Workers' Compensation and Company Sponsored Events: The High Cost of Employee Morale

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WORKERS’ COMPENSATION AND COMPANY SPONSORED EVENTS:
THE HIGH COST OF EMPLOYEE MORALE

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I. INTRODUCTION

When a DDB Needham Worldwide executive organized a white water rafting trip for corporate executives and potential clients, no one thought that the trip would result in anything more than a pleasant diversion. But when all five participants died after having been thrown from the raft, their deaths prompted questions about the nature of the outing and whether the participant’s families were entitled to compensation under the workers’ compensation law.¹

In a country where 65% of employers surveyed sponsor firm softball teams, and nearly half organize golf outings, it cannot be said that business ends at 5:00 and pleasure begins at 5:01.² Company sponsored social events mix business and pleasure, and maintaining good employee morale has become engrained in corporate strategy. Social and recreational activities are the primary vehicle for developing positive employee relations. Cultivating goodwill among employees results in increased efficiency at the work place, and injuries sustained at these events, therefore, are sufficiently related to employment to bring them within a state’s workers’ compensation law.

¹ Lipman, Firms’ Outings Pose Liability Dilemma, Wall St. J., Sept. 14, 1988, at 37, col. 3.
² Id.
This note explores an employer’s potential liability when a worker is injured at a company sponsored event. Part two briefly outlines the history of workers’ compensation law placing particular emphasis on the public policies that gave rise to implementation of the workers’ compensation system. Part three analyzes workers’ compensation statutes, examines the tests used to determine compensability and discusses the effect of exclusive remedy provisions on a worker’s tort recovery.

The last section discusses the methods used to determine whether injury sustained at a company sponsored event falls within workers’ compensation statutes. It asks whether workers’ compensation statutes are equipped to deal with injuries sustained at firm functions and analyzes recent legislative enactments that deal directly with injury sustained during recreational activity. The section focuses on the advantages gained by the employer by compensating the worker for injury sustained at a company sponsored recreational activity. The public policy implications of awarding compensation are examined as are the limits to compensating for injury sustained at a company’s social outing.

II. HISTORY OF WORKERS’ COMPENSATION

The arguments regarding compensating an employee for injuries sustained at company sponsored recreational activities must be placed in the framework of workers’ compensation statutes. The rapid growth of industry in the nineteenth century brought both a dramatic increase in on-the-job injury and new awareness of the need to compensate for those injuries. During the early stages of industrial development, a worker could not sue his employer for injuries sustained at work. The massive number of unemployed as well as the numerous diseased and maimed, made those employed seem fortunate. Society considered an employee’s recovery for workplace injury unjust to the employer who so graciously provided that employee with a steady income at a fair wage.

Early tort law concepts were equally at odds with the new industrial system. While technically an employee could recover against an employer under a theory of negligence, it was an insurmountable task for the employee to prove the necessary elements of negligence. The main obstacle frustrating recovery was establishing the causal link between the

4 Epstein, supra note 3, at 777-78. Much of the feeling that industrial workers were of the privileged class arose from the perceived contrast between agricultural life and industrial life. As a consequence, farmers and other agricultural workers could find no justification for compensating industrial workers when they were forced to bear the burdens of their injuries without outside aid.
5 Friedman, Social Change and The Law of Industrial Accidents, 67 Colum. L. Rev. 50, 51-53 (1967). Negligence cases began to be reported about mid-nineteenth century. By the end of the century, negligence was a common theory of recovery. Id. at 51-53.
employer's actions and the employee's injuries. Frequently, the employee could not show that the employer had acted negligently.

The key feature of early workers' compensation statutes were their complete break from tort law principles. The employee no longer needed to prove the employer's personal negligence because workers' compensation statutes eliminated the need to show fault. Thus, an employee could receive compensation for injury arising out of a risk created by his employment, regardless of whether injury resulted from the negligence of the employer or of a co-worker.

Early case law and legislative enactments set forth a workers' compensation system which is, for the most part, unchanged today. Workers' compensation statutes continue to exempt certain employees from participation and more recent case law indicates that statutes containing exclusive remedy provisions are a source of litigation for plaintiffs seeking larger damage awards under traditional tort law theories.

However, the most litigated area of workers' compensation is statutory interpretation. Because of the ambiguous language used by legislatures to describe situations under which workers' compensation will be awarded, disputes arise when an employee's injury occurs, arguably, outside the scope of her employment. In order to understand how and when workers' compensation will be awarded, the statute of the relative state must be examined.

Statutory interpretation is particularly important when the injury arises at a company sponsored event. A determination that an injury occurring at a recreational event arises out of and in the course of the

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*Cudahy v. Parramore,* 263 U.S. 418, 423 (1923); *New York Central R.R. Co. v. White,* 243 U.S. 188 (1917); *Friedman,* supra note 5, at 53.

*Friedman,* supra note 5, at 53.

*Friedman,* supra note 5, at 67-72. The break from tort law principles is still a key feature of workers' compensation statutes to this day. *See infra* note 35.

*Borgnis v. Falk Co.*, 147 Wis. 327, 133 N.W. 209 (1911).

*A. Larson, The Law of Workers' Compensation § 5.20, 5.30, 6.00, 6.10 (1990).*


*See generally* notes 114, 115; *AGS Machine Co. v. Industrial Comm'n,* 670 P.2d 816 (Colo. Ct. App. 1983) (court addresses whether employee participated in recreational activity on own initiative as described in statute).

*In terms of recreational activities, disputes about compensability invariably turn on whether the injury was sustained from an injury outside the scope of the workers' employment.*
workers' employment requires a broad interpretation of the policy behind workers' compensation statutes. Once the injury is found to fall under the coverage formula of the workers' compensation act, however, the employee will be limited to workers' compensation as a remedy.

III. EXCLUSIVE REMEDY PROVISIONS AND THE "ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT" TEST

Basic similarities exist among states' workers' compensation statutes. Although there is similarity in language among the statutes, there is a lack of uniformity. As a consequence, an injury may be compensable solely under the workers' compensation statute in one state while a similar injury may fall outside the statute in another state. 

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14 Currently, forty-three states use the "arising out of and in the course of employment" language to determine compensability of injury. A. Larson, supra note 10, at § 6.10.


Compensation shall be solely for anatomical loss of use or amputation and shall be as follows:

(a) For the loss of a thumb, sixty-six and two-thirds percent of wages during fifty weeks.

(b) For the loss of the first finger, commonly called the index finger, sixty-six and two-thirds percent of wages during thirty weeks.

(c) For the loss of any other finger, or a big toe, sixty-six and two-thirds percent of wages during twenty weeks.

(d) For the loss of any toe, other than a big toe, sixty-six and two-thirds percent of wages during ten weeks.

