LARSON'S WORKERS' COMPENSATION, DESK EDITION

CHAPTER 15 EMPLOYER'S CONVEYANCE

Synopsis

SCOPE

When the journey to or from work is made in the employer's conveyance, the journey is in the course of employment, the reason being that the risks of the employment continue throughout the journey.

§ 15.01 General Rule Covering Trips in Employer's Conveyance

[1] Cases on Employer's Conveyance Summarized

If the trip to and from work is made in a truck, bus, van, car, or other vehicle under the control of the employer, an injury during that trip is incurred in the course of employment.[1]

It is important in certain cases to observe that the reasons underpinning the rule on furnishing of travel expense or company automobiles in the last section and the rule on furnishing transportation in a conveyance under the employer's control in this section are two different reasons. The reason for the rule in the preceding section depends upon the relative importance of travel as a part of the service performed; the supplying of cash or cars is evidence of the status of the journey as part of the compensated employment. The reason for the rule in this section depends upon the extension of risks under the employer's control.

[2] Payment by Employee Immaterial

One type of case in which this difference of reason is relevant is that in which the employee pays out of his or her own pocket for the transportation furnished in the employer's own conveyance. Since the element of control of the risk in the employer-operated-vehicle case is an independent ground of liability, the employer remains liable for the journey even though it charges the employee an amount for the trip sufficient to cover its cost.[2] Although all trace of extra compensation or reimbursement for the journey disappears, control of the conditions of transportation remains as a ground of liability.

Thus, in an Iowa case,[2.1] the fact that a university employee paid a fare to ride in a van operated by her employer was not determinative of whether her injury occurred in the course of her employment. What determined the issue was the fact that the university was in control of the risks during the employee's commute.

[3] Substitute for Employer's Conveyance

Another type of case in which the difference of reason must be observed is that in which a substitution for the normal mode of transportation is made. If there is nothing more in the facts than the bare availability of transportation in the employer's conveyance, which privilege the employee

forgoes in favor of using his or her own car,[3] motorcycle,[4] or bicycle,[5] compensation has been denied. This result is consistent with the present analysis of the underlying rationale of the employer-conveyance exception, since plainly the employee is not subject to the hazards of a facility of the employer while traveling in the employee's own vehicle.

Conversely, in a clear case of employer payment for the expense of travel, the time of travel, or both, under circumstances identified in the previous section as showing that this type of payment marked the journey itself as part of the service,[6] the fact that the employee adopts some substitute for the usual method of making the journey does not alter the key fact that the journey remains part of the service compensated for.

And so, in a Florida case,[7] compensation was awarded to an employee who sustained injuries in an automobile accident while commuting at the end of the work day. The employee's normal practice was to ride with his foreman, a benefit had been specifically provided the employee by the employer. On the day of the injury, the employee chose instead to ride home with another employee because the foreman decided to stop by a bar and have a few drinks. The court held that the transportation to and from work was incidental to the employment; the fact that claimant accepted other transportation where employer-provided transportation was not reasonably available did not bar the compensation claim.

FOOTNOTES:

Footnote 1. *E.g.* Constantine v. Sperry Corp., 149 A.D.2d 394, 539 N.Y.S.2d 499 (1989). To lessen congestion in its parking lot, Sperry leased a van to transport its employees to and from work. Constantine, a Sperry employee, fell out of his seat and was injured when the van struck a curb. The court held that Constantine's injury arose out of and in the course of his employment. His sole remedy lay with the Workers' Compensation Law, and any tort causes of action were barred by the exclusive remedy rule.

Waterhouse Water Conditioning, Inc. v. Waterhouse, 561 N.W.2d 55 (Iowa 1997). An Iowa court has extended the exception to the going and coming rule to *any* substitute vehicle driven by the employee, *including a bicycle.* The court ruled that the worker's substitution of another means of transportation did not affect the compensability of injuries during the commute. The employer's carrier had argued that in choosing a bicycle, the deceased had altered the nature of the risks inherent within the commute, but the court did not accept that rationale.

Vaughan's Landscaping & Maint. v. Dodson, 262 Va. 270, 546 S.E.2d 437 (2001). A 19-year-old laborer, who sustained an arm injury in an vehicular accident while being driven home by his boss after the two had spent several hours drinking and visiting with friends, was entitled to workers' compensation benefits in spite of the fact that he was intoxicated at

the time of the injury. The court ruled that under the employer conveyance doctrine, the accident occurred within the course and scope of the employment.

