his jumped out to join Lawton and Gabe at that point. He testified about the accident and details were clearer in his mind when it happened.

Brookhouse reiterated he was not going to physically apprehend the vandals, but only make sure they were held responsible for what they had done. Lawton just had time to tell the Jeep occupants "I'm calling the police" as he pulled his phone from his pocket before the Jeep ran over him. 30 to 40 seconds passed from the time Lawton stood in front of the Jeep to when it ran him over. He testified that there was nothing about the

vandals before the event that caused him to feel any need to call the police. He is unaware of any prior incident of vandalism in Pactiv's lot.

Slip trucks are parked in that area where the trucks that Pactiv used in the building he worked out of in the building west of Mason. Those trucks were parked in the alley area. There was no Pactiv policy requiring him to report strangers in the parking lot to supervisors. Pactiv's workers did not wear distinctive uniforms and there were always new people coming to work through staffing companies.

Brookhouse said when he saw the Jeep driver during the earlier shift, he did not think it was something to report to management. Pactiv's slip trucks were parked another 30 feet beyond where the Jeep was located at the time of the accident.

Testimony of Bedford Park Police Sergeant Andrew Smuskiewicz (PX #9)

Sergeant Smuskiewicz testified by evidence deposition on July 21, 2021 (PX #9). He was a Bedford Park police department detective at the time of Lawton's accident on June 13, 2013.

Sergeant Smuskiewicz was called out to Pactiv on the night of the incident. He explained the process of his investigation. where he interviewed a number of witnesses. Respondent Aerotek objected to the testimony on hearsay grounds, which was overruled. Much of Smuskiewicz' s account does consist of hearsay and Aerotek's running objection is well founded, striking this witness's testimony from the case to the extent it was based on what he was told. Aerotek also objected to the Bedford Park police report, which was not offered in evidence. The witness refreshed his memory from the report.

From his investigation, Sergeant Smuskiewicz learned that Lawton was part of a group of people who were trying to stop the crime from taking place and trying to get the offenders to stop so they could be arrested. He found no evidence that Lawton or his companions knew Garcia before the accident.

Respondent Aerotek renewed and reserved its objections to hearsay when it began cross-examination. Sergeant Smuskiewicz testified he never investigated whether Garcia and Ms. Fernandez had an affair. He testified that Bedford Park officers had been called out to Pactiv both before and after Lawton's incident for other incidents. Those calls involved disturbances among employees and supervisors. There was never a call involving an outsider coming onto the property.

Based on what he observed, Sergeant Smuskiewicz understood that that the vehicle involved did not enter Pactiv property after the incident. He agreed that civilians should stay out of police issues and just call 9-1-1. He advised people to not jeopardize their own safety.

Testimony of Jose Gasco Garcia (PX #10)

Jose Garcia testified by evidence deposition on March 28, 2022 (PX #10). He was one of the persons damaging the car in Pactiv's lot and was the driver who ran over Lawton. He testified from prison where he was serving time for Lawton's death.

Garcia had worked at Pactiv for years before the accident and he was still working at Pactiv on the weekends in June 2013. His wife Maria also worked at Pactiv. Garcia did not know Lawton, although he had seen him at work in the past. They worked in different Pactiv buildings.

Garcia identified DepX #1, a daylight photo of the area where he parked the Jeep between the buildings. Garcia parked where the red mark was located on the photo. DepX #2 is an overhead view of the same roadway area. Garcia parked his Jeep where the red X is located on DepX #2. The building at the top of this photo is Pactiv's building and the building at the bottom was some other business. Garcia testified he worked in the building at the top left of the photo with the white roof.

Garcia was not working at Pactiv the night of the accident. He came to Pactiv's property to make sure his wife was at work and to check her car. He parked his Jeep in a dark roadway to make sure that no one got his license plate. He backed his Jeep down the roadway between the buildings with his headlights off. He planned to damage Guadalupe Fernandez's car. He was not going after Lawton's car, and he had no intent to harm Lawton in any way. He was going after Fernandez for bothering his wife and getting involved in their family life.

Garcia testified another Pactiv employee came to assist Garcia that night. Garcia's wife and Fernandez were both working that evening. Fernandez had been harassing Garcia's wife for a long time. Fernandez did this with all the women at the plant. Female workers in that building had been complaining of Fernandez's sexual harassment for years before the accident. Garcia had damaged Fernandez's car on earlier occasions before Lawton's incident.

Garcia knew that Pactiv did not have security guards patrolling its lots before June 2013. He knew there were no security fences which would have stopped him from accessing Fernandez's car. Any person could access the lots, whether they worked there or not. There were no guards in place at Pactiv to keep strangers off the property.

Garcia testified he did not see Lawton in front of his Jeep before accelerating away. He did not intend to run Lawton over. He had nothing against Lawton. He felt something under his vehicle, but he thought it was a piece of concrete which was sometimes in Pactiv's parking lots. Mr. Garcia testified he was trying to get away from the people chasing him and did not see Mr. Lawton standing in front of his car when he drove away.

Garcia testified that during the eight years he worked at Pactiv, Pactiv had no training programs to explain what workers should do about sexual harassers in the plant. He was never told what he was supposed to do when a coworker kept sexually harassing his wife in the plant. Garcia did not intend to hurt anyone when he came to Pactiv on June 13, 2013. He said Lawton's injury was a pure accident.

On cross-examination, Garcia admitted he chose the location where he parked the Jeep because it was dark. There were no lights on the non-Pactiv building to his south. Pactiv had some lights on its building to the north, but not where he parked. He did not park in Pactiv's parking lots to the west because of Pactiv's cameras. He knew Pactiv had cameras on the buildings and did not park there for that reason.

Garcia testified he stopped vandalizing Fernandez's car after he finished what he wanted to do. He and his companion started walking back across Mason and then started to run when people started chasing.

On redirect examination, Garcia admitted that he had also worked in Pactiv's northeast building with the loading docks, shown at the top of DepX #2 with the dark roof. Pactiv used the trailers parked near that building to get the plates out of Pactiv's building. He saw those trailers pulling away from Pactiv's building onto Mason Street many times during the years he worked at Pactiv.

Testimony of Lawrence Liva (PX #19)

Mr. Liva testified by evidence deposition on June 13, 2022 (PX #19). He was a machine shop manager for Pactiv on June 13, 2013. He received a call at home that something had happened to a temporary employee at Pactiv, and that he needed to come into work. Liva did not recall whether he authored the Occupational Incident Report, a diagram, or investigative notes.

Liva testified that if an employee was involved in a major accident, he would meet with Dennis Davidson, Pactiv's Director of Engineering, and Davidson would tell him what to do or who to call. Liva worked the day shift, but he directly supervised Charlie Lawton, John Brookhouse and Gabriel Ybarra. If an incident happened, he would probably handwrite a report, but did not recall much about those reports.

On cross-examination Liva testified Pactiv operated three buildings at that campus, arranged in a L formation: one to the southwest, one to the northwest, and one to the northeast. The building to the southeast had nothing to do with Pactiv. (PX19 p.17) Between that building and the Pactiv building to its north, there was a roadway or a parking area.

Liva was shown the overhead view of the area (Garcia DepX #2). Liva confirmed that the trailers on the photo ran in and out of Pactiv's operations. To access the area where the trailers were, Pactiv would have to use the exit onto Mason. To the right of the

red "X" on Garcia DepX # 2, Liva saw a yellow barrier across the roadway but did not know whether that barrier delineated Pactiv's area of operation from the unrelated business in the south building.

Liva testified he did not know where the property lines were. He also did not know if Mason was a public rather than private road.

Liva did not recall giving Lawton new employee orientation. He did not handle the orientations, but he thought Pactiv's HR would orient new temp employees. He did not recall there being a written handbook of job rules for temporary employees. Liva had never seen a written or oral rule prohibiting workers from going to the aid of other workers who were in peril. He would never have discussed discouraging workers from going to the help of a coworker. In the years he was working at Pactiv, he did not recall there being any kind of rules which prohibited workers from going to the assistance of their coworkers.

Liva testified Brookhouse and Ybarra were not disciplined, written up, or even chastised for joining Lawton in addressing the emergency. He knew of no managers claiming that these workers should not have followed the people who were damaging property in the lot. The police came to him to look at camera footage from the cameras on his building. He saw no photos or video showing what happened down the roadway where Lawton was hurt.

Liva did not recall Pactiv providing training for temp employees as to how they were to address sexual harassment in the plant.

Liva identified the ground level view of the roadway between the buildings from July 2011, Garcia DepX #1. The photo shows pavement running from Pactiv's building on the left to the brick wall of the non-Pactiv building on the right. Liva walked the area a couple of days after the accident but could not recall what he saw.