(e) For the loss of a hand, sixty-six and two-thirds percent of wages during one hundred fifty weeks.

(f) For the loss of an arm, sixty-six and two-thirds percent of wages during two hundred weeks.

(g) For the loss of a foot, sixty-six and two-thirds percent of wages during one hundred twenty-five weeks.

(h) For the loss of a leg, sixty-six and two-thirds percent of wages during one hundred seventy-five weeks.

(i) For the loss of an eye, sixty-six and two-thirds percent of wages during one hundred weeks.


The following list amounts apply to either the loss of or the permanent and complete loss of use of the member specified, such compensation for the length of time as follows:

1. Thumb - 70 weeks

... If the employee shall have sustained a fracture of one or more vertebra or fracture of the skull, the amount of compensation allowed under this section shall not be less than 6 weeks for fractured skull and 6 weeks for each fractured vertebra ... in the event the employee shall have sustained a fracture of any of the following facial bones ... the amount of compensation allowed under this section shall not be less than 2 weeks for each fractured bone ...
particular language adopted by the state determines to what extent and under what circumstances an employee's injury is said to arise out of and in the course of his employment for workers' compensation purposes. Where the employee can show that the injury "arises out of and in the course of his employment" the injury will be compensable under the states' workers' compensation statute.\(^\text{16}\)

In some instances, a finding that the injury arises out of and in the course of employment will be a detriment to the employee, particularly where the employee would receive a larger award under tort law. In contrast, exclusive remedy provisions, which have been adopted in many states, can be advantageous to the employer. These provisions can be asserted by the employer as an affirmative defense when the employee seeks to recover under tort theory.\(^\text{17}\)

\textit{A. Exclusive Remedy}\\

Most state workers' compensation statutes contain exclusive remedy provisions limiting an employee to workers' compensation as a remedy and forbidding traditional tort remedies if the employee's injury falls within the coverage formula of the statute.\(^\text{18}\) These provisions reflect the development and philosophy behind workers' compensation statutes in that employers were reluctant to participate in a state's workers' compensation plan if there remained the possibility of tort liability.\(^\text{19}\) From the employer's standpoint, given that liability attaches regardless of fault, employers felt that they were giving up a legal right to defend themselves against injury claims. In exchange for relinquishment of this right, employers demanded assurance that all exposure to tort liability be eliminated.\(^\text{20}\)

Another important characteristic of workers' compensation statutes is their limitation of recovery to injuries which result in a loss of earning power.\(^\text{21}\) Consequently, an employer faced with a tort claim will try to

\(^{16}\) In re Question Submitted by U.S. Ct. of Appeals, 759 P.2d 17 (Colo. 1988).


\(^{19}\) Ives v. South Buffalo Ry. Co., 201 N.Y. 271, 94 N.E. 431 (1911).


\(^{21}\) See, e.g., Doe v. South Carolina State Hosp., 285 S.C. 183, 328, S.E.2d 652 (Ct. App. 1985) in which the court held that the inadequacy of the state's workers' compensation law to compensate for mental suffering does not enable the worker to bring a separate cause of action in tort.
prove that the injury is within the scope of the state's workers' compensation statute, thereby limiting the employee's recovery to that set by the statute.22

Injuries caused by acts of rape,23 exposure to an unsafe working environment24 and sexual harassment25 have been held to fall within states' workers' compensation statutes, thereby barring the employees' tort actions. In these situations, recovery under a workers' compensation statute is an inadequate remedy, because the only injury suffered by the employee, in many cases, is psychological.26 Unlike a broken leg, for example, psychological injury is not thought to interfere with the employee's ability to continue working. Consequently, the worker is not considered to have sustained an injury which results in a loss of earning power and recovers nothing.27 A worker sustaining only non-physical injury, therefore, could find herself in the unfortunate position of being unable to recover any damages because of lack of physical injury whereas a stranger to the employer might be able to recover substantial damages for a similar injury using traditional tort law.28

Because of the harsh and sometimes inequitable results of the exclusive remedy rule, some exceptions are recognized. If, for example, an employee can show that the employer committed an intentional tort, the employee will not be limited to workers' compensation as a remedy.29 If an employee

22 Generally, the burden is on the employer to plead as an affirmative defense that the injury falls within the workers' compensation law and that the worker is limited to workers' compensation as a remedy. Doney v. Tambouratgis, 23 Cal. 3d 91, 587 P.2d 1160, 151 Cal. Rptr. 347 (1979). But see Le Flar v. Gulf Creek Indus. Park Number Two, 511 Pa. 574, 515 A.2d 875 (1986) (exclusive remedy provision is not an affirmative defense). When the injury occurs at a firm outing, however, the burden is on the plaintiff to show that the injury arose from his employment. Martinson v. W-M Ins. Agency, Inc., 606 P.2d 256 (Utah 1980).

23 In re Question Submitted by U.S. Court of Appeals, 759 P.2d 17 (Colo. 1988).


25 Knox v. Combined Ins. of Am., 542 A.2d 363 (Me. 1988); see also O'Connell v. Chasdi, 400 Mass. 366, 511 N.E.2d 349 (1987) where plaintiff's cause of action for intentional infliction of emotional distress arising out of a co-workers' sexual harassment faces a challenge by the defendant that the claims were barred by the exclusivity provisions of the workers' compensation act.


27 Id.


29 In Aranda v. Ins. Co. of North Am., 748 S.W.2d 210 (Tex. 1988), the court explained that a breach of the duty of good faith or an intentional tort are injuries which are not job related and as such are not governed by workers' compensation law. The company's affirmative defense that the plaintiff was limited to workers' compensation as a remedy failed. Id. at 214. See also Copelin v. Reed Tool Co., 679 S.W.2d 605 (Tex. Ct. App. 1984), rev'd, 689 S.W.2d 4040 (Tex. 1985).
suffers an injury arising out of and in the course of her employment because of the negligence of a third party, the employee will be able to recover against that third party using traditional tort law. Finally, in those cases in which the employer is a provider of services in addition to being an employer, the "dual capacity doctrine" allows an employee to recover tort damages from the employer.

With respect to injuries sustained at recreational activities, exclusive remedy provisions will work to the employer's advantage. Faced with the tort claim of an employee injured at a recreational activity, the employer can argue not only that it is not responsible for, and hence not liable for, the injury but also that even if the employer is some how responsible for the injury, the employee is limited to the remedy set out in the workers' compensation statute. Because workers' compensation statutes cover only loss of earning power, the employer's potential liability is much lower than it would be under traditional tort law.