Salt Lake City Corp. v. Labor Comm'n, 2007 UT 4, 153 P.3d 179. Ross, a field training officer for the Salt Lake City police department, sustained injuries in an auto accident that occurred when she drove a marked patrol car to her residence. She was permitted to drive the patrol car as a participant in the department's ''Take Home Car Program.'' When Ross sought workers' compensation benefits, her employer contended the claim was barred by the going and coming rule. The court affirmed a ruling that held Ross' claim was not barred. The city received benefit from the program. More officers were available for immediate response to calls. The cars were better maintained. While Ross also received benefits, those benefits were irrelevant to the scope of employment issue.

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But cf. Lemon v. New York City Transit Auth., 72 N.Y.2d 324, 532 N.Y.S.2d 732, 528 N.E.2d 1205 (1988). A subway employee was injured going up the stairs leading to the street on her way home approximately one hour and twenty minutes after finishing her shift. She was still in uniform and carrying her transportation pass, which was a fringe benefit provided by the employer that allowed her to ride the subways free of charge. In reversing the supreme court, the New York Court of Appeals denied the claimant workers' compensation benefits and held there was no reasonable connection between the claimant's injury and her employment, given the remoteness in time and space from her place of employment. The court found no evidence in the record to indicate that the employer Transit Authority assumed an obligation to facilitate the claimant's mode of travel in commuting to and from work. Use of the passes was not limited to going to and coming from work, and the Authority was indifferent as to the manner in which the claimant reached her employment each day. Although the employer was in control of the stairs, and the claimant was in a technical sense on her employer's premises when the accident occurred, ''claimant was a commuter, not an employee, using the subways as thousands of others do every day.'' 528 N.E.2d at 1209. **Treatise** quoted.

Footnote 2. Neyland v. Maryland Cas. Co., 28 So. 2d 351 (La. Ct. App. 1946).

Securex, Inc. v. Couto, 627 So. 2d 595 (Fla. Dist. App. 1993).

Footnote 2.1. Thayer v. Iowa, 653 N.W.2d 595 (Iowa 2002). **Treatise** cited.

Footnote 3. Martinez v. A & D Elec. Contractors, 510 So. 2d 1042 (Fla. Dist. Ct. App. 1987), *review denied,* 519 So. 2d 987 (Fla. 1987). The claimant was an electrician's helper who worked at various job sites. If he had reported to the company office he would have

been provided transportation to the site, in which case that journey would have been covered. But here he chose to drive his own car direct to the job. The court ruled that this was not covered, since it was no different from an ordinary trip to and from a regular place of work.

Footnote 4. Thornton v. Texarkana Cotton Oil Corp., 219 Ark. 650, 243 S.W.2d 940 (1951).

Footnote 5. Le Blanc v. Travelers Ins. Co., 68 So. 2d 910 (La. Ct. App. 1953).

But cf. Waterhouse Water Conditioning v. Waterhouse, 561 N.W.2d 55 (Iowa 1997). When the employee travels to work on his bicycle because the employer's van, which he normally drove, was being repaired, the court held that the employee's injuries were compensable. **Treatise** quoted.

Footnote 6. *See* Ch. 14, § 14.07, *above.*

Footnote 7. Wert v. Tropicana Pools, Inc., 286 So. 2d 1 (Fla. 1973).

§ 15.02 Employers in Transportation Business

The special position of employers whose very business is the provision of public transportation gives rise to a difficult question on which the available cases are divided. It has been held in Pennsylvania that a streetcar operator boarding a streetcar for a free ride to the car barn where he was to begin his day's duties,[1] in California that a streetcar employee riding home on a free pass after completing his duties,[2] and in New Jersey that a railway employee returning to his home town on a free pass at the end of his day[3] were within the course of employment. But New York has reached a contrary result in a case involving an employee riding on a free subway pass.[4] And in Florida, compensation was denied to the employee of a bus company for injury sustained while crossing the street to the company shop after alighting from a bus which the employee had utilized under a union contract providing that employees and their spouses could ride the buses free.[5]

The distinction discussed in the preceding section between the two reasons that can support compensability--making the journey part of the service, and extending the risks of the employment to the journey--may be helpful in sorting out the merits of this controversy. First, it may be noted that in the usual streetcar, bus and subway cases the value of the transportation furnished is so small that it would not ordinarily mark the journey as part of the service. The cases in which payment of travel expense has supported

compensability of the journey have generally involved much more expensive journeys than on a city mass transit system. On the other hand, one could readily imagine fact situations in which the value of the transportation furnished under the free pass would be so great that the journey would become part of the service; this would clearly be the case, for example, if an off-duty railroad conductor or flight attendant were being returned a considerable distance to a home base.