Liva was asked about the Occupational Incident Report ("OIR"). The OIR listed him as the person receiving notice of Lawton's incident. Pactiv used these OIR forms for various types of incidents. Liva did not prepare this OIR, he would not have typed it up or phrased things the way they were written on the OIR. Brookhouse and Ybarra were both listed as witnesses on the OIR, and they were both reported as having given statements.

Liva was not aware of prior incidents like what happened to Lawton so he did not know who would take the statements or write the report. Even though the OIR said he was a machinist, Lawton did hand finishing work. The OIR said that "Supervisor/Team Lead should complete front page and top of the back of second page." Liva admitted he was Lawton's supervisor at the time, but different leads or supervisors may have completed the report. A box marked "Contributing Factors" was located at the bottom of

the first page. Liva did not know enough about the details of the event to determine who was at fault for the injury.

Liva reiterated that he was not aware of any Pactiv rules which prohibited workers to going to each other's aid to address sudden emergencies on Pactiv property. If something happened inside the building, he would hope that someone called 911. But he did not remember anything happening outside the building before Lawton's injury. Liva also did not author the Investigative Notes document. He had no idea whether other vehicles had been damaged prior to June 13, 2913. at night in Pactiv's lot. OIR forms should be filled out promptly after an event.

Pactiv's workers were given two breaks and a lunch break. Pactiv did require workers in the southwest building to take their breaks at the north end of the building. Workers were not prohibited from taking breaks in their cars. If Lawton and Brookhouse were in the north end of the building during their breaks, that is where the company expected them to be. Lawton was also allowed to take breaks with coworkers. Breaks were not scheduled for exact times. Workers did not have to clock out or notify the supervisor when going to break, but workers did clock out for lunchbreaks.

Testimony of Guadalupe Fernandez (AerotekX #3)

Guadalupe Fernandez testified at Jose Garcia's criminal trial August 28, 2017, People of the State of Illinois vs. Jose Garcia, 13 CR 1552. Mr. Fernandez identified photos of his car showing broken windows and a gang sign scratched into the car. Later, on June 13, 2013 he recognized "Jose" from a picture on TV and called the police about Garcia. Fernandez had worked with Garcia at Pactiv for 3 years before this night. Fernandez was confronted by Garcia in the canteen 2 months before the attack. Garcia said something to him about calling Garcia's wife or girlfriend, which Fernandez said was a lie. Garcia told him to watch his back.

Fernandez admitted he did not know if Garcia damaged his car because he was inside working. Fernandez went to the police station on June 20, 2013 and identified Garcia in a photo array. He also identified Garcia in a physical lineup at the Sheriff's office in Maywood, as well as in open court. During an interview with police, Fernandez talked about the disagreement he had with Garcia. Fernandez admitted he had had disagreements with other people at work.

Medical Records

Mr. Lawton was transported by Bedford Park Fire Department ambulance to Advocate Christ Hospital ("Christ") in Oak Lawn (PX #2). The EMS record identified multiple injuries (PX #1). The Christ trauma notes document significant deep tissue injuries. Procedures performed at Christ included washout of his right face, left upper extremity, right shoulder, and debridement of wounds.

Christ transferred Lawton to the Loyola University Medical Center ("Loyola"), where he was admitted to the burn unit on June 17, 2013 in an intubated and sedated state. He was hemodynamically stable at that point (PX #3). Loyola healthcare providers noted extensive degloving of the right side of the head, amputation of the right ear, right mastoid fracture with complete fracture and disarticulation of the zygomatic arch, fracture and exposure of the temporomandibular joint, and extensive exposure of deep facial muscles in the right side of the face and clavicle fractures. The left upper chest and shoulder also suffered degloving with exposure of muscle and soft tissue. The right upper extremity had dorsum degloving of hand down to the bone and deep muscle. The left upper extremity was extensively degloved from the shoulder down to the wrist, with a brachial artery bypass being done at Advocate. He had deep partial thickness/full thickness burns to his chest. Three surgical procedures were performed at Loyola, during which he remained sedated with mechanical ventilation while undergoing antibiotic treatment and dialysis for acute renal failure.

Mr. Lawton never regained consciousness or function and treatment ultimately failed. Lawton died on July 13, 2013. Loyola records included photos of Lawton's injuries.

Mr. Lawton's Death Certificate was admitted as PX #4.

Pactiv Occupational Incident Report was admitted as PX #18.

Respondent Pactiv's Motion to Dismiss was admitted as PactivX #1.

The temporary employment agreement between Pactiv and Aerotek was admitted as PactivX #2.

Respondent Aerotek's wage statement was admitted as AerotekX #1.

Respondent Aerotek's employment agreement was admitted as AerotekX #2.

The trial testimony of Guadalupe Fernandez was admitted as AerotekX #3.

CONCLUSIONS OF LAW

Respondent Pactiv filed a Motion to Dismiss, citing the written agreement between Pactiv and Respondent Aerotek, PactivX #2. The agreement states in pertinent part:

- [Aerotek] will, at its own expense, provide and keep in full force and effect during the term of this Agreement…Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the Services are performed.
- [Aerotek] will indemnify, defend and hold Pactiv and its subsidiaries, affiliates, directors, officers, employees and agents from and against all demands, claims, actions, suits, losses, damages (including, but not limited to, property damage, bodily injury and wrongful death), judgments, costs

> and expenses…imposed upon or incurred by Pactiv arising out of…[a]ny claim of any nature asserted against Pactiv or workers compensation carriers by any [Aerotek] employee or agent of [Aerotek], or, in the event of death, by their personal representatives.

The facts here are similar to those in *Lachona v. Industrial Commission*, 87 Ill.2d 208, 427 N.E.2d 858 (1981), where a similar agreement was upheld. The Arbitrator finds that Pactiv is a borrowing employer and Aerotek is a loaning employer in accord with §1(a)4 of the Act. The Arbitrator also notes the stipulation at trial between Respondents Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner as a result of the June 13, 2013 incident, that Aerotek retains full liability for any and all benefits, including, but not limited to, medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency.

Respondent Pactiv's Motion to Dismiss is granted.

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator finds that Petitioner failed to prove that an accident arose out of and in the course of the decedent's employment by Respondents Pactiv Corp. or Aerotek.

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. on June 13, 2013. Mr. Lawton was employed as a temporary CNC Machinist through referral from Respondent Aerotek. On the evening of June 13 Mr. Lawton was taking a break with coworkers in an area abutting Pactiv's employee parking lot. Mr. Lawton and the others heard the sound of breaking glass and went to investigate. They discovered two individuals vandalizing a coworker's car. Jose Garcia was one of the individuals vandalizing the car. Mr. Lawton and coworkers John Brookhouse and Gabriel Ybarra gave chase of Mr. Garcia and the other vandal across the parking lot and onto Mason street which was the public way. Mr. Lawton placed himself in front of a Jeep operated by Mr. Garcia. In an effort to get away Mr. Garcia ran over and dragged Mr. Lawton down the roadway, causing fatal injuries to Mr. Lawton. Mr. Garcia was criminally charged and convicted for his actions.

An injury arises out of one's employment if its origin is from a risk connected with or incidental to employment activities. "Arising out of the employment" refers to the origin or cause of the claimant's injury. A risk is distinctly associated with employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform,

or acts which the employee might reasonably be expected to perform incident to his assigned duties.

An injury occurs "in the course of" of employment if it refers to the time, place, and circumstances of the accident. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, a resulting injury will not be within the course of employment unless the employer had knowledge or acquiesced in such unreasonable conduct.

Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized hey coworkers private vehicle Was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, We're not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties. There is no evidence that his employer had knowledge or acquiesced to the decedent assuming this type of risk. There was no evidence that Aerotek or Pactiv expected, required, or encouraged its employees or temporary employees to stop any sort of criminal activity that occurred on company property.

The Arbitrator finds that Mr. Lawton took himself outside the scope of his employment as a machinist not only when he chased the offenders off Pactiv's property and across Mason Street, but also when he placed himself in front of Mr. Garcia's vehicle in an attempt to stop the offenders from fleeing. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, as here, the resultant injury is not within the course of the employment.

Also, the Arbitrator does not find the Good Samaritan doctrine applicable to this case. In determining whether an accident is compensable under the Good Samaritan Doctrine, courts have focused on whether the conduct is reasonably foreseeable. It was not reasonably foreseeable by Respondents that Mr. Lawton what put himself in harm's way when a criminal act did not involve damage to the employers property or equipment or harm to a coworker.

The Arbitrator does not find the alleged relationship and/or harassment between Mr. Garcia, Mr. Garcia's wife, and Guadalupe Fernandez relevant because it did not involve Mr. Lawton whatsoever.