As with any work related injury, compensation for injury sustained at a recreational activity would be limited to injury which results in a loss of earning power. The employer, in some cases, may be able to argue that a particular injury, though falling within the state's workers' compensation law, is not compensable because it does not impact on the employee's ability to perform. Under this analysis, the executive's knee injury sustained while sliding into third is compensable because it falls under the coverage formula of the act, but no compensation is ever actually paid. This results from the fact that the injury, even if conceded as work related, is not compensable because the injury does not effect the executive's ability to sit at his desk and do his job. Like the noncompensability for injury from rape or assault, psychological injury suffered by the executive from the inconvenience caused by the injury would not be compensable under workers' compensation.

In any situation where there is a question of workers' compensation as the exclusive remedy, the relationship of the parties at the time the injury occurred is first examined. If the injury arose out of and in the course of employment, the employee will be limited to workers' compensation as a remedy absent the existence of one of the exceptions to the exclusive remedy rule. The arising out of and in the course of employment language

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30 This is known as the third party exception and is applicable where, for example, an employee is injured by machinery manufactured by someone other than the employer. The risk of double recovery is eliminated by allowing a workers' compensation lien on any amounts received. Wausau Ins. Co. v. Fuentes, 215 N.J. Super. 476, 522 A.2d 440 (1987) (state statute recognized right to proceed against third party).


32 Failure of the defendant to raise the defense that the claimant's sole remedy is workers' compensation does not, however, necessarily preclude the defendant from raising that issue at a later stage in the proceedings. See, e.g., Le Flar v. Gulf Creek Indus. Park Number Two, 571 Pa. 574, 515 A.2d 875 (1986).

found in workers' compensation statutes establishes a two part test. The first part of the test deals with the "arising out of" language. The second part of the test deals with the "course of employment" language. Although similar to the arising out of element, the course of employment element differs in that it relates to the time, place, and circumstances under which the employee sustained the injury, whereas the arising out of element relates to the causal connection between the employment and the injury.  

B. Course of Employment

For workers' compensation purposes, an injury which takes place on the employer's premises is deemed to have occurred in the course of employment unless the employee's activity is wholly unrelated to the employee's duties and more than incidental to his employment. Under what is known as the "premises line rule," employees working at a fixed location with established working hours are compensated for all injury sustained while on the work premises, whether the injury occurs before work, after work, or during a lunch period. Premises can, however, extend beyond the physical boundaries of the employee's location. If, for example, the employee's job requires that she work off the physical premises of the employer, the premises of the employer will include the em-

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35 Some states include a definition of premises in their workers' compensation law. An example of this is found in Del. Code Ann. tit. 19, § 2301 (1987) which states:

(15) Personal injury sustained by accident arising out of and in the course of employment;
(a) Shall not cover an employee except while he is engaged in, on or about the premises where his services are being performed, which are occupied by, or under the control of the employer (his presence being required by the nature of his employment) or while he is engaged elsewhere in or about his employer's business where his services require his presence as part of such service at the time of injury . . .

36 See, e.g., Rabbit Hash Ironworks, Inc. v. Strubel, 689 S.W.2d 606 (Ky. Ct. App. 1985), in which the court held that an injury sustained while the employee was in the process of constructing a stool for his wife was sustained while the employee was engaged in an activity that was entirely personal and unrelated to his employment duties.


38 The rational for compensating workers for injury sustained during an unpaid lunch break taken on the employer's premises is that eating and refreshment periods are viewed as basic necessities and that the employer benefits from these breaks by having content employees.
ployee's location. A real estate agent or salesman, therefore, who is injured while working off premises, will be working within the course of his employment.

In order for an injury to be in the course of employment, the injury must have been sustained while the employee was in an area authorized by the employer. If the employee wanders into an unauthorized area, or if the employee strays far from the route that the employer would reasonably anticipate the employee would travel, then the employee will not be considered to be acting in the course of her employment and the injury sustained will not be compensable under workers' compensation.

When the employee's injury occurs off the employer's premises, focus is placed on two variables: the degree of control retained by the employer over the employee while off the premises and the level of consent given by the employer for the employee's act. The mere fact that the workers' activity is voluntary and personal will not, in and of itself, preclude the employee from recovery under workers' compensation statutes. Evidence which shows that the employee was paid during the period, that

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39 Zoller v. Elliot Realty, 312 Minn. 595, 252 N.W.2d 857 (1977) (where real estate agent is encouraged to socialize with clients, and agent is injured while visiting at a client's home, injury is compensable under the state's workers' compensation law).
42 In Chesser v. Louisville Country Club, 313 S.W.2d 410 (Ky. Ct. App. 1958) a caddy at a country club, after chasing a cat into the boiler room, drank bottles labeled whisky but which actually contained cleaning fluid, and sustained injuries. The injury was held non-compensable on the grounds that the boiler room did not comprise part of the employer's premises as related to the employee and that the conduct of the caddy was "wholly unrelated to his employment by time, place, or circumstance." Id. at 411.
43 Employee travel will be considered in the course of employment if undertaken at the direction of the employer. This is known as the special mission or special exception to the going and coming rule. Under the going and coming rule, the employee cannot recover for injury sustained going to coming from his place of employment. Green v. Workers' Compensation Appeals Bd., 187 Cal. App. 3d 1419, 1421, 1424, 232 Cal. Rptr. 465, 466, 469 (1986).
44 Roache v. Indus. Comm'n of State of Colo., 729 P.2d 991 (Colo. Ct. App. 1986). Compare Western Airlines v. Workers' Compensation Appeals Bd., 155 Cal. App. 3d 366, 202 Cal. Rptr. 74 (1984), with Helton v. Interstate Brands Corp., 155 Ga. App. 607, 271 S.E.2d 739 (1980). In Western Airlines a flight attendant was raped while on a 26 hour layover in Honolulu, Hawaii. The court held that the injury did not occur in the course of the attendant's employment and that the attendant's voluntary action, i.e., agreeing to go on a date with her assailant precluded her from recovering under the workers' compensation law. In Helton, woman was assaulted and raped while exiting her car after parking it in the employer's lot. The court held that because the attack took place on the employer's premises and parking was incident to her employment, the injury was compensable under the workers' compensation laws.
46 Roache, 729 P.2d at 991.
the activity was incidental to the employment, e.g., bathroom and coffee breaks,\textsuperscript{47} or that the employer encouraged the employee to participate in the off premises activity,\textsuperscript{48} will aid the employee attempting to recover under a workers' compensation statute.