Even if the free rider on the mass transit system could not make a case on this ground, he or she might attempt the second ground, which is that the provision of transportation in the employer's conveyance in effect extends the risks of the employer's premises to the journey.

The difficulty with this argument is the same as the difficulty with the argument put forward by the city workers injured while traveling to work along the city's streets and sidewalks, and of railway workers walking to work along the railroad's right-of-way.[6] They too contended that they were on their employer's premises, and in a very technical and artificial sense this was true. In a more realistic sense, they were using these streets, walks and rights-of-way as members of the public, and in much the same way the employees riding buses, streetcars and subways to work are doing so as members of the public, whether they have free passes or not. The presence or absence of a free pass is of minor relevance to the second ground of liability now under discussion, since the question whether the risks of the employment have been extended to the journey does not turn on the question of payment. When an employer sends out a company truck for the express purpose of transporting employees, and only employees, to its plant, it makes sense to say that this truck resembles a part of the employment premises. But when streetcars and buses ply the streets for the almost exclusive purpose of carrying members of the public, of whom perhaps only one in a thousand may be a company employee on his or her way to work, the picture is not one of extending the employment premises and risk to that one-in-a-thousand.

FOOTNOTES:

Footnote 1. Brown v. Pittsburgh Rys., 197 Pa. Super. 68, 177 A.2d 5 (1962). Equally divided court.

Footnote 2. City & County of San Francisco v. Industrial Acc. Comm'n, 61 Cal. App. 2d 248, 142 P.2d 760 (1943).

Footnote 3. Micieli v. Erie R.R., 131 N.J. 427, 37 A.2d 123 (1944).

But see Mahon v. Reilly's Radio Cabs, Inc., 212 N.J. Super. 28, 513 A.2d 367 (1986), *cert. denied,* 107 N.J. 79, 526 A.2d 159 (1987). A bus company employee was not within the scope of his employment when he was injured while crossing the street after getting off a bus on his way to work. This was true even though his employer provided the free bus transportation as a benefit of employment. Note that this result is based on the specific language of the deliberately restrictive amendment passed in 1979. *See* text accompanying Ch. 13, § 13.01[2][b] ns.38 and 39. Indeed, the court in a dictum added that the employee would not have been covered under this statute even while riding the bus.

Footnote 4. Tallon v. Interborough Rapid Transit Co., 232 N.Y. 410, 134 N.E. 327 (1922).

Contra Konti v. New York City Transit Auth., 111 A.D.2d 1073, 490 N.Y.S.2d 646 (1985). Claimant, who worked at a power station of the city transit authority, was mugged in a subway station 200 yards from his duty station. He was held covered, since he was ''in the precincts of '' his employment, and particularly since he had been provided with a subway pass for going to and from work.

Footnote 5. Jacksonville Coach Co. v. Love, 101 So. 2d 361 (Fla. 1958). **Treatise** quoted.

Footnote 6. *See* Ch. 13, § 13.04[3], *above.*

§ 15.03 Non-contractual or Casual Provision of Transportation

The provision of transportation by the employer may come about as a result of custom and usage,[1] as well as by express contract, as when employees, working at some distance from their homes, engage in the known and habitual practice of riding on the employer's trucks.[2] Thus, in a New York case,[3] the employee was killed while on the way to work, when the employee fell from a truck owned by the employer. Although the truck drivers were not required to give any employees a ride to work, most regularly did so, and the employer had acquiesced in the long-established practice. Compensation was awarded by the New York Court of Appeals even though the truck was being used for another primary purpose, because the employer was in exclusive control of the conveyance. But an isolated and unauthorized ride in the employer's conveyance has usually been held to be outside the course of employment.[4]

It has been ruled in New York that when the employer himself went around in his own car picking up his employees in order to resume work after a rain the transportation was outside the course of employment because there was no agreement about transportation.[5]

In one recent Virginia case,[5.1] a soft-hearted employer had to be ''rescued''

from its own generosity. The evidence indicated that the employee ''practically begged'' to use a company van to get to work because he had car trouble. Reluctantly, the employer consented. After the employee was injured in an accident while driving to work, he filed a claim for workers' compensation benefits, contending the accident fell outside the normal going and coming exclusion because his transportation had been ''provided by the employer.'' The Workers' Compensation Commission disagreed and denied the claim.

