

**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

|                             |   |                                 |
|-----------------------------|---|---------------------------------|
| JASON POPE,                 | ) | No. ED98108                     |
|                             | ) |                                 |
| Respondent,                 | ) | Appeal from the Labor and       |
|                             | ) | Industrial Relations Commission |
| vs.                         | ) |                                 |
|                             | ) |                                 |
| GATEWAY TO THE WEST         | ) |                                 |
| HARLEY DAVIDSON and         | ) |                                 |
| MISSOURI AUTOMOBILE DEALERS | ) |                                 |
| ASSOCIATION,                | ) |                                 |
|                             | ) |                                 |
| Appellants.                 | ) | FILED: October 23, 2012         |

Gateway to the West Harley Davidson (“Employer”) and the Missouri Automobile Dealers Association Services Corporation (“Insurer”) appeal from the decision of the Labor and Industrial Relations Commission (“Commission”) awarding workers’ compensation benefits to employee Jason Pope (“Pope”). Pope was injured when he fell down a small flight of stairs connecting an upper showroom to a lower showroom at Employer’s motorcycle dealership. Pope was carrying a work-required motorcycle helmet at the time of the incident. The fall caused Pope’s right ankle to dislocate and fracture.

Under Section 287.010.1 RSMo. Cum. Supp. (2010), an employer is liable to provide compensation for personal injury suffered by an employee if the employee’s accident arises out of and in the course of the employee’s employment. An injury does not arise out of and in the course of employment, and therefore is not compensable under workers’ compensation, if the injury comes from a hazard or risk unrelated to the employment to which the worker would have been equally exposed in normal, non-employment life. Section 287.020.3(2)(b), RSMo. Cum. Supp. (2010). On appeal, Employer and Insurer argue that because Pope was equally exposed to the risk that caused his injury in his normal non-employment life, the injury did not occur in the scope and course of his employment and, therefore, the Commission’s award was not supported by competent and substantial evidence.

AFFIRMED.

Division IV holds: Viewing the evidence in the context of the whole record, the Commission’s decision is supported by competent and substantial evidence. The record contains no evidence that Pope normally carried his motorcycle helmet while descending stairs in his normal, non-employment life. Because Pope’s injury arose out of and in the course of his employment as required by Section 287.020.3(2), the Commission did not err in awarding workers’ compensation benefits.

Opinion by: Kurt S. Odenwald, J., Lawrence E. Mooney, P.J., and Patricia L. Cohen, J., Concur.

Attorney for Appellants: Susan M. Kelly

Attorney for Respondent: Thomas M. Burke

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**