If, however, the employee participates in an activity which is wholly unrelated to her employment and only for her personal benefit, she will be barred from recovery under the workers' compensation statute.\textsuperscript{49} In such a situation, the employee's location is irrelevant because the employee's activity will be outside the course of her employment and any injury sustained thereof will not be compensable.\textsuperscript{50} For example, an injury sustained while the employee played pool in a recreation room provided by the employer was determined to be non-compensable because the employee's participation in the game occurred after working hours and was solely for the benefit of the employee.\textsuperscript{51}

In relation to recreational activities, course of employment can become the more important of the two elements because the employee's location at the time of the injury is generally off premises. The relation of the activity to the employment and the degree of personal benefit to the employee is more closely scrutinized. In many cases, the activity of the employee appears wholly personal since the activity is enjoyable and far removed from the employee's usual job responsibilities. Where, for instance, an employer invited one hundred and fifty of its employees to participate in a weekend ski trip, it was difficult for the court to find any benefit to the employer.\textsuperscript{52} From a purely practical standpoint this outcome seems completely logical. Ski trips, rafting trips, and other "fun" outings are viewed as perks for the employees. In some respects it seems unfair to burden the employer with liability for injuries sustained at these enjoyable events.

The mere fact that the employee gains a substantial personal benefit from participating in the recreational activity should not impact on the employee's right to compensation. As with injury sustained at the workplace, the employee's injury resulting from participation in a firm outing or social event arises as an incident of the employment. To say that because the employee's participation is wholly personal, any injury sustained is not compensable, denies the fact that the employer placed the employee in the location at which the injury occurred. Given that the employer chose to entice the employee to participate by inviting her to partake in an enjoyable activity, any injury sustained occurs during the course of employment.

\begin{itemize}
\item \textsuperscript{47} Id. at 992.
\item \textsuperscript{48} Id.
\item \textsuperscript{49} Rogers v. Workers' Compensation Appeals Bd., 172 Cal. App. 3d 1195, 218 Cal. Rptr. 662 (1985) (where employee left employer's premises to cash check and was assaulted upon return to workplace, the court held the fact that assault occurred on employer's premises was a mere coincidence and, therefore, the injury was not compensable under workers' compensation).
\item \textsuperscript{50} Taylor v. Bi-State Dev. Agency, 416 S.W.2d 31 (Mo. Ct. App. 1967).
\item \textsuperscript{51} Id.
\end{itemize}
Once the employee proves that her presence at the social event was in the course of her employment, the employee must still prove the "arising out of" element of the two part test. The arising out of element differs from the course of employment element in that an injury which occurs during the course of employment may not be compensable if it results from a risk wholly unrelated to the employment and unforeseen. Such a risk is said not to have arisen out of the employment and any injury sustained thereof is not compensable. The risks presented by participation at a recreational or social outing are special because they are not the risks generally associated with the employee's job. Consequently, a special type of risk analysis is necessary to establish the arising out of element of the two part test.

For an injury to arise out of the course of employment, the employee must show a causal connection between the injury suffered and the risk connected with the employment which caused the injury. The injury must be the direct and natural result of a risk presented by the employment. No attention is given to questions of fault, but if the injury results from a risk so attenuated and remote from the risks presented by the employment, the employee's claim for workers' compensation will fail.

Four basic doctrines are used to determine if a given risk is closely related to the employment: peculiar-risk doctrine, increased-risk doctrine, actual-risk doctrine, and positional-risk doctrine. In a jurisdiction using the peculiar-risk doctrine, the employee must show that the risk causing the harm is "peculiar" to her particular line of work. This means that if an employee was subjected to increased exposure to the elements because of her job, and therefore, sustained an injury, the employee's injury would not be considered work related because exposure to the elements is a risk suffered by all and not unique to her particular type of employment. Under the increased-risk doctrine, the employee need not show that the risk is peculiar to her employment, but need only show that the risk, though a risk suffered by all, was increased because of the employee's

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56 Id. at 615.
57 A. LARSON, supra note 9, at § 6.00, § 6.20, § 6.30, § 6.40, § 6.50. Larson notes that a fifth test, the proximate cause test, was used in older cases but is now obsolete. A. LARSON, supra note 9, at § 6.60.
58 Today, the peculiar-risk doctrine is largely outmode as theory of risk analysis. A. LARSON, supra note 9, at § 6.30.
59 A. LARSON, supra note 9, at § 6.20.
repeated exposure to it by her employment. The actual and positional-risk doctrines define risk in broad terms, allowing a large number of injuries to be considered as arising out of the employment. Actual-risk jurisdictions hold that where it can be shown that the plaintiff was subjected to the actual risk causing the harm because of her employment, any injury caused by the risk is compensable under workers' compensation.

The most liberal of the doctrines, the positional-risk doctrine, uses a but for standard. The employee's injury will be compensable where it is shown that the employee's injury would not have occurred but for the conditions of employment. Unlike the actual-risk doctrine, the employee need not show that she was put at risk because of employment; she need only show that the injury would not have occurred if she were not employed. Under this definition of risk, injuries resulting from assault, rape or death at the hands of a lunatic arise out of the employment and the worker is limited to workers' compensation as a remedy.

Positional-risk analysis should be used in cases dealing with injury sustained by an employee while participating in a company sponsored social outing or recreational event. Under positional-risk analysis, an injury sustained by an employee at a recreational activity would be compensable since the injury would not have occurred but for the employee's presence at the event. The positional-risk doctrine does not require that the risk be anticipated by the employee or the employer. It is only necessary that the risk, foreseen or unforeseen, result as an incident of the employment.

Because the risks presented by social outings are generally different than the risks presented during the everyday work of the employee, the risks causing the injury are usually unforeseen. If, for example, an employee sustains a head injury while driving into a lake during a social outing, such risks causing the injury are unforeseen. Although unforeseen, it cannot be said that these risks do not arise out of the recreational activity, hence the positional-risk doctrine is well suited to analysis of injuries sustained at recreational and social outings.

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60 In re Question Submitted by U.S. Court of Appeals, 759 P.2d 17, n. 4 (Colo. 1988).
61 A. Larson, supra note 9, at § 6.40.
64 In re Question Submitted by U.S. Ct. of Appeals 759 P.2d 17, 22 (Colo. 1983).
Applying positional-risk analysis to injuries sustained at company sponsored events does not mean that the employer becomes liable for all injuries sustained by an employee regardless of the source or cause of the risk. Similar to an activity which is wholly unrelated to employment and solely for the benefit of the employee, where a risk is created by the employee the risk will not be deemed to have arisen in the course of the employment and will not be compensable under workers' compensation. Risks created by the employee are personal to the employee and have no connection to the employment activity, i.e., the recreational event.

The main objection to recognizing injury sustained at recreational activities as compensable under worker compensation is that the employer does not gain a benefit from the employee’s participation in the activity, consequently, there is not a sufficient nexus to work relation to allow for compensation. As discussed below, the objection fails on two grounds. First, the work relation is established by the fact that in most instances there is a requirement, either implied or express, that the employee participate in the event. Secondly, the employer does gain a benefit from the employee’s participation in the event. The benefit is the development of good will between the employee and the employer and among the employees.