On appeal, the court noted that where there was an actual legal agreement between the employer and the employee whereby the former supplied transportation to the employee, the commute might be a part of the employment. Here, however, the van was provided as a favor to the employee; the employer received no benefit from the arrangement. It was not the employer's customary practice to provide transportation to employees. The employee was not paid for the time spent in the van getting to work or going home. The use of the van during the commute was not incidental to the employee's job with the employer. All these factors were sufficient to support the Commission's findings that the accident did not occur within the course and scope of the employment.

In a somewhat similar case from Arkansas,[5.2] the court affirmed a denial of benefits to a supervisor who was injured in an automobile accident that occurred after he had taken another worker home and was proceeding toward his own residence in a company vehicle. Acknowledging that the employer had provided the injured employee a company vehicle to get to and from work, the court stressed that there was no evidence that the provision of the vehicle was anything more than a gratuitous favor on the part of the employer. According to the court, some actual benefit must be provided to the employer in order for the ''employer-conveyance'' rule to apply. Apart from the fact that it made it easier for the supervisor to get to work each day, the injured employee offered no evidence on this point. The court indicated the supervisor's evidence was insufficient to bring the commute within the course and scope of the employment.

However, the distinction between transportation provided by contract and transportation provided without agreement or as a courtesy is being increasingly questioned,[6] since the[7-8] fundamental reason for extension of liability--the extension of the actual employer-controlled risks of employment--is not affected by the question whether the transportation was furnished because of obligation or out of courtesy. Under appropriate

circumstances, the so-called ''control'' on the part of the employer can be quite indirect. In one Maryland case,[9] compensation was awarded to an employee who sustained injuries while riding in a bus owned and operated by a separate firm, which provided transportation services under contract with the employee's employer. The court found ample control on the part of the employer since it dictated how often the bus ran and when and where it stopped.

FOOTNOTES:

Footnote 1. *E.g.* Hanson v. Zollars, 189 Kan. 699, 371 P.2d 357 (1962). An employee frequently rode to work in a company car with his brother-in-law, who was a foreman for their employer. Accident on one such trip held in the course of employment.

But cf. General Dev. Corp. v. Kelley, 159 So. 2d 471 (Fla. 1964). Claimant was injured while crossing a highway. He had just left his employer's conveyance, and was returning to his car after work. Court found that arrangement whereby claimant was taken to work from a designated spot and returned there each evening in his employer's jeep was merely tolerated by the employer, and was not part of the contract of employment. Compensation denied.

Footnote 2. Watson v. Grimm, 200 Md. 461, 90 A.2d 180 (1952). Employee lived on employer's farm and customarily rode on his employer's truck to work and all or part of the way back home. *Held,* in course of employment.

Footnote 3. Holcomb v. Daily News, 45 N.Y.2d 602, 384 N.E.2d 665 (1978). **Treatise** cited. *But see* Cook v. Madison County Chapter of N.Y. State Assoc. of Retarded Citizens, 693 N.Y.S.2d 893 (Sup. Ct. 1999).

Footnote 4. Williams v. Pacific Employers Ins. Co., 109 Ga. App. 695, 137 S.E.2d 348 (1964). Decedent was killed while driving a company truck without permission. He was moving some hog wire he had purchased from his employer. Compensation denied.

Footnote 5. Pierdiluca v. Benedetto, 210 App. Div. 441, 206 N.Y. Supp. 358 (1924).

Footnote 5.1. Marshall v. Craft Forklift, Inc., 41 Va. App. 777, 589 S.E.2d 456 (2003).

Footnote 5.2. Swearengin v. Evergreen Lawns, 85 Ark. App. 61, 145 S.W.3d 830 (2004). Construing the Arkansas statute that limits workers' compensation recovery to injuries sustained ''while performing employment services,'' the court held that the ride given the other employee was not part of the employment and was done as a favor after all work for the day had been completed. There was nothing to take the case out of the ordinary ''going and coming rule.''