The Arbitrator also does not find it relevant that Pactiv placed security in the parking lot after the June 13, 2013 incident. There was no evidence that Bedford Park is a high crime area or that there was a pattern of vandalism or other criminal acts in the Pactiv parking lot. On the contrary, this incident appears to be isolated to the issues between Mr. Garcia and Mr. Fernandez.

G: *What were Petitioner's earnings?*

Petitioner's wage statement, PX #11, shows Mr. Lawton's earnings from November 8, 2012 through June 13, 2013. During that time, the decedent had regular earnings of $20,013.00 and $84.00 of overtime earnings at straight time pay, for a total of $20,097.00. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $772.96.

Respondent Aerotek wage statement, AerotekX #1, showed earnings of $20,281.00. and the Petitioner's average weekly wage, calculated pursuant to section 10 of the Act was $780.04. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $780.04.

The Arbitrator adopts the average weekly wage computation of Respondent Aerotek, $780.04.

H: *Whether the deceased had any dependent children***.**

The evidence established that Mr. Lawton was not married at the time of the incident at issue. According to the June 8, 2015 Order of Heirship, PX #17, the decedent had the following minor dependents at the time of his death: Addison Pozniak (DOB May 19, 2013), Ashley Lawton (DOB July 14, 2002), and Elaina Lawton (DOB February 11, 1997). Elaina Lawton was emancipated by age on February 11, 2015. There was evidence that Grace Orsatdt, decedent's natural child, had been adopted but there was no evidence of when the adoption took place and, therefore, no evidence of whether Grace was a minor dependent at the time of Mister Lawton 's death.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the medical services provided to Mr. Lawton were reasonable and necessary and there is no evidence to the contrary.

K: *What temporary benefits are in dispute? TTD*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the correct disputed period of TTD would be from June 14, 2013 through July 13, 2013, or a period of 4 & 2/7 weeks.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, Respondents had good faith bases for denying benefits. It was neither vexatious nor frivolous to deny Petitioner's claim for benefits when Mr. Lawton exposed himself to a personal risk of harm that was outside the scope of his employment.

O: *Whether Petitioner is entitled to statutory funeral expenses.*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

_____ _____

Steven J. Fruth, Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018189
Case Name	Amanda Pozniak (Individually and as Guardian of Dependent Children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased) v. Aeortek
Consolidated Cases	16WC018188;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0027
Number of Pages of Decision	22
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Anthony Gattuso

DATE FILED: 1/19/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☒ PTD/Fatal denied
☐ Modify	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the ESTATE of CHARLES LAWTON, deceased,

Petitioner,

vs. NO: 16 WC 18189

AEROTEK,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, employment, jurisdiction, causal connection, benefit rates, temporary total disability, medical expenses, prospective medical care, permanent partial disability, penalties and fees and "Other: procedural violations by IWCC" and being advised of the facts and law, affirms, and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 27, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

January 19, 2024

o: 12/21/23
CMD/jjm
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018189
Case Name	Amanda Pozniak, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of Charles Lawton, deceased, v. Aeortek
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Anthony Gattuso

DATE FILED: 7/27/2023

THE INTEREST RATE FOR THE WEEK OF JULY 27, 2023 5.27%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)

)SS.

COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMANDA POZNIAK, individually and as guardian of dependent children Addison Pozniak and Ashley Lawton, and as Ind. Adm. of the Estate of CHARLES LAWTON, deceased,
Employee/Petitioner

Case # **16 WC 18189**

v.

AEROTEK
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **June 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident? How many dependent children did deceased Petitioner have?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other: Is Petitioner entitled to statutory funeral expenses?

FINDINGS

On **6/13/2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

On **6/13/2013**, an employee-employer relationship ***did*** exist between Petitioner and Respondent Pactiv. Pactiv was the borrowing employer for purposes of §1(a)4. Aerotek is the lending employer and is the Respondent in case 16 WC 18189. Per the written agreement between Pactiv and Aerotek, Aerotek agrees to indemnify Pactiv for any liability for any benefits under the Act.

On **6/13/2013**, Charles Lawton ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $20,281.00; the average weekly wage was $**780.04**.

On the date of accident, Petitioner was 35 years of age, ***single*** with **3** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $0.

Respondent is entitled to a credit of $0 under §8(j) of the Act.

ORDER

Petitioner's Application for Benefits is denied.

The Arbitrator grants Respondent Pactiv's Motion to Dismiss.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

_____ **JULY 27, 2023**

Signature of Arbitrator

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Pactiv Corporation

16 WC 18188

consolidated with

Amanda Pozniak individually and as guardian for dependent children Addison Pozniak and Ashley Pozniak, and Independent Administrator of the Estate of Charles Lawton, Jr., deceased v. Aerotek

16 WC 18189

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

16 WC 18188(Pactiv): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

16 WC 18189 (Aerotek): ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***G:*** What were Petitioner's earnings?; ***H:*** Whether the deceased had any dependent children**.;** ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Whether Petitioner is entitled to statutory funeral expenses.

Petitioner claim's Charles Lawton's average weekly wage was $823.75, which Respondents dispute. Respondents claim the average weekly was $780.04.

Petitioner's oral motion to continue the hearing to allow for obtaining evidence from an additional witness was denied for failure to present an offer of proof as to what evidence that witness would provide.

FACTUAL BACKGROUND

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. (borrowing employer) on June 13, 2013 [AerotekX #2]. Mr. Lawton was employed through an Agreement for Temporary Employment Services between Pactiv and Respondent Aerotek (loaning employer) [PactivX #2]. Mr. Lawton was working for Pactiv on June 13, 2013 when he was injured in an incident at or near Pactiv's plant in Bedford Park, IL. Mr. Lawton died on July 13, 2013 from the injuries he sustained on June 13.

STATEMENT OF FACTS

Petitioner displayed video recordings from security cameras capturing the events at the issue (PX #16). The videos recorded a dark SUV entering Pactiv's parking lot and park next to a white van. The SUV then drove off the parking lot and parked on Mason street. Two individuals got out of the SUV and walked onto Pactiv's parking lot. After a time, an individual runs past a second person (presumably Charles Lawton) who began running also. A third person followed close behind the first two. The first 2 individuals ran onto Mason Street where they were followed by the 3 pursuers onto Mason Street. The video does not depict the actual trauma sustained by Mr. Lawton.

Amanda Pozniak testified that she was the girlfriend of Charles Lawton in June 2013. They lived together for a year before the incident at issue. Ms. Pozniak testified Mr. Lawton was sent to work at Pactiv by Aerotek. She identified PX #17, Order Declaring Heirship entered June 9, 2015 in the 18th Judicial Circuit, DuPage County. Ms. Pozniak explained that Elaina Lawton was born February 11, 1997. Elaina lived with her mother at the time in question, but Mr. Lawton " provided for her". Ms. Pozniak also testified that Mr. Lawton provided support for his daughter Ashley Lawton, Elaina 's sister, who was born July 14, 2002. Grace (Ortstadt), born January 8, 2001, is Mr. Lawton's natural child but was adopted. Grace was not living with Ms. Pozniak and Mr. Lawton.

Ms. Pozniak testified that Addison Pozniak is her daughter by Mr. Lawton (PX #5). Ms. Pozniak and Addison were living with Mr. Lawton at the time at issue. She testified that Mr. Lawton was providing support for her and Addison.

Ms. Pozniak testified Addison was in second grade even though she was supposed to be in third grade. She had struggled with meeting milestones ever since she was born. She was in the 50% range for her peers and was the oldest in the class. An Individualized Education Plan ("IEP") had been adopted for Addison (PX #12) The purpose of the IEP was to moderate the standards Addison had to satisfy so she did not have to be held to the higher standards other children were being held to. Addison's formal diagnoses included attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD). An adult has to sit with her at lunch to prevent her from choking. Addison also had a

vestibular movement swing in her room at home which settles her mind and to help her focus better.

Ms. Pozniak identified PX #20, the Order appointing her Independent Administrator of the Estate of Charles Lawton deceased, 2015 P 540, 18th Judicial Circuit, DuPage County.

On cross-examination Ms. Pozniak testified that she does not know whether Addison's diagnoses and other problems will continue into adulthood.

Testimony of Gabriel Ybarra (PX #7)

Mr. Ybarra testified by evidence deposition on August 24, 2020 (PX #7). He described the general layout of Pactiv's property. Four buildings were located in the area, three belonging to Pactiv. The two buildings to the west were Pactiv buildings and the northeast building was also Pactiv. He testified Pactiv had its employees take breaks in the parking lot area adjacent to the buildings to the west.