IV. APPLICATION OF WORKERS' COMPENSATION TO INJURIES SUSTAINED AT COMPANY SPONSORED EVENTS

Courts use a variety of tests to determine whether injury sustained at a company sponsored event is compensable under state worker compensation law. Some state legislatures, in an attempt to create clearer guidelines for awarding compensation, have enacted provisions within their workers’ compensation statutes dealing directly with injury sustained at a company sponsored event. These legislative enactments, however, have complicated the problem. Although there is no precise definition or rule to determine when recreational injury is compensable, some basic principles can be used as a general outline to determine compensability. In most cases, the injury would be compensable because the employer gains a real benefit from the employee's participation and the employee usually feels compelled to attend the event.

70 See, e.g., State Compensation Ins. Fund v. Workers’ Compensation Appeals Bd., 133 Cal. App. 3d 643, 184 Cal. Rptr. 111 (1982) (where injury arises from a personal grievance between the injured employee and a third party, the injury does not arise out of the employment and is not compensable under workers’ compensation laws.).

71 In Lemmon v. Indus. Comm’n of Ariz., 740 P.2d 484 (Ariz. Ct. App. 1986), the court applied this principle stating “overeating and drinking on the part of the employee have their origin in purely personal motives as opposed to the employment relationship, [and] in the absence of indications [that] the employer either directly or indirectly benefitted from such activities [injuries resulting thereof are not compensable under workers’ compensation].” Id. at 487.
A. Compensable Injury: The Role of Compulsion by the Employer

Courts, in determining compensability of injury sustained at an outing or recreational activity emphasize the level of compulsion felt by the employer to attend the event. If an employer requires an employee to attend the activity, and the employee sustains injury while participating in the event, the injury will be compensable under the state's workers' compensation statute. In most cases, however, there is not an actual request by the employer to the employee to attend the social event. Commonly, there is a requirement that the employee participate in a business activity which has a social activity annexed to it. Examples include meetings which are followed by cocktail parties or recreational activities awarded for a job well-done. In these situations, the actual compulsion placed on the employee to attend the mandatory function impacts on the compulsion felt by the employee to attend the voluntary function. To determine compensability in situations in which there are both mandatory and nonmandatory work activities, some courts use the dual purpose test which allows for recovery when the business motive is concurrent with the employee's personal interest.

Notwithstanding its common use, the dominant purpose test is ill suited to gauge compensability for injury sustained at a recreational activity following a mandatory company function. The very fact that the function

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72 The level of compulsion felt by the employee is important because it impacts on the voluntariness of the activity. Generally, the less voluntary the activity appears, the higher the likelihood of the injury falling within the state's workers' compensation laws. See, e.g., Ricciardi v. Damar, 82 N.J. Super. 222, 197 A.2d 390 (1964), rev'd 45 N.J. 54, 211 A.2d 347 (1965), where the court discusses the interplay between voluntariness of attendance and compensability of injury.

73 Campbell v. Liberty Mut. Ins. Co., 378 S.W.2d 354 (Tex. Civ. App. 1964) (court notes that purely voluntary nature of function bars plaintiff from recovery under workers' compensation law); Dynalectron v. Indus. Comm'n, 660 P.2d 915 (Colo. Ct. App. 1983) (written invitation to employee and reprimand of employee for tardiness indicates that employee was required to attend dinner, therefore injury sustained while on "special errand" for employer and compensable).

74 Blatter v. Missouri, 655 S.W.2d 819 (Mo. Ct. App. 1983).


76 Id. at 343. See also, Whitney v. United States Fidelity & Guar. Ins. Co., 373 So. 2d 723 (La. Ct. App. 1979), cert. denied, 376 So. 2d 320 (La. 1979). In Whitney the employee accompanied his employer to assist him in making repairs to a camphouse located on the employer's hunting lease. While at the lease, the employer and employee decided to go on a quail hunt, during which the employee was injured. The court held the injury compensable noting that the employee's presence at the lease was at the direction of his employer.

77 Where an employee accompanied her employer on a number of errands then went to a social gathering with her employer the purpose of which was to establish a more positive working relationship, the injury sustained by the employee was compensable. McBride v. Peony Corp., 84 N.C. App. 221, 352 S.E.2d 236 (1987). See also, U.S. Fiber Glass Ins. v. Uland, 137 Ind. App. 228, 206 N.E.2d 385 (1965).
was preceded by a mandatory function indicates that the dominant purpose of the voluntary function is business related. Application of the dominant purpose test requires that a distinction be made between when the involuntary portion of the event ends and the voluntary portion begins. Many times this distinction cannot be made; the voluntary function is simply a continuation of the mandatory function.

A better approach to nonmandatory recreational functions that follow mandatory functions is to accept them for what they are: work related activities. Recreational activities that take place after mandatory firm functions should be considered as falling within workers' compensation statutes. Under risk analysis, the risk causing injury is connected to the employment. In addition, the actual compulsion on the employee requiring her to attend the mandatory function creates an underlying implied compulsion on the employee to attend the voluntary function.

Compensating an employee for injuries sustained at voluntary company functions preceded by mandatory firm functions is justified under a variety of forms of risk analysis. Using both the positional-risk doctrine and the increased-risk doctrine, the injury sustained by the employee at a firm function or outing arises out of and in the course of employment. Positional-risk doctrine mandates that the employee's injury would not have occurred but for the condition of the workers' employment. Where an employee attends a mandatory function which is followed by a voluntary function, the employee's attendance at the voluntary function would not have occurred but for the fact of the mandatory meeting. Because the employment required that the employee be at the location where the harm occurred, the injury is sufficiently connected to the employee's employment and any injury sustained should be compensable.

