

COURT REJECTS THE “EMPLOYEE’S OWN CONVEYANCE RULE” AS AN EXCEPTION TO THE “GOING AND COMING RULE” IN TORT CASES”

April 7, 2011 | Law Alerts, News

Carnes v. Phoenix Newspapers, Inc.
Ct. Appeals, Div. One, April 7, 2011

[Authored by the JSH Appellate Team](#)

Carnes sued Phoenix Newspaper, Inc. for the wrongful death of her husband. A PNI employee driving her own personal vehicle home from her shift delivering newspapers hit Mr. Carnes while he was riding his bicycle. PNI requires its employees to use their own personal vehicles to deliver newspapers. Carnes claimed that PNI was vicariously liable for its employee’s negligence because the employee was an agent of PNI, acting within the course and scope of employment at the time of the accident.

PNI moved for summary judgment arguing that under the “going and coming rule,” an employer is not liable for the tortious acts of its employees while their employees are going to or returning from work. The policy for this rule stems from the fact that during these times, an employer does not have control, or the right to control, its employees. Carnes argued that the Court should adopt the “employee’s own conveyance rule” as an exception to the “going and coming rule” in tort cases. This rule originated in workers’ compensation cases and provides that if an employee, as part of their job, is required to drive his own vehicle for use during the working day, then the trip to and from work falls within the course and scope of employment.

The court of appeals rejected Carnes’ argument. The purposes behind workers’ compensation statutes and tort cases are fundamentally different. Workers’ compensation rules are broad in scope because they compensate for losses attributed to the work place, and focus on placing the burden of injury on the industry as a whole. The respondeat superior standard in tort cases is more narrow, based on the employer’s control over the employee, and is intended to encourage employers to supervise their employees to discourage negligent conduct toward victims. But an employer does not have the right to control an employee on his way home from work while driving his personal vehicle.