Ybarra took his break at Pactiv's southwest building. He saw Lawton and Brookhouse running across Pactiv's parking lot after two other people. Ybarra testified he joined the pursuit to see what was going on. Lawton and Brookhouse did not ask Ybarra to join them, he just saw them running and followed them. The people they were following got into a Jeep and ran over Lawton.

Ybarra testified he was behind Brookhouse and did not see the people who got into the Jeep. He heard screaming but could not make out any words. Ybarra testified the Jeep was not parked on Pactiv's property. He did not know what the area was used for. Ybarra did not characterize that area as an alleyway as it was a paved area. He did not know whether Pactiv parked its trailers in that area.

Ybarra was not aware of any Pactiv policy which prevented coworkers from helping other coworkers who were in trouble. He was not disciplined or terminated for his involvement in the incident. Pactiv had no fencing to keep non-Pactiv people from accessing the parking lots. There were no security guards to monitor Pactiv's lots. Pactiv hired a security firm to patrol their property after Lawton's incident.

Testimony of John Brookhouse (PX #8)

Mr. Brookhouse testified by evidence deposition on September 28, 2020 (PX #8). Brookhouse knew Mr. Lawton from work, noting that Mr. Lawton helped him out a lot at work by showing him how to do stuff. He and Mr. Lawton were taking a smoking break by Pactiv's 7600 building. Pactiv restricted smoking to a bench area and that is where they took their break. He got halfway through a cigarette when they saw two guys busting up car windows in Pactiv's lot. He did not know whose car it was.

Brookhouse heard windows being smashed and started yelling at the guys who were busting the windows. They started running back across Mason and Brookhouse, Lawton, and Gabe (Ybarra) chased after them. Lawton got in front of the car, and "they ran him over", dragging him through the parking lot.

Brookhouse explained that it was a natural response to follow the guys as he wanted them to get caught for what they were doing. He never intended to beat up the guys. Lawton did not express any interest in doing that either. Brookhouse and Gabriel stopped behind the vehicle. Lawton went to the front of the Jeep with his cellphone out, telling the occupants to "stop man" and that he was "calling the cops." That is when the accident happened.

Mr. Brookhouse testified he had seen this driver in Pactiv's lot during his 7:00 pm break. The driver was sitting in his Jeep in the parking lot. Brookhouse knew the man had no business being there but did not report it to anyone. He did not believe that Pactiv had a system in place to receive such reports about strangers in the lots. Pactiv had no rule which prohibited workers from going to the aid of fellow workers. Pactiv had no fences or security measures other than key fob access to the buildings. Pactiv did not hire security for its lot until Lawton was hurt. Pactiv did not protect its lots with gates, chain link fences or walls. Pactiv did not provide training on what to do when criminal events occurred on its property. Brookhouse testified Pactiv left it up to the employees as to how they should deal with criminal events outside the buildings.

After Mr. Lawton's accident, no supervisor told Brookhouse that he should not have joined Lawton in following the vandals. Brookhouse was not disciplined for assisting Lawton. He did not know if the roadway area where the accident happened was Pactiv property, but he believed it was because Pactiv parked its slip trucks at that location. Pactiv also had big tanks of stuff in that area.

Brookhouse testified Pactiv did not allow its workers to park in that roadway where the accident happened. Pactiv workers had to park in the Pactiv lot to the west. On cross-examination, Brookhouse admitted he did not know what the property lines were between the businesses. Brookhouse clarified that he had walked to his own car and got into it for a brief moment before the guys started breaking out the windows in the other car. He got out of his jumped out to join Lawton and Gabe at that point. He testified about the accident and details were clearer in his mind when it happened.

Brookhouse reiterated he was not going to physically apprehend the vandals, but only make sure they were held responsible for what they had done. Lawton just had time to tell the Jeep occupants "I'm calling the police" as he pulled his phone from his pocket before the Jeep ran over him. 30 to 40 seconds passed from the time Lawton stood in front of the Jeep to when it ran him over. He testified that there was nothing about the

vandals before the event that caused him to feel any need to call the police. He is unaware of any prior incident of vandalism in Pactiv's lot.

Slip trucks are parked in that area where the trucks that Pactiv used in the building he worked out of in the building west of Mason. Those trucks were parked in the alley area. There was no Pactiv policy requiring him to report strangers in the parking lot to supervisors. Pactiv's workers did not wear distinctive uniforms and there were always new people coming to work through staffing companies.

Brookhouse said when he saw the Jeep driver during the earlier shift, he did not think it was something to report to management. Pactiv's slip trucks were parked another 30 feet beyond where the Jeep was located at the time of the accident.

Testimony of Bedford Park Police Sergeant Andrew Smuskiewicz (PX #9)

Sergeant Smuskiewicz testified by evidence deposition on July 21, 2021 (PX #9). He was a Bedford Park police department detective at the time of Lawton's accident on June 13, 2013.

Sergeant Smuskiewicz was called out to Pactiv on the night of the incident. He explained the process of his investigation. where he interviewed a number of witnesses. Respondent Aerotek objected to the testimony on hearsay grounds, which was overruled. Much of Smuskiewicz' s account does consist of hearsay and Aerotek's running objection is well founded, striking this witness's testimony from the case to the extent it was based on what he was told. Aerotek also objected to the Bedford Park police report, which was not offered in evidence. The witness refreshed his memory from the report.

From his investigation, Sergeant Smuskiewicz learned that Lawton was part of a group of people who were trying to stop the crime from taking place and trying to get the offenders to stop so they could be arrested. He found no evidence that Lawton or his companions knew Garcia before the accident.

Respondent Aerotek renewed and reserved its objections to hearsay when it began cross-examination. Sergeant Smuskiewicz testified he never investigated whether Garcia and Ms. Fernandez had an affair. He testified that Bedford Park officers had been called out to Pactiv both before and after Lawton's incident for other incidents. Those calls involved disturbances among employees and supervisors. There was never a call involving an outsider coming onto the property.

Based on what he observed, Sergeant Smuskiewicz understood that that the vehicle involved did not enter Pactiv property after the incident. He agreed that civilians should stay out of police issues and just call 9-1-1. He advised people to not jeopardize their own safety.

Testimony of Jose Gasco Garcia (PX #10)

Jose Garcia testified by evidence deposition on March 28, 2022 (PX #10). He was one of the persons damaging the car in Pactiv's lot and was the driver who ran over Lawton. He testified from prison where he was serving time for Lawton's death.

Garcia had worked at Pactiv for years before the accident and he was still working at Pactiv on the weekends in June 2013. His wife Maria also worked at Pactiv. Garcia did not know Lawton, although he had seen him at work in the past. They worked in different Pactiv buildings.

Garcia identified DepX #1, a daylight photo of the area where he parked the Jeep between the buildings. Garcia parked where the red mark was located on the photo. DepX #2 is an overhead view of the same roadway area. Garcia parked his Jeep where the red X is located on DepX #2. The building at the top of this photo is Pactiv's building and the building at the bottom was some other business. Garcia testified he worked in the building at the top left of the photo with the white roof.

Garcia was not working at Pactiv the night of the accident. He came to Pactiv's property to make sure his wife was at work and to check her car. He parked his Jeep in a dark roadway to make sure that no one got his license plate. He backed his Jeep down the roadway between the buildings with his headlights off. He planned to damage Guadalupe Fernandez's car. He was not going after Lawton's car, and he had no intent to harm Lawton in any way. He was going after Fernandez for bothering his wife and getting involved in their family life.

Garcia testified another Pactiv employee came to assist Garcia that night. Garcia's wife and Fernandez were both working that evening. Fernandez had been harassing Garcia's wife for a long time. Fernandez did this with all the women at the plant. Female workers in that building had been complaining of Fernandez's sexual harassment for years before the accident. Garcia had damaged Fernandez's car on earlier occasions before Lawton's incident.

Garcia knew that Pactiv did not have security guards patrolling its lots before June 2013. He knew there were no security fences which would have stopped him from accessing Fernandez's car. Any person could access the lots, whether they worked there or not. There were no guards in place at Pactiv to keep strangers off the property.

Garcia testified he did not see Lawton in front of his Jeep before accelerating away. He did not intend to run Lawton over. He had nothing against Lawton. He felt something under his vehicle, but he thought it was a piece of concrete which was sometimes in Pactiv's parking lots. Mr. Garcia testified he was trying to get away from the people chasing him and did not see Mr. Lawton standing in front of his car when he drove away.

Garcia testified that during the eight years he worked at Pactiv, Pactiv had no training programs to explain what workers should do about sexual harassers in the plant. He was never told what he was supposed to do when a coworker kept sexually harassing his wife in the plant. Garcia did not intend to hurt anyone when he came to Pactiv on June 13, 2013. He said Lawton's injury was a pure accident.