Footnote 6. *See* Lee v. BSI Temps., Inc., 114 Md. App. 1, 688 A.2d 968 (1997). Quoting extensively from the **Treatise**, the court announced the following very comprehensive rule: [T]he employer conveyance exception allows for the compensation of employees who are injured while riding in a conveyance that is under the control of the employer when such transportation is incidental to the employment *as a result of an express or implied*

agreement or by custom or continued practice of the parties, without regard to whether the transportation is provided for free or paid for by the employee and whether alternate forms of transportation are available.

688 A.2d at 975 (emphasis added). Here, the claimant was riding in a bus contracted for by her employer. The dispositive issue was the extent of the employer's control, and, notwithstanding the fact that the contracting party owned and drove the bus, the court found ample control in that the employer dictated how often the bus ran and where it stopped. The employer was liable for the claimant's injuries.

But see Marshall v. Craft Forklift, Inc., 41 Va. App. 777, 589 S.E.2d 456 (2003). The fact that an employer gratuitously allowed an employee to use a company van to get to work is insufficient, in and of itself, to cause the daily commute to be considered a part of the employment; an injury sustained while driving to work was not compensable.

The evidence indicated that the employee ''practically begged'' to use a company van to get to work because he had car trouble. The employer consented. After the employee was injured in an accident while driving to work, he filed a claim for workers' compensation benefits, contending the accident fell outside the normal going and coming exclusion because his transportation had been provided by the employer. The Workers' Compensation Commission disagreed and denied the claim.

On appeal, the court noted that where there was an actual legal agreement between the employer and the employee whereby the former supplied transportation to the employee, the commute might be a part of the employment. Here, however, the van was provided as a favor to the employee; the employer received no benefit from the arrangement. It was not the employer's customary practice to provide transportation to employees. The employee was not paid for the time spent in the van getting to work or going home. The use of the van during the commute was not incidental to the employee's job with the employer. All these factors were sufficient to support the Commission's findings that the accident did not occur within the course and scope of the employment.

Footnote 7-8. [Reserved]

Footnote 9. Lee v. BSI Temps, Inc., 114 D. App. 1, 688 A.2d 968 (1997).

§ 15.04 Approaching, Entering, or Leaving Conveyance

A division of authority has developed on the question whether the protection of the employer's conveyance doctrine applies only while the employee is on the conveyance, or extends to crossing the street before entering and after leaving the conveyance. The case which appears to have expressed the broadest rule involved a bus driver who had finished a day's work, and, pursuant to the privilege of riding home without charge on the employer's buses, had dashed diagonally across a city street to catch a bus that was

about to leave. The driver was struck by a motorist, and the death was held compensable.[1] The court put it this way:

In effect the Company said to Owens, ''Take your pass and go across the street to our bus; your day's work has been finished, and we are interested in seeing that you get home as expeditiously as possible.''

In Minnesota, under a statute[1.1] expressly providing that coverage extended to employees to whom transportation was regularly furnished, a streetcar company employee who was injured in a streetcar safety zone while awaiting transportation was allowed compensation.[2] And in cases in which truck transportation has been furnished, employees injured while crossing the road to board the truck in the regular way have been held covered.[3] On the other hand, several cases have denied compensation to streetcar employees injured while crossing the street to avail themselves of their privilege of free streetcar transportation.[4]

As for alighting at the destination, a New York case[5] allowed compensation to an employee crossing the road after he had been taken home by his foreman pursuant to an agreement that, after working overtime, he would be given transportation home. On the ground that this special agreement obliged the employer to see the employee safely all the way home, the court distinguished the earlier *Kostyum* case,[6] in which compensation had been denied to an employee let off from the employer's truck on the side of the road opposite his home and hit while crossing to the other side.

The confusion that characterizes this class of cases could be cleared up by forthrightly following the analogy of exceptions to the main premises rule itself. If one thinks of the employer's truck as a floating fragment of the premises, the analogy will supply answers in several familiar types of case. When the employer's truck pulls up across the street from the plant gate, the most fitting analogy is that of travel between two parts of the premises.[7] Let us suppose that there is an employer-maintained parking lot on the same side of the street where the truck boards and discharges employees. An employee parking his or her own car in that lot would be within the course of employment crossing the street in most jurisdictions.[8] With equal reason the employee crossing between plant gate and truck is in the course of employment.

