WORKMEN'S COMPENSATION: RECOVERY OF BENEFITS UNDER THE DUAL PURPOSE DOCTRINE

RECOVERY under workmen's compensation is limited to injuries incurred "in the course of employment." One of the most troublesome facets of this litigious phrase arises when an injury is incurred on a trip made for both business and personal reasons, commonly referred to as a dual purpose trip.

In *Corley v. South Carolina Tax Comm'n*,[1] the Supreme Court of South Carolina was confronted with the problem of the correct interpretation and application of the dual purpose doctrine in determining whether a fatal injury to an employee of the defendant was incurred "in the course of employment." Decedent, a field agent of defendant, invited two friends to accompany him to the state capital to attend a football game, explaining to them that he had to transact some official business before the game. After their arrival, the decedent and his friends went to the football stadium, where the decedent had prearranged a meeting with a state senator who was from the same town as the decedent. However, the two men agreed to postpone their meeting until after they had returned home the next day. Decedent then went to the football game. While returning to his home on the morning after the game, the decedent was killed in a collision with a truck.

The Supreme Court of South Carolina denied compensation to the decedent's wife on the ground that the trip was made for the decedent's personal pleasure.[2] The court held that the meeting with the senator did not necessitate the trip. Emphasizing that both men were from the same town,[3] the court concluded that if the football game had been canceled, the only reasonable inference that could be drawn from the evidence was that the decedent would not have made the trip. In so holding, the court adopted the lucid formula expounded by Judge Cardozo in *Marks' Dependents v. Gray*[4] and correctly applied the test to the fact situation presented.

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[1] 117 S.E.2d 577 (S.C. 1960).

[2] In so holding the court overruled the Industrial Commission's finding that the decedent's work necessitated the journey.

[3] The court also pointed out that the senator stated that the matter he wished to discuss with decedent was of a local nature, and so far as he knew involved nothing requiring a trip to the state capital. 117 S.E.2d at 582.

[4] 251 N.Y. 90, 167 N.E. 181 (1929).

In the *Marks* case, a plumber's helper who was going to drive to a neighboring town to meet his wife was asked by his employer to repair some plumbing in that town. The work would not have justified a special trip for the sole purpose of repairing the plumbing. Shortly after starting on his trip, the employee was fatally injured in an automobile accident. The court denied compensation, Cardozo stating:[5]

> We do not say that service to the employer must be the sole cause of the journey, but at least it must be a concurrent cause. To establish liability, the inference must be permissible that the trip would have been made though the private errand had been canceled . . . . The test in brief is this: If the work of the employee creates a necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own . . . . If, however, the work has had no part in creating the necessity for travel, if the journey would have gone forward though the business errand had been dropped, and would have been canceled upon failure of the private purpose, though the business errand was undone, the travel is then personal, and personal the risk.

Some courts, although purporting to follow the *Marks* rule, have interpreted Cardozo's test to be one of dominant or principal purpose.[6] The case of *Butler v. Nolde Bros., Inc.*[7] is illustrative of this interpretation. The decedent, a route salesman, was fatally injured on a dual purpose trip. The Supreme Court of Appeals of Virginia, although purporting to adopt the *Marks* test, denied compensation, stating that the decedent's fatal injury was incurred on a trip "for the principal purpose of a social visit with his friends . . . and with the incidental purpose of collecting from them for deliveries . . . previously made."[8]

[5] *Id.* at 93, 167 N.E. at 183. The *Marks* approach has been adopted by approximately one-half the states. 1 LARSON, WORKMEN'S COMPENSATION 242 n.27 (1952).

A good example of a case in which the *Marks* test was applied to allow compensation is Irwin-Neisler & Co. v. Industrial Comm'n, 346 Ill. 89, 178 N.E. 357 (1931). In that case an employee who was about to leave for a vacation was asked by his employer to stop on his way back and make a study of why a product was not selling well in a particular area. After his vacation had ended, the employee made the study. While returning to his home, he was injured in a collision. In awarding compensation, the court pointed out that if the employee had not made the investigation, someone else would have been sent to do the same job. For further examples of decisions allowing recovery under this test, see Dauphine v. Industrial Acc. Comm'n, 57 Cal. App. 2d 729, 109 P.2d 978 (Dist. Ct. App. 1941); Levy v. Levy's Bazaar, 257 App. Div. 885, 12 N.Y.S.2d 131 (1939); Standard Oil Co. v. Smith, 56 Wyo. 537, 111 P.2d 132 (1941).

[6] *E.g.*, Pohler v. T. W. Snow Constr. Co., 239 Iowa 1018, 33 N.W.2d 416 (1948); Kaplan v. Alpha Epsilon Phi Sorority, 230 Minn. 547, 42 N.W.2d 342 (1950).

[7] 189 Va. 932, 55 S.E.2d 36 (1949).

[8] *Id.* at 943, 55 S.E.2d at 41.

The court did not adequately consider the question of whether the trip would have been made if the social visit had been canceled.[9]

The dominant or principal purpose formulation is an inaccurate and undesirable interpretation of the *Marks* rule. Cardozo, in expounding this rule, specifically stated that an injury incurred on a trip of which a business purpose was a concurrent cause is compensable. He defined concurrent cause as a cause which would have necessitated making the trip even if the personal objective was no longer present. This formulation, correctly applied, does not require that the motives of the employee be weighed for the purpose of ascertaining the most important or compelling cause of the journey. Yet, under the dominant purpose construction, the court must apply this highly subjective test in determining if the injury is compensable.