On cross-examination, Garcia admitted he chose the location where he parked the Jeep because it was dark. There were no lights on the non-Pactiv building to his south. Pactiv had some lights on its building to the north, but not where he parked. He did not park in Pactiv's parking lots to the west because of Pactiv's cameras. He knew Pactiv had cameras on the buildings and did not park there for that reason.

Garcia testified he stopped vandalizing Fernandez's car after he finished what he wanted to do. He and his companion started walking back across Mason and then started to run when people started chasing.

On redirect examination, Garcia admitted that he had also worked in Pactiv's northeast building with the loading docks, shown at the top of DepX #2 with the dark roof. Pactiv used the trailers parked near that building to get the plates out of Pactiv's building. He saw those trailers pulling away from Pactiv's building onto Mason Street many times during the years he worked at Pactiv.

Testimony of Lawrence Liva (PX #19)

Mr. Liva testified by evidence deposition on June 13, 2022 (PX #19). He was a machine shop manager for Pactiv on June 13, 2013. He received a call at home that something had happened to a temporary employee at Pactiv, and that he needed to come into work. Liva did not recall whether he authored the Occupational Incident Report, a diagram, or investigative notes.

Liva testified that if an employee was involved in a major accident, he would meet with Dennis Davidson, Pactiv's Director of Engineering, and Davidson would tell him what to do or who to call. Liva worked the day shift, but he directly supervised Charlie Lawton, John Brookhouse and Gabriel Ybarra. If an incident happened, he would probably handwrite a report, but did not recall much about those reports.

On cross-examination Liva testified Pactiv operated three buildings at that campus, arranged in a L formation: one to the southwest, one to the northwest, and one to the northeast. The building to the southeast had nothing to do with Pactiv. (PX19 p.17) Between that building and the Pactiv building to its north, there was a roadway or a parking area.

Liva was shown the overhead view of the area (Garcia DepX #2). Liva confirmed that the trailers on the photo ran in and out of Pactiv's operations. To access the area where the trailers were, Pactiv would have to use the exit onto Mason. To the right of the

red "X" on Garcia DepX # 2, Liva saw a yellow barrier across the roadway but did not know whether that barrier delineated Pactiv's area of operation from the unrelated business in the south building.

Liva testified he did not know where the property lines were. He also did not know if Mason was a public rather than private road.

Liva did not recall giving Lawton new employee orientation. He did not handle the orientations, but he thought Pactiv's HR would orient new temp employees. He did not recall there being a written handbook of job rules for temporary employees. Liva had never seen a written or oral rule prohibiting workers from going to the aid of other workers who were in peril. He would never have discussed discouraging workers from going to the help of a coworker. In the years he was working at Pactiv, he did not recall there being any kind of rules which prohibited workers from going to the assistance of their coworkers.

Liva testified Brookhouse and Ybarra were not disciplined, written up, or even chastised for joining Lawton in addressing the emergency. He knew of no managers claiming that these workers should not have followed the people who were damaging property in the lot. The police came to him to look at camera footage from the cameras on his building. He saw no photos or video showing what happened down the roadway where Lawton was hurt.

Liva did not recall Pactiv providing training for temp employees as to how they were to address sexual harassment in the plant.

Liva identified the ground level view of the roadway between the buildings from July 2011, Garcia DepX #1. The photo shows pavement running from Pactiv's building on the left to the brick wall of the non-Pactiv building on the right. Liva walked the area a couple of days after the accident but could not recall what he saw.

Liva was asked about the Occupational Incident Report ("OIR"). The OIR listed him as the person receiving notice of Lawton's incident. Pactiv used these OIR forms for various types of incidents. Liva did not prepare this OIR, he would not have typed it up or phrased things the way they were written on the OIR. Brookhouse and Ybarra were both listed as witnesses on the OIR, and they were both reported as having given statements.

Liva was not aware of prior incidents like what happened to Lawton so he did not know who would take the statements or write the report. Even though the OIR said he was a machinist, Lawton did hand finishing work. The OIR said that "Supervisor/Team Lead should complete front page and top of the back of second page." Liva admitted he was Lawton's supervisor at the time, but different leads or supervisors may have completed the report. A box marked "Contributing Factors" was located at the bottom of

the first page. Liva did not know enough about the details of the event to determine who was at fault for the injury.

Liva reiterated that he was not aware of any Pactiv rules which prohibited workers to going to each other's aid to address sudden emergencies on Pactiv property. If something happened inside the building, he would hope that someone called 911. But he did not remember anything happening outside the building before Lawton's injury. Liva also did not author the Investigative Notes document. He had no idea whether other vehicles had been damaged prior to June 13, 2913. at night in Pactiv's lot. OIR forms should be filled out promptly after an event.

Pactiv's workers were given two breaks and a lunch break. Pactiv did require workers in the southwest building to take their breaks at the north end of the building. Workers were not prohibited from taking breaks in their cars. If Lawton and Brookhouse were in the north end of the building during their breaks, that is where the company expected them to be. Lawton was also allowed to take breaks with coworkers. Breaks were not scheduled for exact times. Workers did not have to clock out or notify the supervisor when going to break, but workers did clock out for lunchbreaks.

Testimony of Guadalupe Fernandez (AerotekX #3)

Guadalupe Fernandez testified at Jose Garcia's criminal trial August 28, 2017, People of the State of Illinois vs. Jose Garcia, 13 CR 1552. Mr. Fernandez identified photos of his car showing broken windows and a gang sign scratched into the car. Later, on June 13, 2013 he recognized "Jose" from a picture on TV and called the police about Garcia. Fernandez had worked with Garcia at Pactiv for 3 years before this night. Fernandez was confronted by Garcia in the canteen 2 months before the attack. Garcia said something to him about calling Garcia's wife or girlfriend, which Fernandez said was a lie. Garcia told him to watch his back.

Fernandez admitted he did not know if Garcia damaged his car because he was inside working. Fernandez went to the police station on June 20, 2013 and identified Garcia in a photo array. He also identified Garcia in a physical lineup at the Sheriff's office in Maywood, as well as in open court. During an interview with police, Fernandez talked about the disagreement he had with Garcia. Fernandez admitted he had had disagreements with other people at work.

Medical Records

Mr. Lawton was transported by Bedford Park Fire Department ambulance to Advocate Christ Hospital ("Christ") in Oak Lawn (PX #2). The EMS record identified multiple injuries (PX #1). The Christ trauma notes document significant deep tissue injuries. Procedures performed at Christ included washout of his right face, left upper extremity, right shoulder, and debridement of wounds.

Christ transferred Lawton to the Loyola University Medical Center ("Loyola"), where he was admitted to the burn unit on June 17, 2013 in an intubated and sedated state. He was hemodynamically stable at that point (PX #3). Loyola healthcare providers noted extensive degloving of the right side of the head, amputation of the right ear, right mastoid fracture with complete fracture and disarticulation of the zygomatic arch, fracture and exposure of the temporomandibular joint, and extensive exposure of deep facial muscles in the right side of the face and clavicle fractures. The left upper chest and shoulder also suffered degloving with exposure of muscle and soft tissue. The right upper extremity had dorsum degloving of hand down to the bone and deep muscle. The left upper extremity was extensively degloved from the shoulder down to the wrist, with a brachial artery bypass being done at Advocate. He had deep partial thickness/full thickness burns to his chest. Three surgical procedures were performed at Loyola, during which he remained sedated with mechanical ventilation while undergoing antibiotic treatment and dialysis for acute renal failure.

Mr. Lawton never regained consciousness or function and treatment ultimately failed. Lawton died on July 13, 2013. Loyola records included photos of Lawton's injuries.

Mr. Lawton's Death Certificate was admitted as PX #4.

Pactiv Occupational Incident Report was admitted as PX #18.

Respondent Pactiv's Motion to Dismiss was admitted as PactivX #1.

The temporary employment agreement between Pactiv and Aerotek was admitted as PactivX #2.

Respondent Aerotek's wage statement was admitted as AerotekX #1.

Respondent Aerotek's employment agreement was admitted as AerotekX #2.

The trial testimony of Guadalupe Fernandez was admitted as AerotekX #3.

CONCLUSIONS OF LAW

Respondent Pactiv filed a Motion to Dismiss, citing the written agreement between Pactiv and Respondent Aerotek, PactivX #2. The agreement states in pertinent part:

- [Aerotek] will, at its own expense, provide and keep in full force and effect during the term of this Agreement…Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the Services are performed.
- [Aerotek] will indemnify, defend and hold Pactiv and its subsidiaries, affiliates, directors, officers, employees and agents from and against all demands, claims, actions, suits, losses, damages (including, but not limited to, property damage, bodily injury and wrongful death), judgments, costs

> and expenses…imposed upon or incurred by Pactiv arising out of…[a]ny claim of any nature asserted against Pactiv or workers compensation carriers by any [Aerotek] employee or agent of [Aerotek], or, in the event of death, by their personal representatives.