However, when the employee approaches the truck from home in the morning, or leaves the truck at night, the analogy just invoked does not

apply. For reasons discussed in connection with the main premises problem, it would be undesirable to start the dangerous and unending game of fixing a ''reasonable distance'' to which protection is extended.[9] One analogy that might sometimes apply would be that of the special hazard necessarily encountered in the access route.[10] For example, if the employer's truck stopped at such a point that the employee necessarily had to cross a railroad track just after leaving the truck, the special hazard rule could appropriately be applied.

Another type of case in which this problem might arise is that involving a two-leg journey, in which the first leg is made in the employee's private car, and the second in the employer's conveyance. In *McCollum v. Rogers*,[10.1] the deceased employee drove his car to the highway each morning where he was picked up by his foreman. One morning the employee was found in his car dead from carbon monoxide poisoning. The appellate court determined that the employer had not provided transportation to the employee and denied compensation.

Another type of exception is that in which the employer in effect assumes control over a portion of a public sidewalk forming an approach to his premises.[11] This exception was relied on in a New York case in which the employer had made a regular practice of keeping the public approach to the place of business free from ice and snow. An employee who was injured alighting from an automobile which she had been invited by the employer to use was held to have been within the course of employment at that point.[12]

Approaching these cases on entering and leaving the employer's conveyance along the guide lines supplied by specific exceptions to the main premises rule will make for precision and consistency, and will avoid both the vagueness of the ''reasonable distance'' concept and the sweeping and paternalistic implications of the quotation from the Arkansas case with which this section began, which seemed to read into the simple issuance of a free pass, which could be utilized at any time, a complete safe-conduct from the employer's gate, across city streets, throughout the street car journey, and, presumably, to the employee's front door.

FOOTNOTES:

Footnote 1. Owens v. Southeast Ark. Transp. Co., 216 Ark. 950, 228 S.W.2d 646 (1950).

Spennacchio v. Delco Appliance Div., 11 A.D.2d 857, 202 N.Y.S.2d 912 (1960). The court held that the employer took control over the public approach to his place of business by the practice of regularly keeping the approach free from snow. The employee sustained an injury

upon alighting from a private automobile which she had been invited by the employer to use. Compensable.

Footnote 1.1. The current version of the statute, Minn. Stat. § 176.011(16), has identical wording..

Footnote 2. Radermacher v. St. Paul City Ry., 214 Minn. 427, 8 N.W.2d 466 (1943).

See also Jasaitis v. Paterson, 55 N.J. Super. 138, 150 A.2d 55, *aff'd,* 31 N.J. 81, 155 A.2d 260 (1959). A city policeman entitled to free transportation on city buses was injured on alighting from the bus on his way home. The New Jersey Appellate Division awarded compensation on the employer conveyance rule, but the supreme court rejected this view and affirmed compensation on the theory of continuing benefit from the policeman's uniformed though off-duty presence.

Footnote 3. Ward v. Cardillo, 77 App. D.C. 343, 135 F.2d 260 (1943).

Millers Mut. Fire Ins. Co. v. Rawls, 500 S.W.2d 545 (Tex. Civ. Ct. App. 1973). The decedent was an eight-year-old boy who was employed by a poultry company to gather chickens for a few hours each day. He was picked up by his employer's agent each evening before work and returned home later each night. On May 26, 1970, after being dropped off, the decedent was killed crossing the road in front of his home. The court awarded compensation, holding that the transportation was furnished as part of the contract and that the transportation extended until the boy crossed the street, especially in light of the employee's age.

Footnote 4. *E.g.* Dellepiani v. Industrial Acc. Comm'n, 211 Cal. 430, 295 P. 826 (1931).

Footnote 5. Sihler v. Lincoln Alliance Bank & Trust Co., 280 N.Y. 173, 19 N.E.2d 1008 (1939).

Footnote 6. Kostyum v. F. C. Sheldon Slate Co., 234 App. Div. 643, 251 N.Y. Supp. 906 (1931), *aff'd per curiam,* 259 N.Y. 515, 182 N.E. 160 (1932).

