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Georgia's Court of Appeals Breaks away from prior Ingress/Egress holdings

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Georgia's Court of Appeals was recently asked to resolve two occasionally conflicting principals of workers' compensation law. In *Frett v. State Farm Employee Workers' Compensation*, Ga. App. (821 SE2d 132) (2018), both the injured worker and the employer/carrier relied upon well established principles of Georgia law to justify their contrasting positions on whether Ms. Frett's injuries were compensable.

Ms. Frett, an office employee of State Farm, had mandatory lunch breaks. She was free to do as she pleased during her break and was never required to work during them. She often prepared a meal in the State Farm breakroom and took it off site. On the day of her accident, during her break, Ms. Frett was exiting the State Farm breakroom with her lunch and slipped in water.

Naturally, before the ALJ, and later on appeal, conflicting positions were asserted. Ms. Frett asserted-and the ALJ agreed- her injuries were compensable under the "ingress/egress" rule. To her point, Kissiah's Georgia Workers' Compensation Law states "[i]t has long been established than an employee must be allowed a reasonable period of time for ingress to, and egress from, the immediate place of work, during which time the employee remains in the course of his employment.[1]" Georgia courts have found injuries occurring as many as thirty minutes after clock out, and have found accidents outside of the employee's workspace (parking lots, office complex elevators, hallways, etc.) compensable.[2] It is important to note that Ms. Frett had only recently clocked out, and was in a State Farm controlled breakroom when the accident occurred. As such, it was certainly reasonable for Ms. Frett (and her counsel) to assert her injury was sustained "in the course of employment" despite the fact that she was clocked out and not performing any work on behalf of State Farm at the time of her injury.

Relying on equally established precedent, State Farm argued-and the Appellate Division agreed- Ms. Frett's injury was not compensable because she was on a "regularly scheduled break." Generally, Georgia courts have held that an injury/accident that occurs on a scheduled break was not sustained in the course of employment- even if that accident occurs on the employer's premises. In the seminal 1935 Farr case, a worker was injured during his lunch break.[3] Georgia's Supreme Court ruled that Farr's injuries were not compensable because he was not working at the time he was injured and was free to do as he chose during his break. Although the burden of proof shifts to the employer to prove the workers was in fact on a break, and that the worker was free to do as she pleased during such breaks, in cases where the facts are undisputed that the worker was on such a break, the courts have held the injury not compensable. Therefore, State Farm's position was just as reasonable and supported by prior case law as Ms. Frett's.

So that's the issue the *Frett* Court was confronted with: what should happen when a worker is injured while ingressing/egressing on the employer's premise during a scheduled break?

It would be misleading to suggest the *Frett* case was the first time these apparently incongruent rules of law have been presented to the Court of Appeals. As recently as 2001 in *Rockwell v. Lockheed Martin Corp* the Court of Appeals was confronted with arguments that each rule of law dictated the outcome of the case. [4] The Court of Appeals, as it had done previously in the *Travelers Insurance Co. v. Smith* and *Chandler v. General Acc.* Fire cases, resolved the discrepancy between the two rules in favor of the ingress/egress policy of finding injuries on the employer's premise compensable, even where the worker was not clocked in, and was on a break. The holdings seemed to limit the "scheduled break" defense to an accident which not only occur during the break, but also while the injured worker is doing something other than entering or exiting her job site.

The *Frett* case is important, not because it addresses a novel issue, but because it reaches a new conclusion. Expressly reversing its prior decisions of *Rockwell, Chandler,* and *Travelers Ins. Co. v. Smith*, the Court of Appeals went in a new direction. The Court held that an injury sustained during a scheduled break was not compensable, even if it occurred during ingress/egress. The Majority explained that the Court of Appeals' holdings in its recent cases inappropriately diluted the Georgia Supreme Court's ruling in *Farr*, and extended the ingress/egress doctrine to include ingress/egress from a break at the expense of the scheduled break doctrine. The Majority specifically left it to the Supreme Court of Georgia to expand the ingress/egress doctrine, if it chose to do so. A dissenting decision was filed, arguing that deferring to a 1930's Farr decision fails to adapt to changes in our economy, and also ignores the lack of development of workers' compensation law at the time the decision was issued. The dissent, like the majority, appears eager for the Supreme Court to weigh in.

At the moment, it does not appear ingress/egress doctrines apply to breaks: only to the initial presentation to and final exit from work for a given shift. Endless hypotheticals could be presented to undermine the court's decision- e.g. What if the worker's schedule indicated they were to work two separate four hours shifts with an hour off, rather than a nine-hour shift with an hour lunch? Would that make this claim compensable? Presumably, the Supreme Court will be asked to provide answers to these types of questions. However, unless and until the Supreme Court weighs in, the Frett case provides powerful precedent for Employer/Insurers to deny accidents sustained during scheduled breaks, regardless whether the worker was entering or exiting their workspace.

[1] §5.02 citing *West Point Pepperell, Inc. v. McEntire*, 150 Ga. App. 728, 258 S.E.2d 530 (1979) *inter alia*.

[2] *United States Cas. Co. v. Russell*, 98 Ga. App. 181, 105 S.E.2d 378 (1958); *Crawford v. Meyer*, 195 Ga. App. 867, 395 S.E.2d 237 (1980); Kissah's Georgia Workers Compensation Law, § 5.02[4].

[3] *See Ocean Acc. & Gaur. Corp v. Farr,* 180 Ga. 266, 178 S.E. 728 (1945).

[4]