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Employer Liability for Supervisors' Intentional Torts: The Uncertain Scope of the "Alter Ego" Exception

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By Michael J. Hayes* and Quinn Broverman

Whether employers can be sued for intentional torts committed by their supervisors depends on whether the supervisor is covered by the "alter ego" exception to the rule that workers' compensation is the exclusive remedy for workplace injuries. Both state and federal courts in Illinois are divided over the scope of the alter ego exception. To resolve this division, this article proposes adoption of a compromise standard from a 1992 case.

I. Introduction

When Illinois employees are the victims of intentional torts by supervisors,[1] can they bring common law tort suits against their employers for these injuries, or are they limited to bringing a claim under the workers' compensation system? This question, which arises with unfortunate regularity, lacks a clear answer because both state and federal courts in Illinois are divided over the scope of the "alter ego" exception to the exclusivity of workers' compensation as the remedy for intentionally inflicted workplace injuries.

The Illinois Workers' Compensation Act ("IWCA") contains exclusivity provisions that mandate that workers' compensation is the sole remedy available to employees for workplace injuries.[2] There are exceptions to the exclusivity rule, including the principle that the rule does not apply if the injury is not accidental.[3]

In *Meerbrey v Marshall Field and Co., Inc.*, the Illinois Supreme Court held that employees were barred from suing their employers in tort for injuries intentionally inflicted by co-workers because such injuries were "accidental" for purposes of the IWCA.[4] The court explained that "such injuries are unexpected and unforeseeable from the injured employee's point of view." More importantly, these injuries "are also accidental from the employer's point of view" and therefore "the employer has a right to consider that the injured employee's sole remedy against the employer will be under the workers' compensation statute."[5]

Meerbrey held that injured employees can bring common law actions against their co-workers for intentional torts. The court found that such suits are not barred by the exclusivity rule because persons who committed intentional torts should not be permitted to claim that their victims' injuries were accidental and covered by the IWCA.[6]

The *Meerbrey* court used a similar rationale in reaffirming two judicially created exceptions to the IWCA's preclusion of employee suits against employers for intentionally inflicted injuries. Citing prior Illinois court decisions, the court held that the exclusivity rule would not apply where (1) the injuries were intentionally inflicted by "the employer or its alter ego," or (2) the injuries "were commanded or expressly authorized by the employer."[7] The court reasoned that "the employer

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1. In this article, the term "supervisor" will refer generically to all persons with supervisory or managerial authority over employees, regardless of their level of authority.
2. See 820 ILCS 305/5(a) ("No common law or statutory right to recover damages from the employer...or the [employer's] agents or employees...for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act"); 820 ILCS 305/11("The compensation herein provided...shall be the measure of the responsibility of any employer...for accidental injuries sustained by any employee").
3. See *Collier v Wagner Castings Co.*, 82 Ill 2d 229, 408 NE2d 198, 202 (1980).
4. 139 Ill 2d 455, 564 NE2d 1222, 1226 (1990).
5. Id.
6. Id, 564 NE2d at 1229-30.
7. 564 NE2d at 1226 (citing *Collier*, 408 NE2d at 202-03 and *Jablonski v Multack*, 63 Ill App 3d 908, 380 NE2d 924 (1st D 1978)).

should not be permitted to assert that the injury was 'accidental,' and therefore under the exclusive provisions of the Act, when he himself committed the act."[8]

The *Meerbrey* decision did not define the scope of either of these exceptions. Consequently, in the eight years since *Meerbrey*, employers and employees have frequently litigated the meaning of both exceptions. In many cases of alleged intentional torts by supervisors, the injured employee has contended that the supervisor is an "alter ego" of the employer, so that the exclusivity rule does not bar a suit against the employer. Illinois courts, however, have adopted at least three different definitions of the alter ego exception, which we discuss below.

II. Interpretations of the "Alter Ego" Exception

A. The Broadest Interpretation: Johnson and Its Progeny

Since 1990, numerous decisions have indicated that the "alter ego" exception applies to *all* supervisors, regardless of their degree of supervisory authority. The first case taking this position was *Johnson v Federal Reserve Bank of Chicago*,[9] which predated *Meerbrey* by five months.

In *Johnson*, a bank employee claimed that his superiors had harassed and abused him for more than 18 months in retaliation for his objection to allegedly illegal bank practices.[10] Based on this conduct, the employee sued his employer for intentional infliction of emotional distress. One of the employer's defenses was that the suit was barred by the exclusivity provisions of the IWCA.