Compensability is also warranted under the increased-risk doctrine. The requirement that the employee attend the mandatory function impacts on the employee's decision to attend the voluntary function. Once the employee decides to attend the voluntary function because of actual or implied compulsion on the part of the employer, any risk of harm that

80 In re Question Submitted by U.S. Ct. of Appeals, 759 P.2d 17 (Colo. 1983).
81 A. Larson, supra, note 9, § 6.00.
82 Dymaletren v. Indus. Comm'n, 660 P.2d 915 (Colo. Ct. App. 1983) (injury sustained by an employee at a cocktail party following a mandatory meeting is held compensable on grounds that the informal gathering was incident to the employment and that it was natural and reasonable for the employee to attend the cocktail party); Cellura v. Frank B. Hall & Co., 36 A.D.2d 868; 320 N.Y.S.2d 191 (1971).
is increased by participation should be compensable under the workers’ compensation statute. The employment, by requiring the employee’s attendance and participation in the recreational activity, increases the employee’s exposure to risk by placing the employee in an environment containing risk. If for instance, a company holds a meeting at a ski resort and the employee suffers an injury while skiing during a free period, the injury should be compensable because the worker was exposed to an increased risk of suffering a ski injury as a result of her employment. The fact that the employee was acting for personal enjoyment and that the skiing activity was not compelled by the employer is irrelevant. The employer, by scheduling a meeting in a recreational environment, tacitly encouraged the employee’s participation in the available recreational activities thereby increasing the risk that the employee would suffer a recreational injury.83

In cases where the recreational activity is not preceded by a mandatory firm function, courts are more apprehensive about awarding compensation.84 This is due to a number of factors, but two factors appear to be overriding. Recreational activities which do not have a mandatory function connected are viewed as purely voluntary and unrelated to the employee’s professional life. This factor can be overcome by showing that there was an implied compulsion on the employee to attend the event. The second factor, however, is more difficult to overcome. Courts are reluctant to award compensation to employees who sustain injury at completely voluntary recreational activities because they fail to see the benefit which accrues to the employer from the employee’s participation.

The absence of a recognizable benefit to the employer from an employee’s participation in a completely voluntary recreational activity requires courts to focus on the implied compulsion felt by an employee when asked to participate in a voluntary company function.85 Many times, a company’s social gatherings are viewed by employees as an integral part of their employment duties.86 Company outings give an employee an opportunity

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83 Approval by the employer for employee participation in activities generally thought to be personal to the employee and independent of the employee’s duties has been held to support the inference that the injury arose out of and in the course of employment. See Cabin Crafts, Inc. v. Pelfrey, 119 Ga. App. 809, 165 S.E.2d 660 (1969); Zengotita v. New York Tel. Co., 58 A.D. 930, 396 N.Y.S.2d 921 (1977).


to interact with her superiors in an informal setting conducive to candid discussion about personal goals and prior achievements. Informal gatherings are an important part of the employee's employment because the personal relationships established at informal social gatherings can impact on later career advancement.\(^8\)

This is particularly true for low level executives whose futures depend on upper management's personal feelings. An employee perceived as outgoing, comfortable in social settings and a team player has a much greater chance for advancement than one viewed as introverted and uninterested in making contacts outside the workplace. Social gatherings are used by firms to draw out the employee's personality. Impressions made by the employee at the social function give rise to certain presumptions about the employee's leadership abilities, cooperativeness, and managerial skills.\(^8\)

Evidence of the important role that social outings play is found in typical employee review forms which rank employees on the basis of their attitude toward their work. Participation in firm outings solidifies the employer's perception that an employee has a positive attitude about her job and that the employee is an asset to the company.\(^9\)

Because a significant amount of the time spent at a recreational activity is devoted to cultivating work relationships which will aid the employee in the furtherance of her career, such functions should be viewed as an extension of the employment duties and should be compensable under the workers' compensation statutes. Refusal to recognize social gatherings as an important aspect of modern business denies the true nature of modern industrialization.\(^9\)


\(^9\) Even where the employer testifies that the activity was solely for the enjoyment of the employees and completely voluntary, most employers will concede that the outings also serve the purpose of giving upper management a chance to meet with subordinates to discuss their future goals. See generally, Ricciardi v. Damar Prod. Co., 82 N.J. Super. 222, 197 A.2d 390 (1964), rev'd, 45 N.J. 54, 211 A.2d 347 (1965); Husman Snack Foods v. Dillon, 591 S.W.2d 701 (Ky. Ct. App. 1979).


\(^9\) In his concurring opinion in *Ricciardi*, Judge Lewis noted that:

> The realities of the commercial world command the recognition that social business interludes to stimulate goodwill, esprit de corps and better relations between employer and employee are desirable business accomplishments.

B. Good Will - A Real Benefit to the Employer

Social outings develop goodwill among employees and between employees and management. Goodwill is a real benefit to the employer and, as such, should be given more credence by courts. Traditionally, courts have limited benefit analysis to identifying an action by the employee which can be said to further a business interest of the employer. In defining business interest, some courts look for a direct benefit to the employer. Courts which use direct benefit analysis refuse to compensate for injury sustained at social outings on grounds that the benefit of goodwill is not a true benefit to the employer and that participation in the activity benefits only the employee. This type of analysis, however, fails to recognize that in a modern industrial society, the intangible benefit of goodwill is just as important to a company as the benefit derived from the everyday labor expended by the company's employees. Goodwill aids the efficiency of a company's operation by nurturing cooperation and teamwork among employees and is an important asset to the employer.

91 Goodwill, for the purposes of this note, includes developing comraderie and a sense of unity among the firm's employees as well as a show of appreciation by the employer for a job well done.

92 Where a camp employee died in an off premises canoeing accident while on break the court held that the injury was not compensable because the employee was not "actually engaged in the furtherance of the business or affairs of the employer." Harris v. Workers' Compensation Appeals Board, 51 Pa. Commn. 470, 473, 414 A.2d 765, 767 (1980). See also, Briar Cliff College v. Campolo, 360 N.W.2d 91 (Iowa 1984) (court holds employee's participation in intermural basketball game gave substantial direct benefit to employer). The "furtherance of the business or affairs of the employer" test is used often in cases where the employee is traveling on business. Under this standard, any injury sustained during the business trip is compensable because the act of traveling furtheres a business interest of the employer. In re Melinda Capizzi, 61 N.Y.2d 50, 459 N.E.2d 847, 471 N.Y.S.2d 554 (1984).

93 In Dynalectron v. Indus. Comm'n, 660 P.2d 915 (Colo. Ct. App. 1983), the court held that injury sustained at a dinner sponsored by the employer was compensable under workers' compensation because the employer received a direct benefit from the employee's attendance by conducting business at the dinner. Many workers' compensation acts use "furtherance of the business affairs of the employer" in the statute. See, e.g., PA. CONS. STAT. tit. 77 § 411(1) (Purdon 1988).


95 Companies are placing much more emphasis on developing both the personal and professional lives of their employees. Levi Strauss & Co. distributes paper weights to its employees which read:

We want satisfaction from accomplishments and friendships, balanced personal and professional lives, and to have fun in our endeavors.

Solomon, Defining Values, Not Just Goals, Wall St. J., Jan. 30, 1989, at B1, col. 1. This is a clear indication of the increasing merge between work relationships and social relationships.

96 In the Riccardi opinion, the court notes that:

[W]here . . . the employer sponsored a recreational event for the purpose of maintaining or improving relations with and among employees, the employees gratify the employers wish by attending and thus serve a business aim. It therefore is correct to say the legislature intended the enterprise to bear the risk of injuries incidental to that company event.