Footnote 7. *See* Ch. 13, § 13.01[4], *above.*

Footnote 8. *See* Ch. 13, § 13.01[4], *above.*

For a case in effect applying this principle to employer-furnished housing, *see* Morin v. Lemieux, 179 Conn. 501, 427 A.2d 397 (1979). Claimant was injured while walking from employer-furnished transportation by truck to employer-furnished lodgings. Claimant, under a contract made in Connecticut, was working on a construction project in Virginia. Since the transportation and housing were a condition of the employment, the trip was held covered.

Footnote 9. *See* Ch. 13, § 13.01[2], *above.*

For an attempt, e.g., to stretch the distance to two blocks, *see* Oefinger v. Texas Employers' Ins. Ass'n, 243 S.W.2d 469 (Tex. Civ. Ct. App. 1951). Employee sent to branch office, the company to pay his transportation fare home on weekends. After leaving a trolley

on the trip home, he was killed about two blocks away while going to his home. *Held,* compensation denied. Court specifically notes that they are not to decide what would be the result if the injury had occurred during the travel, although the opinion seems to exclude recovery.

Another type of case in which this problem might arise is that involving a two-leg journey, in which the first leg is made in the employee's private car, and the second in the employer's conveyance. *See, e.g.,* McCollum v. Rogers, 238 Ark. 499, 382 S.W.2d 892 (1964). Decedent drove his car to the highway each morning where he was picked up by his foreman. One morning he was found in the car dead from carbon monoxide poisoning. Court found that employer did not provide the transportation. Compensation denied. **Treatise** quoted.

Footnote 10. *See* Ch. 13, § 13.01[3], *above.*

See also Williams v. Workers' Comp. App. Bd. (City of Philadelphia), 850 A.2d 37 (Pa. Commw. Ct. 2004). The claimant suffered injuries when he hit his head on the employer's ''courtesy van.'' The van was provided by the employer to take employees from work to access public transportation. Interpreting the act broadly, the court held that this courtesy service was within the employer's ''business or affairs.'' Becker v. Industrial Comm'n (Russell), 308 Ill. App. 3d 278, 241 Ill. Dec. 663, 719 N.E.2d 792 (1999). The employee was provided transportation to his home in the employer's bus for the employer's benefit. He was injured after leaving the bus when he crossed the highway in front of the bus and was hit by a car coming around the bus. The court determined that the injury arose out of and in the course of the employee's employment. The court analogized this case to ones in which an employee is injured near the employer's premises such as the employer's parking lot or a public sidewalk next to the employer's property. The court also noted that the employee was subjected to a hazardous condition in crossing the highway.

Footnote 10.1. McCollum v. Rogers, 238 Ark. 499, 382 S.W.2d 892 (1964). **Treatise** quoted.

Footnote 11. *See* Ch. 13, § 13.02[2], *above.*

Footnote 12. Spennacchio v. Delco Appliance Div., 11 A.D.2d 857, 202 N.Y.S.2d 912 (1960).

§ 15.05 Employee Required to Furnish Own Conveyance

[1] Summary of Cases on Employees Furnishing Own Conveyance

If the employee as part of his or her job is required to bring along his or her own car, truck or motorcycle for use during the working day, the trip to and from work is by that fact alone embraced within the course of employment.[1]

[2] Theories of Liability in Own-conveyance Cases

The theory behind this rule is in part related to that of the employer-

conveyance cases: the obligations of the job reach out beyond the premises, make the vehicle a mandatory part of the employment environment, and compel the employee to submit to the hazards associated with private motor travel, which otherwise he or she would have the option of avoiding. But in addition there is at work the factor of making the journey part of the job, since it is a service to the employer to convey to the premises a major piece of equipment devoted to the employer's purposes. Since these are the reasons supporting the rule, care must be exercised not to confuse these cases with the more common cases discussed in Ch. 14 in which attention is focused exclusively on the journey itself--in particular, on the question: was the employee paid for the time or expenses of the journey itself? In the present category, it is immaterial whether the employee is compensated for the time or expenses of the journey, since work-connection is independently established by the fact of conveying the vehicle to the operating premises. Indeed, it is quite common in these cases to find that the employee is reimbursed for his or her mileage after he or she reaches the premises and until he or she leaves for home, but specifically not for the going and coming trip. Yet the going and coming trip has repeatedly been held covered in these circumstances.[2]

[3] Ancillary Activities Such as Repair of Vehicle

For the same reasons, the course of employment may be held to extend beyond the actual trip to necessary ancillary activities, such as repairs, connected with getting the vehicle to work;[3] thus, in two early cases compensation was awarded for accidents occurring in the course of trying to get the vehicle started in the morning.[4]