Responding to this defense, the first district appellate court stated that the IWCA does not prohibit employee tort actions against employers for injuries intentionally inflicted "by the employer or a co-employee acting as the alter ego of the employer." The court held that Johnson's suit was not barred because "Johnson alleged intentional conduct by persons acting in their capacity as managers of the Bank, *therefore as the alter ego of the Bank*...."[11] Thus, the court, without explanation, equated "managerial capacity" with alter ego status.

Other decisions have relied on *Johnson* in broadly interpreting the *Meerbrey* alter ego exception as covering any type of supervisor. These decisions have found the alter ego exception applicable to, for example, three "management employees" whose powers were not described in the plaintiff's complaint,[12] eight supervisory and managerial staffers of various rank,[13] a worker "employed...in a supervisory capacity,"[14] a district manager,[15] and a vice president of corporate relations.[16]

In *Feliciano*, *Tolson*, *Wysong*, and *Whitehead*, the courts found that for purposes of denying defendants' motions to dismiss, the "alter ego" status of the alleged tortfeasors was sufficiently demonstrated by allegations that they had such standard supervisory powers as the authority to discharge employees, to review employee performance, and to grant vacation and sick leaves.[17]

Only two of these decisions, both by Judge Norgle of the U.S. District Court for the Northern District of Illinois, offered any rationale for the conclusion that all supervisors are alter egos of their employer. In *Whitehead*, the court noted that the seminal decision, *Johnson*, had not explained why the bank managers were alter egos. The court then provided its own explanation: "[W]here the employer is a fictitious person, i.e., corporate entity, and its authorities and powers are necessarily delegated to supervisors to conduct the corporate business, the supervisors act as alter egos of the corporate entity."[18]

Similarly, in *Feliciano*, the court reasoned that where the employer is a "fictitious person," like a corporation, "powers are necessarily delegated to managers to conduct the corporate business" and so those managers may be alter egos of the corporation.[19]

Under these precedents that broadly interpret the alter ego exception, an employee's showing that the person who committed the intentional tort possessed standard supervisory powers is sufficient to overcome the exclusivity of the IWCA and to permit the employee to bring a common law action against his or her employer.

B. The Strictest Interpretation: The Jablonski Line of Cases

Beginning in 1978 with *Jablonski v Multack*,[20] a series of state and federal decisions in Illinois have held that the alter ego exception to exclusivity applies only when the individual tortfeasor has such a dominant role or substantial ownership interest in the employer that there is a blurring of

8. Id.
9. 199 Ill App 3d 427, 557 NE2d 328 (1st D 1990).
10. Id, 557 NE2d at 329-30.
11. Id, 557 NE2d at 332.
12. *Buddingh v South Chicago Cable, Inc.*, 830 F Supp 437, 442, 443 (ND Ill 1993).
13. *Feliciano v Jerry's Fruit and Garden Center, Inc.*, No 93-C-5911, 1994 WL 142963, 1 (ND Ill April 15, 1994).
14. *Tolson v HHL Financial Services, Inc.*, No. 94-C-5136, 1995 WL 461883, 1 (ND Ill Aug 3, 1995).
15. *Wysong v Wendy's Intl, Inc.*, 71 FEP Cases (BNA) 1472 (ND Ill 1996).
16. *Whitehead v AM Intl*, 860 F Supp 1280, 1285, 1290 (ND Ill 1994).
17. *Feliciano*, 1994 WL 142963, at 3; *Tolson*, 1995 WL 461883, at 3; *Wysong*, 71 FEP Cases at 1474; *Whitehead*, 860 F Supp at 1290.
18. 860 F Supp at 1290.
19. 1994 WL 142963, at 3.
20. 63 Ill App 3d 908, 380 NE2d 924 (1st D 1978).

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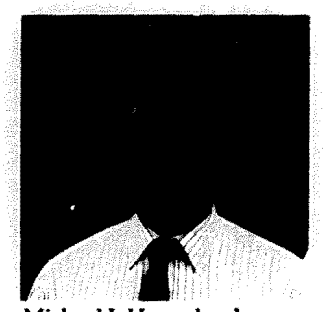

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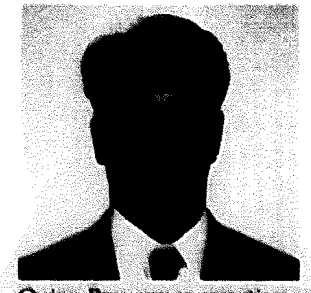

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identity between the individual and the employer. This definition of the alter ego exception is derived largely from the treatise *Larson's Workmen's Compensation Law*,[21] which is generally accepted as the leading authority on workers' compensation.