As companies recognize that the employee's good health, fitness and positive mental attitude benefits them through higher efficiency and cooperation, more steps are taken by the employer to ensure the well-being of employees. The advent of on-premise fitness centers, motivational training seminars and employee counseling evidence an increased awareness on the part of the employer that cultivation of the intangible benefit of goodwill translates into the tangible benefit of higher efficiency at the workplace. Off-premises social and recreational activities sponsored by the employer merely extend this philosophy. Employer sponsored recreational activities are not only for the personal benefit of employees, but rather help to achieve increased efficiency at the workplace by fostering goodwill among employees.

The fact that the employer seeks the intangible benefit of goodwill, adds to the compulsion felt by the employee to attend the company-sponsored event. Even where the event is described by the employer as wholly voluntary, in many cases the employee will feel compelled to attend because of peer pressure or repeated requests by the employer that the employee attend. The level of implied compulsion is important when it is unclear whether the injury can be said to arise from the employment. A finding that there was an implied compulsion on the employee to attend the function should give rise to the presumption that the employer sponsored the event with an intent to foster better employee relations; therefore, any injury sustained by the employee at the event should be compensable under workers' compensation statutes on the ground that the injury arose out of and during the course of employment.

C. Proposed Reform: Setting the Standard for Compensability

Currently, courts are split on the compensability of injury sustained at recreational activities. The case law in this area conflicts and it is difficult, therefore, to predict the outcome of any given case. A lawyer presented with a claim for recovery for injury sustained at a recreational activity must make a number of difficult decisions which can effect the outcome of her client's claim. The lawyer can immediately apply for workers' compensation benefits...

98 Main, Merchants of Inspiration, FORTUNE, June 6, 1987, at 69.
compensation benefits. The award of benefits, however, bars her client from a larger recovery utilizing traditional tort law. Doing so could prove costly for both the client and attorney because the employer may raise the affirmative defense that the employee is limited to workers' compensation as a remedy, or the court may simply hold that the workers' compensation board must first determine whether the injury arose during the course of the employment before the claim can be brought.\footnote{101} Both outcomes mean increased litigation costs. This area of the law needs to be reformed and by using general guidelines borrowed from other areas of the law a standard can be established to predict whether recreational activity is compensable.

A reasonableness standard should be used to determine whether employee attendance at the social outing was expected. Evidence can be presented to establish that the compulsion felt by the employee was reasonable under the facts of a given case. Evidence which shows that the employer encouraged the employee to attend the recreational activity,\footnote{102} that the majority of the company's workers attended the event,\footnote{103} that the employer actively participated in the planning of the event,\footnote{104} or that the employer paid for the event\footnote{105} will substantiate an employee's claim that there was an implied compulsion to attend the event. This list is not exclusive and it should not be necessary that a specific number of factors be present to award compensation; rather general guidelines such as these can be used to determine compensability. Whether it was reasonable for the employee to feel compelled to attend the social outing should be a question of fact for the jury, and at least one court has held that the slightest indication of compulsion gives rise to a presumption of compensability.\footnote{106}

The level of the employee's participation is a way to measure the benefit that the employer expects to derive from the recreational activity. Evidence similar to that which shows that the employee was compelled to attend the event should be used to show that the employer intended to derive a benefit from the sponsorship of the event. For instance, evidence

\footnote{101} Palmer v. Bean, 636 S.W.2d 691 (Mo. Ct. App. 1982).
\footnote{104} Wallace v. Shade Tobacco Growers' Agricultural Ass'n, 642 F. 2d 17 (1st Cir. 1981).
\footnote{105} Id. at 20.
\footnote{106} In Jackson v. Cowden Mfg., 578 S.W.2d 259 (Ky. Ct. App. 1978), the court, citing Spurgeon v. Blue Diamond Coal Co., 469 S.W.2d 550 (Ky. 1971), states: ... [I]f the slightest degree of compulsion is practiced by employer then it must be presumed that the activity engaged in is incidental to the interests of the employer and therefore part of the employee's work. \textit{Id.} at 263.
that the employer paid for the activity,\textsuperscript{107} planned and managed the activity\textsuperscript{108} or was recognized in the community as actively supporting and encouraging the activity,\textsuperscript{109} creates the inference that the employer perceived the activity as incident to the employment and that the employer expected to receive some benefit from the employee's participation in the event. The benefit sought to be gained is an increased feeling of goodwill which contributes to increased efficiency at the workplace.

The combination of work related benefit to the employer (increasing efficiency by raising goodwill) and the implied compulsion felt by the employee to attend the social or recreational outing justifies awarding workers' compensation benefits. Implied compulsion and goodwill benefit to the employer are often difficult to measure, but difficulty alone should not be the basis for denying the employee compensation. Because of the difficulty in determining when to award benefits for injury sustained at a recreational activity, some states have enacted statutes outlining the circumstances under which workers' compensation is available to an employee who sustains injury at a company function. But these statutes, in most instances, complicate the issue by setting standards as ambiguous as judicially developed standards.

D. Legislative Action

California's Workers' Compensation Act contains a provision which specifically deals with injury sustained by an employee at a recreational function. The provision, which is typical of legislation of this type, states that:

\begin{quote}
[injury is compensable where] ... the injury does not arise out of voluntary participation in an off duty recreational, social or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by the employment ... \textsuperscript{110}
\end{quote}

(Emphasis added)

A variation of this type of statute is found in Ohio's Workers' Compensation Act which uses waiver as a vehicle to limit liability for injury sustained at recreational events.\textsuperscript{111} Massachusetts Workers' Compensa-

\textsuperscript{107} Wallace v. Shade Tobacco Growers' Agricultural Ass'n, 642 F.2d 17, 20 (1st Cir. 1981).
\textsuperscript{108} Id. at 20.
\textsuperscript{109} Consistent support of an employee's involvement in a community youth baseball team and an established policy of community service dictates that an injury sustained by the employee while on the way to a youth baseball meeting is compensable under the workers' compensation act. Pepco, Inc. v. Ferguson, 734 P.2d 1321, 1324 (Okla. Ct. App. 1987)
\textsuperscript{111} OHIO REV. CODE ANN. § 4123.01 (Baldwin 1988).
tion Act excludes recovery for injuries resulting from an employee's "purely voluntary participation in any recreational activity, including but not limited to athletic events, parties, and picnics even though the employer pays some or all of the costs thereof."\(^{112}\)

The California statute, by using a "reasonable expectancy of employment" test, allows the greatest amount of coverage. Under this test, an employee can recover for his injury where the employee "subjectively believes his or her participation in an activity is expected by the employer and where that belief is objectively reasonable."\(^{113}\) Some California courts view the statute as an indication that the legislature wishes to limit the employer's liability for injury sustained at a recreational event.\(^{114}\) A better approach, however, is to view the statute as merely setting a standard against which implied compulsion can be measured.\(^{115}\) Given that the legislature chose to use the words "subjectively believes" the latter interpretation appears to be correct.

