Trovillion, Inveiss & Demakis

Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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OFFICES THROUGHOUT SOUTHERN CALIFORNIA

SAN DIEGO
1455 Frazee Rd, Ste 650
San Diego, CA 92108
Phone: 619-232-7181
Fax: 619-232-8423

ORANGE COUNTY
1851 East 1st St, Ste 410
Santa Ana, CA 92705
Phone: 714-547-4450
Fax: 714-547-3355

LOS ANGELES
131 North El Molino Ave, Ste 200
Pasadena, CA 91101
Phone: 626-247-1180
Fax: 626-247-1184

GOING AND COMING RULE - REQUIRED VEHICLE EXCEPTION

In the matter of *Newland v. County of Los Angeles* (2018), the California Court of Appeal clarified the Required Vehicle Exception to the going and coming rule. While the decision itself focused on an employer's vicarious liability for an injury caused to a third-party by one of its employees during the employee's commute home from work, the test is equally applicable in workers' compensation cases involving injury to an employee sustained during their commute to and from work.

The going and coming rule essentially holds that the employment relationship does not exist while an employee is commuting to and from work; therefore, the employer is not liable for the employee's actions during their commute. One of the exceptions to the going and coming rule is referred to as the Required Vehicle Exception. This exception applies when there is an incidental benefit to the employer or the employer required the employee to have a car while at work.

In the matter of *Newland v. County of Los Angeles*, the employee (Prigo), a deputy public defender for the county of Los Angeles, struck another vehicle (Newland) when he stopped by a post office to make a rental payment on his way home from work. The issue was whether the County of Los Angeles was vicariously liable for the injury caused by their employee to the other driver.

The County of Los Angeles argued against vicarious liability under the going and coming rule as the employee was

commuting home from work when the incident occurred. The Plaintiff countered, arguing that the going and coming rule was not applicable under the Required Vehicle Exception. Ultimately, the Appellate Court concluded that the exception did not apply.

Evidence showed that the County of Los Angeles required Prigo to have a valid driver's license but did not require him to drive to and from work. Evidence also showed that Prigo routinely used his personal vehicle when traveling to meet clients; however, on the date of the incident, there were no client appointments or business purpose which required Prigo to drive his vehicle.

The Appellate Court held that, "In order to apply the vehicle use exception to the coming and going rule in this case, Newland had to show that (1) the County required Prigo to drive his car to and from the workplace at the time of the accident, or (2) Prigo's use of his car provided a benefit to the County at the time of the accident. A benefit to the County may be found if at the time of the accident, Prigo agreed to make his car available, the County reasonably came to rely on Prigo's use of the car, and the County expected Prigo to make it available. There was no evidence in this case to support finding a job requirement or a benefit to the County on the day of the accident."

From a workers' compensation perspective, the Appellate Court's decision clarifies the going and coming rule and the Required Vehicle Exception when determining whether an employer is liable for injuries to third parties caused by an employee during their commute. A workers' compensation practitioner should carefully evaluate the facts surrounding the employee/applicant's employment duties as well as the specific tasks performed on the date of injury when evaluating liability. It will be interesting to see how the WCAB interprets and applies the analysis in the *Newland* decision moving forward noting that the employee in *Newland* was not required to use his car for business purposes on the day of the accident. Had the employee in *Newland* needed to use his car on the date of the accident for work-related tasks, there would have been a benefit to the employer and the exception may not have applied.