Jablonski was the first decision in Illinois to discuss the question whether the exclusivity provisions of the IWCA barred employee tort suits against employers for intentional torts by supervisors.[22] The court declared that the Larson treatise "states the rule which we believe to be preferable":

> When the person who intentionally injures the employee is not the employer in person *nor a person who is realistically the alter ego of the corporation, but merely a foreman, supervisor or manager*, both the legal and moral reasons for permitting a common-law suit against the employer collapse....
>
> The legal reason for permitting the common-law suit for direct assault by the employer...is that the same person cannot commit an intentional assault and then allege it was accidental. This does not apply when the assailant and the defendant are two entirely different people...."[23]

Jablonski then relied on the Larson treatise in distinguishing *Heskett v Fisher Laundry & Cleaners, Inc.*,[24] an Arkansas case in which the tortfeasor employee had been deemed an alter ego of the employer. *Jablonski* explained that Larson had "the following to say" about *Heskett*:

> The *correct distinction* to be drawn in this class of cases *is between a supervisory employee and a person who can genuinely be characterized as the alter ego of the corporation*. Take, for example, a case like *Heskett*....It seems probable from the facts given in the opinion that the assailant there was *so dominant in the corporation that he could be deemed the alter ego of the corporation under the ordinary standards governing disregard of corporate entity*. He was an officer and general manager of the corporation. His name was Fischer, and the corporation's name was Fischer Laundry and Dry Cleaners Company — indicating that it was probably in whole or in part his own business. In such circumstances the attribution of moral responsibility for the actor's conduct to the corporation is quite a different matter from the same process when the actor is merely a foreman or supervisor.[25]

Based on the legal principles expressed in these passages from Larson, *Jablonski* held that a restaurant manager was not an alter ego of the employer.

Under the interpretation of alter ego adopted in *Jablonski*, most supervisors would not be covered by the alter ego exception. The quotations from Larson repeatedly distinguish between "genuine alter egos" and "mere supervisors." Moreover, the reference, in the second passage from Larson, to the ordinary corporate law standards on alter ego suggests a particularly narrow definition of that concept. In corporate law, the alter ego doctrine applies only when there is "such unity of interest or ownership that the individual and corporation are, for all practical purposes, coextensive."[26] Thus, under the standard set forth in the Larson treatise, and adopted in *Jablonski*, the alter ego exception would apply only in unusual circumstances.

> **"*Crissman*...offered a sensible resolution to the conflict over the alter ego exception. Under the *Crissman* standard, an individual is deemed an alter ego if he or she has 'the authority to make decisions and set policy on behalf of the employer,' and thus 'speaks for the company.'"**

Since the alter ego exception was reaffirmed by the *Meerbrey* decision in 1990, several decisions in Illinois have relied on *Jablonski* and the Larson treatise in strictly limiting that exception. One striking example is *Joyce v HHL Financial Services*,[27] in which the court found that allegations that the tortfeasor was a regional vice president with supervisory powers to promote, discharge, and to review and evaluate employee performance were insufficient to show that he was an alter ego. "That set of relationships," the court declared, "does not remotely begin to approach the blurring of identity between employee and corporate employer that has been labeled the alter-ego concept."[28]

Both *Damato v Jack Phelan Chevrolet Geo, Inc.* and *Al-Dabbagh v Greenpeace, Inc.* relied on lengthy quotes from *Jablonski* and the Larson treatise in explaining why the alter ego exception did not apply.[29] In an unpublished decision in 1996, the seventh circuit also employed the *Jablonski* standard in ruling that the alter ego exception did not apply.[30] In 1997, the seventh circuit again appeared to apply the strict interpretation of alter ego when it held, without elaboration, that a "head supervisor" did not possess "sufficient stature" to be the employer's alter ego.[31]

Thus, in contrast to the *Johnson* line of cases discussed in the previous section, the decisions applying the *Jablonski* definition of alter ego have held that the alter ego exception to exclusivity applies only in very limited circumstances.

