EMPLOYER NOT VICARIOUSLY LIABLE FOR EMPLOYEE'S AFTER-WORK ACCIDENT DURING AWAY-FROM-HOME ASSIGNMENT

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Engler v. Gulf Interstate Engineering
Ariz. Supreme Court, July 9, 2012

Authored by the JSH Appellate Team

Gray worked for employer Gulf, a Texas-based energy consulting company. In 2007, Gray worked on the design and construction of a natural gas compressor for Gulf in Los Algodones, Mexico. Gray lived in Houston and flew each week from Houston to San Diego, where he rented a car and drove to Yuma. He stayed in a hotel in Yuma and commuted each day to the worksite in Mexico. Gulf also reimbursed Gray's business expenses, including the cost of his lodging, rental cars, and meals; and Gulf paid Gray for his travel to and from the job site because his work required him to cross an international border each day, which often entailed significant delays, especially when returning to Yuma. Gulf considered Gray's work day to begin when he left the hotel in Yuma and to conclude when he returned to Yuma. During after-work hours, Gulf did not attempt to supervise Gray or control his activities. After work one day, Gray got into an accident and injured a motorcyclist when leaving a restaurant in Yuma after dinner.

The Supreme Court held that Gulf was not vicariously liable for the motorcyclist's injuries. Adopting the Restatement (Third) of Agency § 7.07, Gray was not acting in the course and scope of his employment when the accident occurred. Gulf did not exercise any control over Gray at the time of the accident. Gray was not serving his employer's interests in traveling to and from the restaurant during his off hours, and Gulf did not control where, when, or even if Gray chose to eat dinner. Once Gray returned to his hotel at the end of the work day, he was free to do as he wished. That he ate dinner with a work colleague after work hours did not transform the social occasion into a business activity.

In so holding, the court rejected Plaintiff's attempt to use worker's compensation principles to construe "scope of employment" broadly. While those principles might provide guidance, those standards do not apply because workers' compensation and tort law differ in purpose and scope. The court also rejected Plaintiff's argument that all of Gray's activities in Yuma were to serve his employer. Whether the employee was subject to the employer's control must be assessed at the time of the employee's tortious act. Finally, the court distinguished a previous court of appeals decision, McCloud v. Kimbro (App. 2010), because that case involved an administrative regulation providing that a DPS officer comes "within the course and scope of employment when driving a state-owned vehicle if driving 'to and from meals while on out-of-town travel.'" Importantly, however, the court disagreed with any interpretation of Mc-Cloud II suggesting that employees generally are acting within the course and scope of their employment when "driving to a restaurant" while off duty during an extended out-of-town assignment simply because eating is incidental to a multiple day assignment.