

## Injury Suffered During Off Premises Meeting Denied as Not in Course and Scope of Employment

In *Pilone v. County of Middlesex*, A-1676-19 (App. Div. March 15, 2021), the Appellate Division was faced with the issue of whether injuries sustained by an assistant prosecutor while walking to a donut shop one block away from the Superior Court to meet a fellow prosecutor to discuss strategy resulted in compensable injuries. Both the Workers' Compensation Judge (WCJ) and the Appellate Division dismissed the claim concluding that the injuries did not arise out of and during the course of employment.

The petitioner arrived at her office between 8:30 and 9:00 a.m. and was planning to meet with a victim-witness later that day. She wanted to discuss the case and strategy with a fellow assistant prosecutor. They decided to meet at 11:00 a.m. at a donut shop one block from the County Superior Court. They had left the premises when the petitioner fell on the sidewalk en route to the donut shop. She was taken by ambulance to a hospital.

The trial was bifurcated to address the issue of whether the petitioner's injuries were compensable. This is a frequent procedure when the medical issues can be resolved between the parties, but the issue of course and scope of employment should be addressed before time and expenses are incurred in that effort.

The petitioner testified that it was common for her to meet her colleagues outside of the office to discuss cases. She testified that the office setting can be "too busy." She intended to purchase a coffee and discuss the case inside the coffee shop. She testified that she "probably" brought the file with her since it would not have been prohibited by the office.

Following testimony, the WCJ applied the "premises rule" in concluding that the injuries did not arise out of and during the course of employment. The Judge dismissed the argument that the injuries arose due to a "special mission" since the petitioner's decision to go off premises to meet with her colleague was not directed by any superior, but rather a personal decision. The meeting certainly could have taken place on the premises. Section 36 of the Workers' Compensation Act limits injuries such as this to areas under the control of the employer (the premises rule) and applied to this matter the county exercised no control over the area where the petitioner fell on a public sidewalk.

The Appellate Division dismissed the petitioner's arguments and upheld the decision of the WCJ. They refused to apply this special mission exception to the coming and going rule. They relied upon the Supreme Court's Decision in *Hersh v. County of Morris*, 217 N.J. 236 (2014) which requires the application of a two-part test. The Court must look at the "situation of the accident" and the "degree of employer's control" over that site. Applied to this matter, there was no valid reason to extend liability to the Prosecutors Office due to an injury that took place on a public walkway. The petitioner did not present any evidence that the meeting at the donut shop was assigned or directed by the Prosecutors Office. The decision in this matter certainly would have been different had those facts been presented.

**Comment:** This is a fair and accurate decision by both the WCJ and the Appellate Division. While the petitioner was intent on working at the donut shop, her decision to leave the employer's premises to conduct this meeting exposed her to a risk that the employer should not bear. The decision reviews pertinent case law and is a good decision to read from front to back for that purpose.