C. A Middle Ground: The Crissman *Decision*

In *Crissman v Healthco International*,

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21. Arthur Larson & Lex Larson, *Larson Workmen's Compensation Law* (Matthew Bender 1996).
22. 380 NE2d at 926.
23. Id, 380 NE2d at 927 (quoting Arthur Larson, 2A *The Law of Workmen's Compensation Law* § 68.21) (emphasis added).
24. 217 Ark 350, 230 SW2d 28 (1950).
25. 380 NE2d at 927 (quoting Arthur Larson, 2A *Workmen's Compensation Law* § 68.22) (emphasis added).
26. *Froehlich v J.R. Froelich Mfg. Co.*, 93 Ill App 3d 179, 416 NE2d 1134, 1137 (1st D 1981).
27. No 94-C-5357, 1995 WL 215169 (ND Ill April 10, 1995).
28. 1995 WL 215169 at 3.
29. *Damato*, 927 F Supp 283, 291-92 (ND Ill 1996); *Al-Dabbagh*, 873 F Supp 1105, 1113-14 (ND Ill 1994). In *Al-Dabbagh*, the court observed that the tortfeasor did not even have a supervisory or management role, but stressed in a footnote that this observation "should not be misunderstood as suggesting that [this] type of low level status in the corporate hierarchy...would suffice to trigger alter ego responsibility for the corporation." 873 F Supp at 1114 n9.
30. *Cutchin v Wal-Mart Stores, Inc.*, Nos 95-2152 and 95-2514, 1996 WL 122829 (7th Cir Mar 19, 1996). Under the rules of the seventh circuit, an unpublished decision generally cannot be cited as precedent.
31. *Hunt-Golliday v Metropolitan Water Reclamation District of Greater Chicago*, 104 F3d 1004, 1017 (7th Cir 1997). It will be interesting to see whether the seventh circuit's application of the strict interpretation of the alter ego exception in *Cutchin* and *Hunt-Golliday* will influence federal district courts in Illinois in determining which interpretation of that exception to apply.
32. 60 Empl Prac Dec (CCH) ¶ 41,859 (ND Ill 1992).

Inc.,[32] the plaintiff, based on conduct of the employer's supervisors, brought against her employer federal claims of sex discrimination and sexual harassment and state claims of intentional infliction of emotional distress and battery. The plaintiff, employing the broad interpretation of alter ego, argued that her state claims were not barred by the IWCA because the employer should be liable for the torts of its "supervisory agents" based on the principle that a corporation can act only through its agents.[33] The defendant employer invoked the strict definition of alter ego and contended that, because the alleged tortfeasors were not owners of the corporation and did not share a "unity of interest" with it, the alter ego exception did not apply.[34]

Reacting to these arguments, Judge Ilana Diamond Rovner[35] declared, "Neither party has the analysis quite right."[36] Judge Rovner found that the plaintiff sought "an overly loose standard which would render the [IWCA] inapplicable any time a tort were committed by the employer's agent." Citing to *Jablonski* and the Larson treatise, Judge Rovner observed that this "loose" standard was at odds with the prevailing view in the nation and in Illinois.[37]

On the other hand, Judge Rovner criticized the defendant's position that "the tortfeasor and the corporate employer must be virtually one and the same" as "unrealistic."[38] Judge Rovner pointed out that the Larson treatise, though referring to the corporate standard for alter ego, had not stated that the same standard should apply in workers' compensation law.[39] Judge Rovner reasoned that if the strict corporate standard were used to define alter ego, "the results might often be contrary to the concerns underlying the [IWCA]."[40] By requiring that the tortfeasor have a unity of ownership or interest with the employer, the strict standard would exempt the employer from tort liability even if the tortfeasor had "[a] high degree of, or even complete decisionmaking authority" over the employer.

For example, Judge Rovner noted, an employer could not be sued in tort even if the employer's president ordered a nationwide policy of subjecting employees to intentional torts. Judge Rovner concluded that the strict interpretation of the alter ego exception was inappropriate because a corporation could be separate from its owners under the strict alter ego standard "and yet take purposeful actions which are injurious to their employees."[41]

Picking up on Professor Larson's use of the term "realistically an alter ego," Judge Rovner proposed a "realistic and practical appraisal" of which persons should be deemed alter egos.[42] Judge Rovner reasoned that "[s]tatus as a 'foreman, supervisor, or manager' alone" was not sufficient to make an individual an alter ego, if that individual lacked policymaking authority.[43] But where an individual has "the authority to make decisions and set policy on behalf of an employer," then that individual could realistically be regarded as the employer's alter ego. Accordingly, Judge Rovner found that "when the tortfeasor holds a position in which he, in a practical sense, speaks for the company, he may be deemed the employer's alter ego for purposes of the Workers' Compensation Act."[44]