[4] Ordinary Going-and-coming Rule Distinguished

The danger of confusing this class of cases with ordinary going and coming cases is exemplified by the Massachusetts decision *In re Gwaltney's Case.* [5] Claimant, an account supervisor, spent about 25 percent of his time out of the office. When it was necessary for him to use his automobile, he was paid mileage plus tolls and parking. On the day of injury he drove to work, parked his car, and while walking towards his office slipped on some ice. A finding that claimant was in the course of his employment from the time he left home was held unsupported by the evidence, even though claimant was to have used his car on the day of injury for business. The court indicated that the use of the car later in the day would not alter the ordinary coming and going nature of claimant's trip to the office in the morning.

The Court's opinion gives no indication that the Court is aware of the special rule discussed in this subsection. The rationale of the Court consists of a flat assertion that this is an ordinary going and coming case, and that the fact that the employee was required to bring his car in the morning so as to use it for business purposes during the day was immaterial. Of course, the issue was obscured slightly by the circumstance that the accident occurred, not during the car trip itself as in the most of cases that have recognized this special rule, but on the street after the car had been parked. It seems, however, that this should not alter the result. If the car trip from home to office was in the course of employment under the special rule, it would appear illogical to carve out a small segment of the total trip, that from garage to office, and for that distance reconvert the trip to a personal one. After all, the employee had to use his car to get to work because he had to have it available for his employer's purposes during the day; it follows that he had to put the car in a garage; and thereafter he had to travel from the garage to the office. In short, the character of the journey from beginning to end was colored by the employment requirement of furnishing his own car during the day.

It will be seen that this type of case differs only in degree from the typical traveling employee's case. Here the time out of the office was about 25 percent. But suppose it had been 50 percent, or 75 percent. Many traveling employees spend a substantial time at a desk in the main office, but it would be unlikely that any court would for this reason relegate them to the same position as that of an employee with a fixed place of work on the employer's premises.

FOOTNOTES:

Footnote 1. *E.g.* Gilbert v. Star Tribune/Cowles Media, 480 N.W.2d 114 (Minn. 1992), *reh'g denied* (April 2, 1992). Claimant, a newspaper carrier, was required to use his personal automobile to deliver his papers. His earnings were based on the number of papers delivered, the price of gasoline, and the mileage he travelled on his route. Claimant was not compensated for travel between his home and the paper depot, or from his last customer delivery back to his home. One morning, claimant was involved in an automobile accident while travelling from his home to the paper depot and he sustained several injuries for which he sought benefits. A compensation judge denied benefits and the workers' compensation court of appeals affirmed, because he was commuting to work at the time of his accident. In reversing, the supreme court quoted the **Treatise** for the proposition that, when an employee, as part of the job, is required to bring his or her own vehicle to work for use during the working day, the employee's trip to and from work will fall within the course of his or her employment.

Footnote 2. *E.g.* Borak v. H. E. Westerman Lumber Co., 239 Minn. 327, 58 N.W.2d 567

(1953). A lumberyard manager died from carbon monoxide poisoning while attempting to start his automobile preparatory to going to work. He was expected to have his car at his place of employment to make deliveries and inspections. The employer paid his mileage when he was on company business, but did not pay mileage for the trip to and from work. The death was held to be compensable.

Footnote 3. Deterts v. Times Publishing Co., 552 P.2d 1033 (Colo. Ct. App. 1976) *(reh'g denied) (cert. denied).* The claimant, a newspaper delivery boy, had arranged with his employer to store his bicycle on the employer's premises while the claimant was in school. The bicycle was necessary to insure timely delivery of the newspapers, and there had been vandalism to bicycles at the school in the past. The claimant was injured in an elevator on the employer's premises after dropping off his bicycle. The court held that the claimant was entitled to compensation, because the bicycle safekeeping inured to the benefit of the employer in that it assured speedy and timely delivery of his newspaper.

Footnote 4. Borak v. H. E. Westerman Lumber Co., 239 Minn. 327, 58 N.W.2d 567 (1953).

Moser v. Industrial Comm'n, 21 Utah 2d 51, 440 P.2d 23 (1968).

Footnote 5. In re Gwaltney's Case, 355 Mass. 333, 244 N.E.2d 314 (1969).