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Employers May Be Liable For Injuries Caused By Employees On Business Trips

A California Court of Appeal has ruled that the "special errand doctrine" may allow an employer to be held liable for personal injuries caused by an employee returning from a business trip.

An employer may be held vicariously liable for the actions of an employee acting within the scope of his or her employment. However, under the "going and coming rule," an employee is not regarded as acting within the scope of employment while going to or coming from the workplace, because the employee ordinarily is not rendering services to the employer while traveling. On the other hand, the "special errand exception" to this rule allows for employer liability where the trip involves a special or incidental benefit to the employer.

In the recent case of Jeewarat v. Warner Brothers Entertainment, the Court of Appeal found that an executive's attendance at an out-of-town conference may qualify for the special errand exception. Further, when an employee intends to drive home from the errand, the errand is not concluded simply because the employee drives his regular commute route, but rather is concluded when the employee arrives at home or deviates from the errand for personal reasons.

The employee in this case, a Warner Brothers' vice president, had attended a three-day business conference in Sunnyvale, California. The trip was approved by the company which paid for his airfare, hotel, and hotel parking. After landing at the Burbank airport, the employee retrieved his car and drove home. On his way home, the employee drove around his employer's complex without stopping and took his normal route home for about three miles, at which point he was involved in an automobile collision. The cars struck three pedestrians, resulting in the death of one and injuries to the others.

The injured parties sued the employee, the driver of the other car, and Warner Brothers. Warner Brothers moved for summary judgment, arguing that the employee was commuting from work to home when the accident occurred, and therefore, under the "going and coming rule," he was not acting within the scope of his employment and so Warner Brothers could not be held vicariously liable. The trial court agreed and granted summary judgment.

The appellate court reversed, finding that a business trip may qualify as a special errand for purposes of the "special errand exception." In the court's opinion, the fact that Warner Brothers paid for the employee's airfare, hotel accommodations, and airport parking could lead to a reasonable inference that Warner Brothers expected to derive a benefit from the employee's attendance at the conference.

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The court rejected Warner Brothers' argument that the special errand ended when the employee drove past his office and resumed his regular commuting route around the time he usually left the office. The undisputed evidence showed that the employee was traveling from the airport to his home with no intention of going to his office. Because a special errand continues for the entirety of the trip, it would not end until the employee arrived at home, regardless of whether the employee coincidentally chose a route that passed by the workplace.

This decision should remind employers of their potential liability for torts committed by their employees during business trips. Though such liability is difficult to avoid, it may be worth reminding employees about safe driving practices and appropriate behavior while on business-related travel.

Click **here** to read the opinion in full.