Judge Rovner then explained that, under this "realistic and practical" approach, more than one person may be deemed a company's alter ego. For example, Judge Rovner stated, "To the extent that each of Healthco's seven regional managers had final decisionmaking authority with respect to the policies and procedures within his or her region...each may qualify as an alter ego."[45] Judge Rovner added that "[t]he same might arguably be said at the level of branches and branch managers...." The key was whether the individual had "authority" to deliver the employer's "final word" in his or her sphere.[46] If so, then that individual would qualify as an alter ego.

Judge Rovner found that another factor supporting application of the alter ego exception in *Crissman* was that the alleged torts involved recurrent conduct over a substantial period.[47] Judge Rovner reasoned that where tortious conduct is repeated over a significant period, "it becomes more difficult to describe such acts as 'accidents'...and more plausible to characterize them as the intended policy of the employer itself." Judge Rovner noted that when tortious conduct is recurrent, it may be covered by either the "alter ego" or the "expressly authorized" exceptions established in *Meerbrey*.[48]

Applying the foregoing principles to the facts of Crissman, Judge Rovner concluded that the evidence of involvement of higher level managerial employees in the tortious conduct, and of tortious conduct being repeated over time, was sufficient to create a question of fact as to whether the conduct fit within the alter ego exception.[49]

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33. Id at 73,000.
34. Id at 72,999-73,000.
35. Judge Rovner, who now serves as a seventh circuit appellate justice, decided *Crissman* when she was a federal district court judge.
36. *Crissman*, 60 Empl Prac Dec (CCH) at 73,000.
37. Id.
38. Id.
39. Id.
40. Id at 73,001.
41. Id.
42. Id.
43. Id (quoting Arthur Larson, 2A *Workmen's Compensation Law* § 68.21).
44. Id.
45. Id.
46. Id.
47. Id at 73,001-73,002.
48. Id at 73,003.
49. Id.

Since 1992, several decisions of the U.S. District Court for the Northern District of Illinois have followed the *Crissman* precedent in determining the scope of the alter ego exception.[50] In *Rowan* and *Wood*, the courts focused on *Crissman's* discussion of the decisional authority of the tortfeasor. In *Rowan*, the court relied on *Crissman* in holding that "[w]hether an employee is the alter ego of an employer depends upon whether the employee has 'final decision-making authority...within his or her region.'"[51] Applying this standard, the court found that the plaintiff's allegations regarding the tortfeasor's authority were sufficient to survive the employer's motion to dismiss.

In *Wood*, the court relied on *Crissman* in *granting* an employer's dismissal motion. Under the *Crissman* standard, the court said, "there must be allegations of final decision-making and policy-setting authority, such that the tortfeasor can be said to 'speak for the company.' Such allegations are absent here."[52]

In *Kennedy*, *Alberts*, and *Reynolds*, the courts relied on *Crissman* in considering both the tortfeasor's decisional authority and the recurrent nature of the conduct in finding that the plaintiff's claim could fit within the alter ego exception.[53]

Thus, the *Crissman* standard has emerged as a distinct approach to defining the scope of the alter ego exception. Under the *Crissman* approach, the key factor in deciding whether the exception applies is whether the tortfeasor possessed sufficient decisional authority. Also, some courts have additionally considered whether the tortious conduct was repeated over time.

III. Resolving the Scope of the "Alter Ego" Exception

Neither the broad *Johnson* interpretation nor the strict *Jablonski* interpretation defines the appropriate scope of the alter ego exception. As Judge Rovner pointed out in *Crissman*, the broad interpretation is "overly loose," and would effectively abolish workers' compensation exclusivity for all intentional torts committed by supervisors. That result would be in conflict with the Illinois Supreme Court's decision in *Meerbrey*, and with the nationally prevailing doctrine on the scope of workers' compensation exclusivity.

The only rationale that has been offered for the broad interpretation — that "corporations must act through their supervisors" — is untenable. Under that rationale, the alter ego exception should not be limited to supervisors because corporations delegate functions to, and "act through," all their employees. By contrast, the rationale apparently excludes non-corporate entities, such as partnerships and proprietorships, from the alter ego exception, even though these entities also delegate powers to supervisors and other employees. There is no logical reason why the employer's form of organization should so greatly impact whether it can be sued in tort for the intentional acts of its employees.

