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## Workmen's Compensation—Injury Arising Out of and in the Course of Employment

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of a modern society, it is felt that the decision reached in the principal case is correct. It is submitted, however, that by a recognition of the existence of a right of privacy, the court will not in all cases permit a recovery in the absence of publication of the wrongfully gained material. It was necessary in this case to establish such a right in the plaintiff without a publication by the defendant, for if this had not been done, a privilege to willfully eavesdrop, with immunity therefor, would have been granted. Thus a justifiable result was reached in the principal case by giving primary consideration to the protection of the plaintiff.

M. D. W., Jr.

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WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT.—Deceased was employed by a tractor repair company. The owner of the company had an informal understanding with his employees that help was to be given by the employees to any motorist they found in distress on the highways, in the belief that this would indirectly help his business, in that other motorists would help his drivers if the need arose. Deceased, while driving a company truck in performance of his duties, stopped to assist a fellow trucker in difficulty. He was attempting to warn oncoming motorists with a flashlight when he was struck and killed by an approaching truck. The widow asks payment under the state workmen's compensation statute. *Held*, affirming the lower court, that the injury and death resulted from an accident arising out of and occurring in the course of employment. *U.S. Fidelity & Guaranty Co. v. Hamlin*, 105 S.E.2d 481 (Ga. 1958).

GA. CODE tit. 114, § 102 (1935), states that for an injury to come under that state's workmen's compensation statute, the injury must result from an accident "arising out of and in the course of employment."

The problem raised by the principal case and the applicable section of the *Georgia Code* is one which is extremely easy to isolate and pose, and just as difficult to resolve. It may be stated quite simply: When does an injury arise out of and in the course of employment? The majority of jurisdictions in this country have statutory provisions similar to that of Georgia, if not in form, at least in substance. Interpretation of these statutes has given rise to a multitude of cases in which the courts have attempted to formulate some

general rules to be used as guideposts in deciding the borderline cases.

In *Colwell v. Mosley*, 309 S.W.2d 350, 351 (Ky. 1958), the court stated that the employment and the injury "must have a causal connection . . . one which is possible to trace to the nature of employee's work or to the risks to which the employer's business exposes the employee."

The language used in a recent Colorado case may be more helpful with respect to the factual situation in the principal case. That case takes the position that, "if what employee is doing is an incident to or a hazard of his employment, in the course of which he is injured, it is connected with employment in such a manner as to make the injury compensable." *Alexander Film Co. v. Industrial Comm'n*, 136 Colo. 486, 319 P.2d 1074 (1957).

The final test, of course, is "whose work was the servant doing, and under whose control was he doing it"? *Cooley v. Tate*, 87 Ga. App. 1, 5, 73 S.E.2d 72, 74 (1952). The cases uniformly hold that although the manner, time, and circumstances of performance are left to the discretion of the employee, that this does not automatically disqualify him from compensation. *Fulmer v. Aetna Cas. & Sur. Co.*, 85 Ga. App. 102, 68 S.E.2d 180 (1951); *Wilson v. Rowan Drilling Co.*, 55 N.M. 81, 227 P.2d 365 (1950); *Oklahoma Ry. v. Cannon*, 198 Okla. 65, 176 P.2d 482 (1946).

Applying the above findings to the principal case would disclose the following items in support of the court's holding. 1. The informal understanding between employer and employee that help was to be given stranded motorists establishes the employment as the ultimate cause of the injury. 2. The fact that giving aid to motorists was incidental to the primary duties of deceased does not take the act from the category of "arising out of and in the course of employment." 3. The fact that the employee could exercise discretion as to the time, manner and circumstances under which he would render aid does not deprive the act of any qualities necessary for compensation.

Helpful as these rules may be in deciding the majority of compensation cases, it is felt that, as to the borderline cases at least, the only workable general rule is "whether or not a given accident is so intimately related to employment as to come within coverage of workmen's compensation statute must depend upon its own parti-

cular facts and circumstances." *Demara v. Employers Liability Assurance Corp.*, 250 F.2d 799 (5th Cir. 1958).

West Virginia is faced with the same problems confronting the other jurisdictions. W. VA. CODE ch. 23, art. 4, § 1 (Michie 1955), states that the only injuries covered by this state's compensation statute are "personal injuries in the course of and resulting from their employment. . . [the] terms 'injury' and 'personal injury' shall be extended to include silicosis. . . ." There are other sections of the *West Virginia Code* adequately and completely covering compensation for silicosis, and very little room is left for judicial interpretation.

In the West Virginia cases the court has attempted to set out general rules to determine what injuries arise "in the course of and resulting from their employment." *Adams v. Murphy Co.*, 115 W. Va. 122, 174 S. E. 794 (1934), held that "the injury to be compensable must be directly attributable to a definite, isolated, fortuitous occurrence". This case would seem to disqualify one receiving an injury as a result of an extended period of bad working conditions.

As to causation, our court held in *De Francesco v. Piney Mining Co.*, 76 W. Va. 756, 86 S.E. 777 (1915) that the "existence of a causal relation between such omission and the injury is essential."

The phrases "in the course of" and "resulting from" are not synonymous, the former relating to time, place and circumstances, and the latter to the origin of the injury. *Archibald v. Workmen's Compensation Comm'r*, 77 W. Va. 448, 87 S.E. 791 (1916). To the effect that both phrases must be satisfied, see *Damron v. State Compensation Comm'r*, 109 W. Va. 343, 155 S.E. 119 (1930).

The above cited West Virginia cases seem to indicate that our court would have reached the same conclusions as those reached by the Georgia court in the principal case. As a matter of fact it can safely be said that there are no minority jurisdictions in this field, as courts throughout the country closely approach uniformity in dealing with the general principles behind this problem.

However, little help toward correct determination of a particular question in a workmen's compensation case is derived from the consideration of other cases involving different circumstances.

T. J. W.