The facts here are similar to those in *Lachona v. Industrial Commission*, 87 Ill.2d 208, 427 N.E.2d 858 (1981), where a similar agreement was upheld. The Arbitrator finds that Pactiv is a borrowing employer and Aerotek is a loaning employer in accord with §1(a)4 of the Act. The Arbitrator also notes the stipulation at trial between Respondents Pactiv and Aerotek, whereby if any benefits are awarded to Petitioner as a result of the June 13, 2013 incident, that Aerotek retains full liability for any and all benefits, including, but not limited to, medical benefits, TTD benefits, death benefits, funeral expenses, penalties and fees, and permanency.

Respondent Pactiv's Motion to Dismiss is granted.

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator finds that Petitioner failed to prove that an accident arose out of and in the course of the decedent's employment by Respondents Pactiv Corp. or Aerotek.

Charles Lawton, Jr. was employed by Respondent Pactiv Corp. on June 13, 2013. Mr. Lawton was employed as a temporary CNC Machinist through referral from Respondent Aerotek. On the evening of June 13 Mr. Lawton was taking a break with coworkers in an area abutting Pactiv's employee parking lot. Mr. Lawton and the others heard the sound of breaking glass and went to investigate. They discovered two individuals vandalizing a coworker's car. Jose Garcia was one of the individuals vandalizing the car. Mr. Lawton and coworkers John Brookhouse and Gabriel Ybarra gave chase of Mr. Garcia and the other vandal across the parking lot and onto Mason street which was the public way. Mr. Lawton placed himself in front of a Jeep operated by Mr. Garcia. In an effort to get away Mr. Garcia ran over and dragged Mr. Lawton down the roadway, causing fatal injuries to Mr. Lawton. Mr. Garcia was criminally charged and convicted for his actions.

An injury arises out of one's employment if its origin is from a risk connected with or incidental to employment activities. "Arising out of the employment" refers to the origin or cause of the claimant's injury. A risk is distinctly associated with employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform,

or acts which the employee might reasonably be expected to perform incident to his assigned duties.

An injury occurs "in the course of" of employment if it refers to the time, place, and circumstances of the accident. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, a resulting injury will not be within the course of employment unless the employer had knowledge or acquiesced in such unreasonable conduct.

Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized hey coworkers private vehicle Was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, We're not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties. There is no evidence that his employer had knowledge or acquiesced to the decedent assuming this type of risk. There was no evidence that Aerotek or Pactiv expected, required, or encouraged its employees or temporary employees to stop any sort of criminal activity that occurred on company property.

The Arbitrator finds that Mr. Lawton took himself outside the scope of his employment as a machinist not only when he chased the offenders off Pactiv's property and across Mason Street, but also when he placed himself in front of Mr. Garcia's vehicle in an attempt to stop the offenders from fleeing. If an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, as here, the resultant injury is not within the course of the employment.

Also, the Arbitrator does not find the Good Samaritan doctrine applicable to this case. In determining whether an accident is compensable under the Good Samaritan Doctrine, courts have focused on whether the conduct is reasonably foreseeable. It was not reasonably foreseeable by Respondents that Mr. Lawton what put himself in harm's way when a criminal act did not involve damage to the employers property or equipment or harm to a coworker.

The Arbitrator does not find the alleged relationship and/or harassment between Mr. Garcia, Mr. Garcia's wife, and Guadalupe Fernandez relevant because it did not involve Mr. Lawton whatsoever.

The Arbitrator also does not find it relevant that Pactiv placed security in the parking lot after the June 13, 2013 incident. There was no evidence that Bedford Park is a high crime area or that there was a pattern of vandalism or other criminal acts in the Pactiv parking lot. On the contrary, this incident appears to be isolated to the issues between Mr. Garcia and Mr. Fernandez.

G: *What were Petitioner's earnings?*

Petitioner's wage statement, PX #11, shows Mr. Lawton's earnings from November 8, 2012 through June 13, 2013. During that time, the decedent had regular earnings of $20,013.00 and $84.00 of overtime earnings at straight time pay, for a total of $20,097.00. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $772.96.

Respondent Aerotek wage statement, AerotekX #1, showed earnings of $20,281.00. and the Petitioner's average weekly wage, calculated pursuant to section 10 of the Act was $780.04. Using the weeks and parts thereof method, Mr. Lawton worked a total of 130 days during that period, or 26 weeks. This computes to an average weekly wage of $780.04.

The Arbitrator adopts the average weekly wage computation of Respondent Aerotek, $780.04.

H: *Whether the deceased had any dependent children***.**

The evidence established that Mr. Lawton was not married at the time of the incident at issue. According to the June 8, 2015 Order of Heirship, PX #17, the decedent had the following minor dependents at the time of his death: Addison Pozniak (DOB May 19, 2013), Ashley Lawton (DOB July 14, 2002), and Elaina Lawton (DOB February 11, 1997). Elaina Lawton was emancipated by age on February 11, 2015. There was evidence that Grace Orsatdt, decedent's natural child, had been adopted but there was no evidence of when the adoption took place and, therefore, no evidence of whether Grace was a minor dependent at the time of Mister Lawton 's death.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the medical services provided to Mr. Lawton were reasonable and necessary and there is no evidence to the contrary.

K: *What temporary benefits are in dispute? TTD*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, it appears the correct disputed period of TTD would be from June 14, 2013 through July 13, 2013, or a period of 4 & 2/7 weeks.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

Notwithstanding the Arbitrator's finding that the incident at issue did not result in a compensable injury, Respondents had good faith bases for denying benefits. It was neither vexatious nor frivolous to deny Petitioner's claim for benefits when Mr. Lawton exposed himself to a personal risk of harm that was outside the scope of his employment.

O: *Whether Petitioner is entitled to statutory funeral expenses.*

The Arbitrator has found that Petitioner failed to prove that Charles Lawton sustained his fatal injuries in an incident that arose out of and in the course of his employment. Therefore, this issue is mooted.

_____ _____

Steven J. Fruth, Arbitrator Date

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

AMANDA POZNIAK, as Independent Administrator of the Estate of Charles Lawton, deceased, et al., **Plaintiffs,** **v.** **PACTIV CORPORATION, et al.,** **Defendants.**	**Case No.: 2024L050047**

ORDER

Charles Lawton witnessed a car being vandalized while outside in the employee parking lot on a break from work. Lawton chased the vandals, who fled back to their own car, which had been parked just off-property. He stood in front of the vandals' car in an effort to prevent their escape. The vandals – who, it later turned out, were fellow employees, off-duty, seeking to avenge a grievance with the vandalized car's owner – drove over Lawton and dragged him under the car, critically injuring him. Lawton would later die of his injuries. The driver, Jose Garcia, was subsequently apprehended and imprisoned for Lawton's death.

Amanda Pozniak, the mother of one of Lawton's children and the administrator of his estate, filed a claim against his employers[1] under the Workers' Compensation Act on behalf of the estate and Lawton's minor children. The claim proceeded to arbitration, following which the Arbitrator determined that the Lawton's death was non-compensable:

> Charles Lawton was employed by Pactiv as a machinist. There was no evidence that he was charged with any responsibilities relating to security of the workplace, of his employer's property or equipment, or of his coworkers. Pursuing criminals who had vandalized [their] coworker[r's] private vehicle was not part of the duties of a machinist or incidental to the duties of a machinist. Mr. Lawton, along with Mr. Brookhouse and Ybarra, [were] not engaged in protecting the property or equipment of Pactiv or protecting a coworker from harm. The risks associated with chasing the offenders off Pactiv's property and standing in front of their fleeing vehicle was a risk that was assumed solely by Mr. Lawton and was in no way connected to his

[1] It was stipulated that the Respondents, Aerotek and Pactiv, had a borrowing-lending relationship with regard to Lawton's employment. The two Respondents are referenced throughout as the "employer" or "employers" for simplicity's sake.

> employment with Respondents. Mr. Lawton voluntarily exposed himself to a risk that was outside of his job duties.

The principle of law applicable to the circumstances of Lawton's death, according to the Arbitrator, dictates that an injury is not considered to have occurred in the course of employment "if an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties . . ."

The Commission affirmed and adopted the Arbitrator's Decision.

Pozniak has filed a Petition for Review arguing, in the main, that the accident should be found compensable under the "hero/emergency doctrine."