The strict interpretation of alter ego, however, is too narrow. As was discussed in Section II, the strict interpretation derives from the Larson treatise on workers' compensation. But even the Larson treatise recognizes that exclusivity should not apply where the injury is inflicted by employer *policymakers*. In the section following the section on alter ego, the Larson treatise notes that the "unpremeditated assaults" by supervisors discussed in preceding sections "could not conceivably be said to have any content of corporate or employer policy."[54] Relying on this point in the Larson treatise, another commentator has asserted, "When...an injury is intended and effectuated through a deliberate managerial decision by those *with corporate decision-making responsibility and authority regarding such matters*, a strong argument can be made for allowing a tort claim."[55]

In *Crissman*, Judge Rovner offered a sensible resolution to the conflict over the alter ego exception. Under the *Crissman* standard, an individual is deemed an alter ego if he or she has "the authority to make decisions and set policy on behalf of an employer," and thus "speaks for the company."[56] This standard is consistent with the Illinois Supreme Court's decision in *Meerbrey*, which reasoned that workers' compensation exclusivity should not apply in cases where the employer itself committed the intentional tort.

It is reasonable and fair to say, as the *Crissman* standard does, that when a tort is committed by a key decision-maker of an employer, it is truly committed by the employer. Moreover, as Judge Rovner emphasized, the *Crissman* standard is based on a "realistic and practical appraisal" of what it means to be an alter ego of an employer.

For these reasons, the state and federal courts of Illinois should uniformly adopt the *Crissman* standard for defining the alter ego exception to workers' compensation exclusivity. Then, the workers of Illinois would know with greater certainty whether they can go to court to obtain relief for intentional torts in the workplace.

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50. See, for example, *Daulo v Commonwealth Edison*, 938 F Supp 1388 (ND Ill 1996); *Rowan v Gottlieb Memorial Hospital*, No 95-C-6515, 1996 WL 131716 (ND Ill Mar 20, 1996); *Alberts v Wickes Lumber Co.*, No 93-C-4397, 1995 WL 476654 (ND Ill Aug 9, 1995); *Wood v Illinois Bell Telephone Co.*, No 93-C-5194, 1994 WL 194228 (ND Ill May 16, 1994); *Reynolds v Hitachi Seiki USA, Inc.*, No 92-C-8281, 1993 WL 384535 (ND Ill Sept 28, 1993); *Kennedy v Fritsch*, No 90-C-5446, 1993 WL 761979 (ND Ill Mar 1, 1993) (report of Executive Magistrate Judge Lefkow).

51. *Rowan*, 1996 WL 131716 at 2 (quoting *Crissman*, 60 Empl Prac Dec (CCH), at 73,001).

52. *Wood*, 1994 WL 194228 at 3 (quoting *Crissman*, 60 Empl Prac Dec (CCH), at 73,001).

53. *Kennedy*, 1993 WL 761979 at 10; *Alberts*, 1995 WL 476654 at 5; *Reynolds*, 1993 WL 384535 at 3.

54. Arthur Larson, 2A *Larson's Workers' Compensation Law* at § 68.23.

55. Joseph King, *The Exclusiveness of an Employee's Workers' Compensation Remedy Against His Employer*, 55 Tenn L Rev 405, 450 and n219 (1988) (citing Arthur Larson, 2A *Workmen's Compensation Law* § 68.23).

56. *Crissman*, 60 Empl Prac Dec (CCH) at 73,001. As was discussed earlier, some post-*Crissman* decisions have treated *Crissman* as establishing a *two-prong* standard that looks both at the authority of the tortfeasor *and* whether the conduct is recurrent in nature. The addition of this second prong is misplaced. Although the court in *Crissman* did rely on the repeated nature of the conduct in finding the alter ego exception applicable, the court said that when tortious conduct is recurrent, it may be covered by either the alter ego exception or the "expressly authorized" exception. In fact, the recurrent nature of the conduct is most relevant to the "expressly authorized" exception: where tortious conduct is repeated, it is likely that the employer knew about it and approved it.

Accordingly, the *Crissman* standard endorsed by this article includes only the "authority" prong: if the intentional tort is committed by an individual who possesses the requisite authority, the alter ego exception should apply.