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Workman's Compensation - Accidents During Course of Employment - Mixed Business and Pleasure Activities of Salesmen

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WORKMEN'S COMPENSATION—ACCIDENTS DURING COURSE OF EMPLOYMENT—MIXED BUSINESS AND PLEASURE ACTIVITIES OF SALESMEN

Plaintiff sought compensation under the Louisiana Workmen's Compensation Law for the death of her husband, who had been employed by defendant motor company as an automobile salesman. Deceased had gone to a trade school to call upon a prospective buyer and, while awaiting the latter's arrival, was offered an airplane ride by another student, who allegedly was intoxicated. Deceased replied that he "would just as soon sell him an automobile as anyone else" and embarked. The plane crashed and both were killed. *Held*, compensation awarded. The injury resulting in the salesman's death occurred while he was performing services arising out of and in the course of his employment. *Green v. Heard Motor Co.*, 224 La. 1077, 71 So.2d 849 (1954).

The workmen's compensation acts of forty-one states have employed the terms "arising out of" and "during the course of" employment to indicate the scope of their coverage.[1] The content of these terms is extremely difficult to determine when the employment in question is one in which business and pleasure are closely interwoven. Such employments are common; salesmen in particular receive wages for doing many things not ordinarily considered work. Where the injured employee's purpose at the time of the accident is equivocal, courts have inquired whether his dominant purpose at the time was the pursuit of business or pleasure[2] or whether the pleasant activity during the course of which he was injured was incidental to an overriding business purpose or *vice versa*.[3] The dissimilarity of the various facts presented to the courts prevents the formulation of a general rule. For example, a New York court awarded compensation to a salesman injured while returning home from a restaurant which he had visited partly with a view to selling his wares to the proprietor.[4] On the other hand, a Wisconsin court denied compensation to an automobile salesman injured on his way home from a tavern where, he testified, he had tried to interest the bartender in buying a car.[5] In a Utah case, the

1. 1 LARSON, THE LAW OF WORKMEN'S COMPENSATION §§ 6.00, 6.10 (1952).
2. Olson v. Trinity Lodge, 226 Minn. 141, 32 N.W.2d 255 (1948).
3. Price v. Shorewood Motors, 214 Wis. 64, 251 N.W. 244 (1933).
4. Mendelson v. Modern Vending Co., 37 N.Y.S.2d 103 (1942).
5. Price v. Shorewood Motors, 214 Wis. 64, 251 N.W. 244 (1933).

court allowed recovery to an automobile salesman injured while demonstrating a car. During the course of the ride, the prospect invited aboard, with the salesman's approval, several friends, including women, and the party of eight was heading for a dance-hall when the accident occurred. The court regarded the hilarity as incidental to the salesman's paramount business purpose.[6] A California court denied compensation to a state employee who was killed at a picnic in a speed boat accident with a man whom he had gone to the picnic to consult on a business matter.[7] The court thought that even if the parties had not completed their business when they embarked on the boat ride, they "laid it aside" during the ride. In a recent New Jersey case, the claimant had been injured in an automobile accident while driving a baby sitter home after returning from an official function of an Optimists' Club. The claimant's employer, a mortician, had secured claimant's admission to the club "to incidentally remind the sanguine fraternal brethren that the doors of death and of his employer's funeral home were always open."[8] Recovery was allowed. The Louisiana Supreme Court regarded a salesman as within the course of his employment when he was injured on a trip to Mississippi with a prospect who hoped to secure funds there with which to close a deal.[9] These decisions illustrate the difficulty of the problem.

In the present case, plaintiff's deceased husband was not confined by his employer to any particular territory or hours in his selling activities. The only question presented was whether or not he had left his employment when he embarked on the airplane ride.[10] The trial court and the court of appeal denied compensation on the grounds that plaintiff had not established that her deceased husband was led to accept the plane ride by a genuine belief that the pilot was a prospective buyer. The Supreme Court found that this had been established and reversed the decision with Justice Hamiter dissenting. An appli-

6. Ford Motor Co. v. Industrial Commission, 64 Utah 425, 231 Pac. 432 (1924).

7. Torrey v. Industrial Accident Comm., 132 Cal. App. 303, 22 P.2d 525 (1933).

8. Harrison v. Stanton, 26 N.J. Super. 194, 97 A.2d 687 (1953).

9. Harkness v. Olcott-Stone Motors, 203 La. 947, 14 So.2d 773 (1943).

10. Since employees are not barred by their negligence from recovery under the Workmen's Compensation Law, the court justifiably attached no importance to the evidence that the pilot of the plane had been drinking when he offered the salesman the ride. See LA. R.S. 23:1031 (1950). This legislation is discussed in MALONE, LOUISIANA WORKMEN'S COMPENSATION LAW AND PRACTICE 448 (1951).

cation for rehearing was withdrawn after the parties reached an amicable settlement.

The decision seems in keeping with the spirit of the Louisiana Workmen's Compensation Law. The court recognized that salesmen are required by their employer's business to create receptive attitudes or good will among their acquaintances, not only for the employer's wares, but for the salesmen themselves, as part of the merchandising organization. It is not inconceivable that all the activities of some enthusiastic salesmen are colored by a business motive and that such salesmen are always partly at work. For example, confronted with another type of employment requiring the constant cultivation of good will, a Pennsylvania court has held that a minister injured on a hunting trip with members of his congregation was entitled to compensation.[11] In view of the mixed purposes with which those who practice salesmanship tend to act, the instant case does not seem to extend the coverage of the Workmen's Compensation Law too far. It is interesting to speculate whether or not the finding of a business motive on the salesman's part in the instant case was necessary for the decision. When the salesman arrived at the place where he intended to meet the prospect and decided to await his arrival there, what has been termed a "standby" period in his employment began.[12] Recovery has been allowed in several Louisiana cases for injuries sustained by an employee pursuing his own whim or convenience in such a period of necessary idleness.[13] Recovery has been denied when the employee abused the standby period.[14] It is submitted that the salesman's taking an airplane ride in the instant case would have constituted an abandonment of the standby vigil and a departure from the course of employment, had he not had a business motive in accepting the plane ride.

John M. Shaw

11. Adams v. East Pennsylvania Conference, etc., 49 Pa. D. & C. 61 (1943).

12. See MALONE, LOUISIANA WORKMEN'S COMPENSATION LAW AND PRACTICE § 164 (1951).

13. Fields v. Brown Paper Mill, 28 So.2d 755 (La. App. 1946); Goins v. Shreveport Yellow Cabs, 200 So. 481 (La. App. 1941); McClendon v. Louisiana Cent. Lbr. Co., 135 So. 754 (La. App. 1931).

14. Como v. Union Sulphur Co., 182 So. 155 (La. App. 1938); Nance v. United Fruit Co., 131 So. 738 (La. App. 1930).