To be compensable under the Workers' Compensation Act, the injury complained of must be one "arising out of and in the course of the employment." 820 ILCS 305/2. An injury "arises out of one's employment if its origin is in some risk connected with or incidental to the employment, so that there is a causal connection between the employment and the accidental injury. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995). An injury occurs "'in the course of employment [if] it occurs within a period of employment, at a place where the worker may reasonably be in the performance of his duties, and while he is fulfilling those duties or engaged in something incidental thereto.'" *Parro*, 167 Ill. 2d at 393 (quoting *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 367 (1977)).

Whether an injury arose out of and in the course of employment are questions of fact for the Commission and may not be set aside unless against the manifest weight of the evidence. *Litchfield Healthcare Ctr. v. Indus. Comm'n*, 349 Ill. App. 3d 486 (5th Dist. 2004). In applying a manifest weight of the evidence standard, courts of review should be "reluctant to set aside the Commission's decision on a factual question," but "should not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion." *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993); See also *Roberson v. Indus. Comm'n*, 225 Ill. 2d 159, 173 (2007) ("A reviewing court will not set aside the Commission's decision unless its analysis is contrary to law or its factual determinations are against the manifest weight of the evidence.")

The principle of law relied upon by the Arbitrator and adopted by the Commission has been referenced by courts of review as the "unnecessary personal risk doctrine."

Application of the "unnecessary personal risk" doctrine seems to have generally been limited, by Illinois courts of review, to three circumstances. The first involve situations in which the claimant is injured while engaged in "performing an act of a personal nature solely for his own convenience." The second centers around cases involving a claimant who "voluntarily exposes himself to a known hazard." And the third category of cases concern injuries that occur

during the course of an employee "minister[ing] to his personal comfort" in an unreasonable or unforeseeable manner.

Orsini v. Industrial Comm'n, 117 Ill. 2d 38 (1987), illustrates the first type. There, the claimant was adjusting the carburetor on his own car at the Texaco where he worked when it lurched forward and pinned him against a workbench, breaking his legs. The Supreme Court held that the injury was non-compensable because it did not "arise from" the claimant's employment, framing the doctrine of "unnecessary personal risk" as involving a "danger entirely separate from the activities and responsibilities of [the employee's] job":

> [U]nder the terms of his employment, Orsini was not required to work on his personal automobile during working hours, and Wilmette Texaco could just as well have permitted him to do nothing while he was waiting for the additional brake parts needed to complete the job he was performing for his employer. . . . Orsini's car served no purpose relative to his employment duties at Wilmette Texaco. Thus, we find here that Orsini voluntarily exposed himself to an unnecessary danger entirely separate from the activities and responsibilities of his job, and was performing an act of a personal nature solely for his own convenience, an act outside of any risk connected with his employment. Clearly, there is no evidence here of a causal connection between Orsini's employment at Wilmette Texaco and the accidental injury.

Orsini, 117 Ill. 2d at 47; See also *Sekora v. Indus. Com*., 198 Ill. App. 3d 584, (1990) (employee injured while riding dealership ATV in a field after work); *Curtis v. Indus. Comm'n*, 158 Ill. App. 3d 344 (1987) (claimant burned transferring gasoline to container for his personal use); *Segler v. Indus. Com*., 81 Ill. 2d 125 (1980) (claimant injured by conveyer while attempting to heat his lunch in industrial oven); *Yost v. Indus. Com.*, 76 Ill. 2d 548, 550 (1979) (claimant injured attempting to pry lid off candy tin).

This, first type, of "unnecessary personal risk" centers on the "personal" aspect of the risk – and the "arising out of" prong of analysis. Courts of review assign particular significance to whether, as in *Orsini,* the claimant was "performing an act of a personal nature solely for his own convenience" at the time of his injury. See e.g. *Fisher Body Division, General Motors Corp. v. Industrial Com*., 40 Ill.2d 514 (1968) (employee injured by car battery explosion while re-charging in employee parking lot); *Mazursky v. Industrial Com.,* 364 Ill. 445 (1936) (employee injured while attempting to repair wheel of his car on employer's premises).

The second type of case in which the "unnecessary personal risk" doctrine has been applied are cases that involve employees injured while voluntarily confronting known hazards for their own convenience – typically by taking a "shortcut" on the way to or from work. See e.g., *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, ¶ 23 (claimant injured while attempting to hop over barrier); *Hatfill v. Industrial Comm'n,* 202 Ill.

App. 3d 547 (1990) (jumping over a ditch *en* route to parking deck); *General Steel Castings Corp. v. Industrial Comm 'n*, 388 Ill. 66 (1944) (crossing railroad tracks instead of using pedestrian tunnel on way to employee parking lot); *Terminal R. Ass'n v. Indus. Com.*, 309 Ill. 203 (1923) (attempting to crawl under a freight train to get to work station in railroad roundhouse).

Courts confronted with these cases typically focus on the "unnecessary" aspect of the activity and the "in the course of employment" prong of the analysis. Injuries that occur while employees are engaged in confronting a known hazard, like operating train tracks, are said to be acting for their own personal convenience – rather than acting with some interest of the employer in mind – and, consequently, acting outside the course of employment.

The third category of cases concern limitations on employees seeking "personal comfort." As set out by the Supreme Court, "the course of employment is not considered broken by certain acts relating to the personal comfort of the employee," but, "if the employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, the resultant injury will not be deemed to have occurred within the course of the employment." *Eagle Discount Supermarket v. Industrial Comm'n*, 82 Ill.2d 331, 339-40 (1980); See also *Union Starch v. Industrial Comm'n*, 56 Ill.2d 272, 277 (1974) ("Our courts have found that incidental, or nonessential acts of the employment, such as seeking personal comfort, may not be within the course of employment if done in an unusual, unreasonable, or unexpected manner")[2]

The facts at issue here fall outside each of the three circumstances in which Illinois courts of review have applied the "unnecessary personal risk" doctrine. This wasn't a case that involved Lawton's personal interest. It wasn't *his* car that was being vandalized. Neither was this a circumstance involving Lawton confronting a known risk for his personal convenience – nor a case concerning the limits of the "personal comfort doctrine." While Lawton was on break, he was doing nothing to advance his own interest, convenience or comfort in confronting the vandals in the employee parking lot.[3]

Petitioner argues that the case is one that is controlled by the "hero/emergency doctrine" citing *Dragovich v. Iroquois Iron Co.*, 269 Ill. 478 (1915), *Baum v. Indus. Com.*, 288 Ill. 516 (1919), *Metropolitan Water Reclamation District of Greater Chicago v. Industrial Comm'n*, 272 Ill. App. 3d 732 (1995), and other cases.

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[2] Other states have adopted constructs requiring employee "misconduct" to be "unusual or extraordinary" or "unconventional and perilous" to be disqualifying. See 3 Larson's Workers' Compensation Law § 32.02D (collecting cases).

[3] See e.g. *Chicago Extruded Metals v. Indus. Comm'n*, 77 Ill. 2d 81, 85 (1979) (killing an insect in the employer's shower facility considered to be an act in the employer's interest).

In *Dragovich*, Frank Markusic, working on Christmas Eve 1912, was burned to death in scalding water after he fell into an open hole on the factory floor while coming to the aid of a fellow employee who was screaming for help – having fallen into a different part of the same hole, himself. Construing "arising out of and in the course of the employment" of the newly enacted Workers' Compensation Act for the first time, the Illinois Supreme Court found that an employee's duties at work extend to attempts to save the lives of his fellow employees:

> Section 1 of the act requires that compensation may be had for accidental injuries sustained by any employee "arising out of and in the course of the employment," etc. From the facts already stated, counsel for appellant argues that it was not shown that the accident arose out of and in the course of deceased's employment. This provision of the statute has never been construed by this court but somewhat similar acts have been construed by the courts in other jurisdictions. Under these authorities it is clear that it is the duty of an employer to save the lives of his employees, if possible, when they are in danger while in his employment, and therefore it is the duty of a workman in his employ, when occasion presents itself, to do what he can to save the lives of his fellow-employees when all are at the time working in the line of their employment. Any other rule of law would be not only inhuman but unreasonable and uneconomical, and would, in the end, result in financial loss to employers on account of injuries to their employees. From every point of view it was the duty of the deceased, as a fellow-employee, in the line of his duty to his employer, to attempt to save the life of his fellow-employee under the circumstances here shown. That he failed in his attempt does not in the slightest degree change the legal situation.

Dragovich, 269 Ill. at 484.