Other courts have adopted the "no nice inquiry" approach to the dual purpose problem.[10] Under this rule, "it is enough that there was a concurrent business and personal motive and no nice inquiry will be made to determine the relative importance of each."[11] It is apparent that some courts have adopted this approach as a reaction against the dominant or principal purpose interpretation of the *Marks* test. For example, in *Cook v. Highway Cas. Co.*,[12] the Supreme Court of Florida, in adopting the "no nice inquiry" rule, stated:[13]

[T]he decisions of those courts which do not require the Commission to weigh the business and personal motives and determine which is the dominant

[9] The court indicated that although there was a business purpose, the business was such that it could have been accomplished equally as well at the time when decedent normally transacted such business. Since the business could have been done at another time the court concluded that the trip on which decedent was fatally injured was "more of a personal than a business nature." *Id.* at 942, 55 S.E.2d at 41. However, as is pointed out in 1 LARSON, *op. cit. supra* note 5, at 244, "[I]t is not necessary, under this formula, that, on failure of the personal motive, the business trip would have been taken *by this particular employee at this particular time.* It is enough that someone sometime would have had to take the trip to carry out the business mission. Perhaps another employee would have done it; perhaps another time would have been chosen; but if the trip would ultimately have had to be made, and if the employer got this necessary item of travel accomplished by combining it with his employee's personal trip, it is accurate to say that it was a concurrent cause of the trip, rather than an incidental appendage or afterthought."

[10] See Phoenix Indem. Co. v. Industrial Acc. Comm'n, 31 Cal. 2d 856, 193 P.2d 745 (1948); Cook v. Highway Cas. Co., 82 So. 2d 679 (Fla. 1949); Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381 (1951); Talent v. M. C. Lyle & Son, 187 Tenn. 482, 216 S.W.2d 7 (1948).

[11] 5 NACCA L.J. 61, 64 (1950).

[12] 82 So. 2d 679 (Fla. 1955).

[13] *Id.* at 682.

or compelling cause of the trip, are more consistent with the remedial purposes of our workmen's compensation act than is the more stringent rule of *Marks' Dependents v. Gray* . . . and we agree . . . that " 'no nice inquiry' will be made to determine the relative importance" of a concurrent business and personal motive.

The "no nice inquiry" approach, to the extent that it eliminates the weighing of motives, is consistent with the *Marks* rule. However, one authority has perceptively noted that this approach "supplies no positive test with which to solve the many close questions that are constantly arising."[14] The "no nice inquiry" rule is, in effect, an abandonment of any attempt to circumscribe the applicability of workmen's compensation; conceivably, it would allow recovery even if the business purpose were infinitesimal.

The Supreme Court of South Carolina is to be commended for adopting the correct interpretation of the *Marks* rule.[15] Properly applied, this test establishes workable limitations and, at the same time, furthers the humanitarian purpose of workmen's compensation.[16] In order to conform to this purpose, the applicable statutory provisions should be liberally construed;[17] the *Marks* approach is sufficiently

[14] 1 LARSON, *op. cit. supra* note 5, at 250.

[15] Of course it may be argued that the *Marks* test establishes an arbitrary cutoff point for compenstation. However, the fixing of boundaries of protection involves basic policy considerations that defy hard and fast rules. No matter how far the boundaries of protection are extended, there always will be troublesome borderline cases in which ultimate results will require balancing of conflicting interests. The cutoff point established by the *Marks* case is certainly no more arbitrary than any other cutoff point that might be established.

[16] Workmen's Compensation is a branch of social insurance designed to protect workers from a substandard level of life, resulting from a disabling work injury, by facilitating the recovery of compensation. The need for this type of legislation grew out of the fact that the rules which governed employment-connected injuries prior to workmen's compensation "were predicated on notions of fault and dismally failed to protect the injured workmen." Riensenfeld, *Forty Years of American Workmen's Compensation*, 7 NACCA L.J. 15, 17 (1951).

[17] *Accord*, Clark v. Village of Hemingford, 147 Neb. 1044, 26 N.W.2d 15 (1947); Sligh v. Pacific Mills, 207 S.C. 316, 35 S.E.2d 713 (1945); Wilkins v. Blanchard-McDonald Lumber Co., 115 Vt. 89, 52 A.2d 781 (1947). See generally, HOROVITZ, CURRENT TRENDS IN WORKMEN'S COMPENSATION 470-72 (1947), where he points out:

> "[C]ompensation laws were enacted as a humanitarian measure, to create a new type liability—liability without fault—to make the industry that was responsible for the injury bear a major part of the burdens resulting therefrom. It was a revolt from the old common law and creation of a complete substitute therefor. . . . It meant to make liability dependent on a relationship to the job, in a liberal, humane fashion, with litigation reduced to a minimum. It meant to cut out the

broad to effectuate this objective. Since this test is more consistent with the remedial purpose of workmen's compensation acts than is either the dominant purpose interpretation or "no nice inquiry" approach, it should not be distorted by inaccurate interpretation.[18]

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narrow common law methods of denying awards.

"The early cases tended to be strict; but the later and modern trend was and is to construe the acts broadly and liberally, to protect the interests of the injured worker and his dependents."

[18] An excellent discussion of the dual purpose doctrine is found in 1 LARSON, *op. cit. supra* note 5, at § 18.