Attempts by legislatures to limit the kinds of recreational activities which are compensable is problematic because the factors used to determine whether such an injury is compensable are too esoteric to fit into a legislative scheme. It is not enough simply to say that voluntary participation in recreational activity is not compensable. Participation is voluntary only to the extent that the employee does not feel compelled to attend. The use of words such as "implied" or "subjectively believes" admits that injury sustained at a recreational event is compensable given the right set of circumstances. Legislatures, although the birth place of workers' compensation law, are incapable of reconciling the problems of liability for injury sustained at recreational activities. Workers' compensation boards (and the courts when necessary) can resolve these problems if the legislatures make a clear statement that injuries sustained at recreational activities are compensable, as a general rule, and that exceptions to this rule should be developed by the courts and workers' compensation boards.


\(^{114}\) "The purpose of \(§ 3600 (a)\) was to ensure the employer could provide voluntary off-duty recreational, social, and athletic benefits for his employees personal use without also bearing the expense of insuring the employee for worker's compensation benefits during participation in those activities." Hughes Aircraft Co. v. Workers' Compensation Appeals Bd., 149 Cal. App. 3d 571, 196 Cal. Rptr. 904 (1983)

\(^{115}\) Aetna Casualty & Surety Co. v. Workers' Compensation Appeals Bd., 187 Cal. App. 2d 922, 232 Cal. Rptr. 257 (1986) (court views \(§ 3600(a)\) as an attempt by the legislature to limit indirect pressure by the employer to compel employees to participate in company sponsored events; court notes that evidence showing that the employer used express or implied pressure to stimulate employee involvement would substantiate a claim of compensability).
E. The Nineteenth Century Revisited: The Hidden Value of Compensating for Injuries Sustained at Recreational Events.

Opposition\textsuperscript{116} to compensating for injury sustained at a recreational or social activity is misplaced because it focuses on the argument that compensating for such injury will result in increased costs to the employer. This argument, which mirrors arguments made by industrialists almost a century ago,\textsuperscript{117} is faulty because its basic premise, — that compensating recreational activity will be costly for employers, is untrue. Recent case law indicates that compensating an employee for this type of injury will actually save the employer money because doing so eliminates the employer's exposure to tort liability.

Where, for example, the employer sponsored a picnic for its management employees and the plaintiff was stabbed by a co-worker, the plaintiff sought tort recovery rather than workers' compensation.\textsuperscript{118} The plaintiff argued that the employer was negligent in "failing to provide a safe premises for the picnic and failing to provide adequate supervision."\textsuperscript{119} The employer's response was that the employee failed to state a claim upon which relief could be granted and that the employee's claim was barred by the exclusive remedy provision of the state's workers' compensation statute.\textsuperscript{120} On appeal of the trial court's grant of summary judgment for the employer, the appellate court held that the compensability of the employee's injury was a factual determination to be made by the workers' compensation board; therefore, the trial court's grant of summary judgment was improper.\textsuperscript{121} According to the court, should the workers' compensation board find the injury non-work related, the employee would then be allowed to proceed with his tort claim.\textsuperscript{122}

This case, and others like it,\textsuperscript{123} illustrate the need to recognize injuries sustained at recreational activities as work related. The current state of this area of workers' compensation law leads to conflicting and confusing results. Employees, in an attempt to reap larger awards under tort principles, are turning employer's arguments against them. It is now the employee who "contends that [the company outing] was a purely social

\textsuperscript{116} Companies have devised some ingenious ways to avoid liability for injury sustained at company sponsored events. For example, 3M Company has established the 3M club which is a not for profit corporation funded by membership dues paid by employees and revenues derived from vending machines located on the employer's premises. The purpose of the club is to organize and sponsor recreational activities for 3M employees. When faced with a compensation claim by an employee who participated in a 3M club event, the 3M Company argued that the 3M club was a separate legal entity and that is had no connection to that entity. The court held that the employee's injuries did not arise out of and in the course of the employee's employment. 3M Co. v. Illinois Indust. Comm'n, 78 Ill.2d 182, 399 N.E.2d 612 (1979).

\textsuperscript{117} Friedman, \textit{supra} note 5, at 60, 63, 64.


\textsuperscript{119} \textit{Id.} at 428.

\textsuperscript{120} \textit{Id.}

\textsuperscript{121} \textit{Id.} at 430.

\textsuperscript{122} \textit{Id.} at 430.

\textsuperscript{123} Beckam v. Estate of Brown, 100 N.M. 1, 664 P.2d 1014 (Ct. App. 1983).
Employers, in an attempt to limit liability, argue that “substantial business-related benefits were to be derived from the social gathering” and that compensating for injury sustained during a company outing is consistent with “a humanitarian and economic system for compensating injured workmen and their families.”

Implementing a system whereby injuries sustained at a recreational activity or social outing are routinely compensated will be cost effective and in keeping with the general policy of workers’ compensation statutes that an employee be compensated for work related injury. Like general workers’ compensation principles, exceptions to compensability would exist when the employee acts outside the scope of the recreational activity, e.g., voluntary intoxication. Refusing to recognize injuries sustained at company sponsored recreational activities or social outings as compensable only complicates existing problems and stifles the evolution of workers’ compensation law.

V. CONCLUSION

Compensating employees for injuries sustained at company sponsored recreational activities or social outings is fair, in the interests of public policy, and in keeping with the spirit of workers’ compensation law. As in the early days of workers’ compensation law, the opposition of employers to recovery for injury sustained at a recreational event is premised upon the belief that it would be cost prohibitive to compensate for such injury. But when examined in a broader perspective, compensating employees for recreational injury can be cost efficient since workers’ compensation statutes cover only damages sustained from loss of earning power and an award of workers’ compensation benefits cuts off recovery under traditional tort liability.

Companies are able to assume the risk of recreational injury. Workers’ compensation was founded on the belief that the cost of work related injury should be borne by the party best able to assume it, and that party is the employer. Employee involvement in recreational activities is an extension of the duties of employment. The fact that the employee may gain some personal benefit and that the activity is not directly related to the employee’s job description should not bar the employee from recovery under the state’s workers’ compensation statute.

125 Id. at 429.
Modern industry has changed the workplace from the traditional assembly line to a broad range of work environments. Off-premises recreational activities and social outings should be considered part of the work environment. In the highly complex corporate structure, cooperative interaction between employees determines profitability of a company. Recreational activities are an integral part of developing cooperation and efficiency and, as such, are work related. As a result, injury sustained while participating at one of these events should be compensable under the workers' compensation statutes.

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