In *Baum*, striking workers from the International Garment Workers' Union stormed the Nora Shirtwaist Company, a non-union shop owned by Simon Baum. Edward Tomczyk, an "assistant cutter" and one of only a few male employees, attempted to stop the strikers from advancing onto the factory floor and was stabbed to death. The Supreme Court, affirming an award of workers' compensation benefits, found that Tomczyk's stabbing arose out of his employment because he was performing a voluntary act during an emergency that he believed to be in the interest of his employer:

> While there must be some causal relation between the employment and the injury, it is not necessary that the injury be one which ought to have been foreseen or expected. It must, however, be one which after the event may be seen to have had its origin in the nature of the employment. . . . Where a workman voluntarily performs an act during an emergency which he has

> reason to believe is in the interest of his employer and is injured thereby, he is not acting beyond the scope of his employment.

Baum, 288 Ill. at 518-19.

Metropolitan Water Reclamation District involved a lockmaster, who – while waiting to be relieved from working in the station house where the Chicago River meets Lake Michigan – suffered a heart attack after assisting in rescuing a man who had fallen into the lake from an adjacent property. Affirming the Commission's finding that the injury was compensable, the Appellate Court determined that – despite the rescue taking place after the lockmaster's shift and off property – the fact the lockmaster's actions were in response to a "sudden emergency" brought it within the course of his employment:

> [C]laimant had signed out, but was not supposed to leave until his replacement arrived. After hearing a commotion in the parking lot, claimant went there to make sure his replacement was not in danger. At that point, claimant was still on the respondent's time and premises. Once in the parking lot, claimant heard a woman's call for help and proceeded to the adjacent property in response to the "sudden emergency" to rescue a stranger. Giving aid as claimant did is natural and expected and did not remove him from the course of his employment.

Metropolitan Water Reclamation District, 272 Ill. App. 3d at 735-36 (citing *Puttkammer v. Industrial Comm'n*, 371 Ill. 497, 501 (1939) ("If a servant in the course of his master's business has to pass along a public street, whether it be on foot or on a bicycle or on an omnibus or car, and he sustains an accident by reason of the risks incidental to the streets, the accident arises out of as well as in the course of his employment." (quoting *Dennis v. A.J. White and Co*. 15 N.C.C.A. 294)).

Dragovich, *Baum* and *Metropolitan Water Reclamation District* stand for three general principles: (1) "in the course of employment" is not constrained to an employee's job duties for purposes of the emergency doctrine; (2) voluntary acts performed in the interest of the employer during an emergency "arise from" the employment; and (3) as long as the act is "in the course of" and "arising from" the employment, it is irrelevant if the act occurs on or off the employer's premises.

Professor Larson summarizes the rule, which he calls the "General Rescue Rule," as extending to emergencies involving both life and property: [4]

> Under familiar doctrines in the law relating to emergencies generally, the scope of an employee's employment is impliedly extended in an emergency to include the performance of any act designed to save life or property in which the employer has an interest. . . . It is too obvious for discussion that emergency efforts to save the employer's property from fire, theft, runaway horses, destruction by strikers, or other hazards are within the course of employment.

3 Larson's Workers' Compensation Law § 28.01 (citing, among other cases, *Deutsch v. Heritage Automotive Enters*., 939 So.2d 259 (Fla. Dist. Ct. App. 2006) (employee awarded benefits after chasing thief and being run over by her car)).

If Jose Garcia, the offender in this case, had – upon being confronted in his act of vandalizing the car – pulled out a gun and shot Lawton in the employee parking lot, there would be no question that the incident would be considered to have "arisen out of" and "in the course of the employment." See *Rodriguez v. Frankie's Beef/Pasta & Catering*, 2012 IL App (1st) 113155 (employee shot to death by fellow employee over dispute over promotion covered by exclusivity provisions of Workers' Compensation Act); *Price v. Lunan Roberts, Inc*., 2023 IL App (1st) 220742 (employee stabbed to death by fellow employee while at work for unknown reasons covered by exclusivity provisions of the Workers' Compensation Act).[5]

Significant to the analysis would be the fact that Garcia was, himself, an employee of Pactiv Corporation, rather than a stranger. Significant, too, would be the fact that the vandalism stemmed from a work-related dispute: the harassment of Garcia's wife (and other employees) by the car's owner while at work. And it would not have mattered if the shooting occurred after Lawton pursued Garcia across the street from the employee parking lot.

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[4] Respondents cite *Pearson v. Industrial Comm'n*, 318 Ill. App. 3d 932 (2001), for the proposition that the "emergency doctrine" is limited to "life-threatening" circumstances. The "emergency doctrine" discussed in *Pearson*, however, is a doctrine differing from that at issue and pertains to extending "employment" status to non-employees during a life-threatening emergency. See *Wolverine Insurance Co. v. Jockish*, 83 Ill.App.3d 411, 38 Ill. Dec. 686, 403 N.E.2d 1290 (1980). See also *Conveyors' Corp. of America v. Industrial Comm'n*, 200 Wis. 512, 228 N.W. 118 (1929); *Tipper v. Great Lakes Chemical Co.* 281 So.2d 10 (Fla. 1973).

[5] See also *Hooks v. Cee Bee Mfg. Corp*., 80 A.D.2d 687 (NY 1981) (workers' compensation coverage found under New York's version of workers' compensation law for claimant shot and killed after confronting vandals in employee parking lot).

The compensability or non-compensability of the claim cannot hinge on the fact that Garcia killed Lawton with a car instead of a gun.

As Petitioner points out, the Arbitrator here improperly injected elements of contributory negligence and assumption of the risk into the analysis. Construing the "emergency doctrine" in a manner that would include such negligence concepts would bring the doctrine into stark conflict with the public policy objectives underlying the Workers' Compensation Act:

> It has long been recognized that one of the [Illinois Workers' Compensation Act's] objectives was to do away with defenses of contributory negligence or assumed risk. Recklessly doing something persons are employed to do which is incidental to their work differs considerably from doing something totally unconnected to the work. It matters not how negligently the employee acted, if at the time he was injured he was still within the sphere of his employment and if the accident arose out of it.

Gerald D. Hines Interests v. Industrial Comm'n, 191 Ill. App. 3d 913, 917 (1989) (citations omitted).

The court finds the Arbitrator's analysis with regard to the compensability of the accident, as adopted by the Commission, to have been contrary to law. However, the court finds the parties' dispute concerning the compensability of the claim to have been in good faith and confirms the denial of penalties.

The court also sets aside the findings made by the Arbitrator unnecessary for the determination that the accident was non-compensable, including the findings as to Lawton's average weekly wage, the identity of his minor dependents, whether medical services were reasonable and necessary and the duration of any temporary total disability to which he was entitled. (Disputed Issues G, I, J and K).

The court confirms the Commission's Decision and Opinion on Review with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss – any dispute regarding the contractual liability between the borrowing and lending employers to be resolved by way of separate motion or proceeding following payment of any award. See *Chaney v. Yetter Manufacturing Co.*, 315 Ill.App.3d 823, 826-27 (2000) ("[*Lachona v. Industrial Commission*, 87 Ill.2d 208 (1981)] does not hold that a borrowing employer can escape workers' compensation liability (*vis a vis* the employee) through an indemnification agreement with the loaning employer.")

IT IS THEREFORE ORDERED:

That the Decisions and Opinions on Review of the Commission dated January 19, 2024 are hereby SET ASIDE with regard to Disputed Issues C, G, I, J, K, L and O;

That the Commission's Decisions and Opinions on Review dated January 19, 2024 are CONFIRMED as to Disputed Issue M, the court finding no penalties warranted given the good faith dispute as to liability;

That the Commission's Decision and Opinion on Review is CONFIRMED with regard to vacating the Arbitrator's order granting Respondent, Pactiv's Motion to Dismiss;

That, on remand, the Commission shall make whatever additional findings deemed necessary to determine the issues disputed by the parties at the arbitration of this matter including Disputed Issues C, G, I, J, K, L and O and the extent of any death benefits due pursuant to 820 ILCS 305/7(a) and 820 ILCS 305/7(f);

That the Commission is authorized to conduct further hearings, remand the matter further for such hearings, or employ whatever methods it deems necessary to comply with this order;

That the matter is disposed. See *Kudla v. Indus. Comm'n*, 336 Ill. 279, 282 (1929) (holding that, following review, the circuit court exhausts its statutorily-conferred jurisdiction and any "attempt to retain further jurisdiction [is] void.")

Judge Daniel P. Duffy
JAN 27 2025
Circuit Court - 2103

Hon. Daniel P. Duffy
Circuit Court of Cook County
Law Division -
Tax and Miscellaneous Section
50 West Washington, Room 2505
Chicago, Illinois 60602

Enter:_____

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Judge Judge's No.