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PARTNER BENJAMIN LEONARD OBTAINS COURT OF APPEALS VICTORY IN CONTINUOUS EMPLOYMENT DOCTRINE CASE

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Partner Benjamin A. Leonard of the firm's Workers' Compensation division obtained a reversal in favor of firm clients in a continuous employment doctrine case which will have an impact on all employers utilizing so-called "traveling employees" along with their insurers. The case was argued orally before the Court of Appeals on September 13, 2016 and was the first Workers' Compensation case to be broadcast live from the Court of Appeals in Georgia history (see the link below to watch the arguments). The ruling from the Court of Appeals places limits on the compensability of claims brought under the continuous employment doctrine especially with accidents occurring while employees are engaged in so called "ministerial" acts.

The underlying facts of the case involve an employee who was an Atlanta native who obtained work for a company in Augusta GA. The company rented a hotel room for the employee to stay in Augusta during the week. While the employee only worked Monday through Friday from 8AM until 5:30pm, because the room was rented for a full week, the employer allowed the employee to stay in the hotel room during weekends in order for the employee to save money as he experienced financial difficulties with some frequency. At other times during his work in Augusta, he traveled back and forth to Atlanta on the weekends to visit his mother. He was not required at any time to work on weekends nor was he an "on-call" employee during the weekends. He was free to come and go as he pleased once his work week ended on Friday at 5:30 until it began again on Monday at 8AM.

The employee suffered an accident while walking across the parking lot at his hotel on Sunday March 9, 2014 after returning from a personal errand to buy himself some groceries. The accident resulted in a fractured ankle and alleged ongoing economic and physical disability. The employee brought a claim against the employer for medical and indemnity benefits, culminating in an evidentiary hearing before an Administrative Law Judge ("ALJ") in January 2015. The ALJ found the employee entitled to benefits under the so called "continuous employment" doctrine, finding that his work required him to remain out of town and therefore his presence in Augusta on the weekend of March 9, 2014 was necessitated by work activities, therefore, the accident was compensable as the employee was not necessarily free to do as he pleased during that time. The ALJ further found the employee was not an "on-call" employee during that weekend, a fact which was not contested upon appeal by the employee.

The employer and insurer appealed to the Appellate Division of the State Board of Workers Compensation, which reversed the ALJ in full. The Appellate Division reweighed the evidence below and made new factual findings, as is within its powers to do. The Appellate Division specifically found the employee was not engaged in any activities of any benefit to the employer at the time of the accident. While noting so-called "ministerial" activities for traveling employees can be compensable if an accident occurs during the same (activities such as obtaining meals, entertainment, etc.), these activities are only

compensable as long as they occur in a manner that both arises out of and in the course of employment. In the case reviewed, the employee was in Augusta at his own choice, and was not doing anything of value or benefit to the employer. In other words, he was on a personal mission on his own time. As such, the claim was found not compensable by the Appellate Division, and reversed in full as not compensable.

The employee appealed to the Superior Court of Richmond County, which then reversed the Appellate Division. While the Superior Court noted its obligation under the so called "any evidence" standard of review (OCGA §34-9-105) to give deference to the party prevailing before the Appellate Division, and also that it could not substitute itself as a fact finding body, the Superior Court made a new factual finding by determining the employee was in Augusta on March 13, 2014 in order to prepare for work the next day, Monday March 14, 2014, a fact not found by any court below. In so finding, the Superior Court of Richmond County reversed the Appellate Division of the State Board of Workers Compensation.

The Georgia Court of Appeals accepted the Application for Discretionary Review filed by the employer and insurer, and further accepted the case for oral argument. On appeal, the employer and insurer first argued the Superior Court overstepped its authority under OCGA §34-9-105 by making a new finding of fact, which in turn allowed the Superior Court to reverse the Appellate Division. The employer and insurer also argued on appeal that the interpretation of the continuous employment doctrine as found by the Superior Court was too broad, and would lead to findings of compensability for accidents having occurred during incidents purely personal in nature during times when the employee merely chose, for personal reasons, not to return back to their primary residence.

In a 7-1 decision, the Court of Appeals agreed with the employer and insurer, and reversed the ruling from the Superior Court. It specifically found the Superior Court abused its discretion under OCGA §34-9-105, and the finding of fact by the Superior Court that the employee was in Augusta on March 13, 2014 for purposes related to his employment was incorrect as matter of fact and law. The Court of Appeals further ruled upon the second ground for appeal by the employer and insurer, equally finding the interpretation of the continuous employment doctrine by the Superior Court was overbroad, and incorrect. Specifically, the Court noted the employee was only within the doctrine of continuous employment when he might be "in the performance of his duties and while he is fulfilling those duties or engaged in doing something thereto". The Court of Appeals noted the Appellate Division's findings of fact had to be given the most deference under the "any evidence" standard of review, and as such, the finding that the employee was not engaged in an activity required by his employment, and his presence in Augusta was a personal, not professional, choice. In other words, if the acts of the employee are solely for the benefit of the employee, and during a time when the employee has complete control over his own acts and location, the claim is not compensable, even if the accident occurs within the general locale of the work being performed. Therefore the Court of Appeals reversed the Superior Court and found the accident did not arise out of and in the course of employment pursuant to the continuous employment doctrine.

Associates Kyle Paske and Josh Saunders assisted with the appeals process and briefs to the respective Courts. The link to the oral argument, which was the first Workers' Compensation claim to be argued by live stream in Georgia, can be found here:

https://www.youtube.com/channel/UCnvFjZlOQUMitfzJW2hcr4Q