Injuries at Company Events-Who Pays?

By Merton E. Marks, Esq., WCP®

Who doesn't like parties, dinners, picnics, golf tournaments and any kind of good time? Company recreational events are as much a part of the job as the job itself. But, what if someone is injured at the event? Who pays?

The knee-jerk reaction is "The Boss." But, not necessarily so. Whether such injuries are covered by workers' compensation benefits depends on whether the injury arose "out of and in the course of the employment." This is the most familiar and elusive phrase in workers' compensation law. Dozens of court decisions and many legal articles have struggled to define it. As will be seen, the answer is highly dependent on the facts of the case and court decisions can be contradictory even when facts are very similar.

Company Picnics and Sports Events

A South Carolina case gives us the most recent word on the issue. The claimant, Whigham, was the Director of Creative Solutions at Jackson Dawson, a marketing, advertising, and public relations company. As part of his employment, he attended bi-monthly meetings at which the managers discussed, among other things, the importance of team-building events. In compliance with the company's plan for an enjoyable work atmosphere, Whigham conceived the idea of having a company kickball game. Management approved. Whigham proceeded to contact a rental facility and designed T-shirts for the event. The company funded the event. Whigham used the company intranet to promote it and encourage attendance. The game took place on a Friday afternoon with roughly half of the employees in attendance. Ironically, Whigham was injured on the last play.

Overruling the Commissioner and Court of Appeals, both of which had denied benefits, the South Carolina Supreme Court ruled in favor of Whigham, stating

"In finding a recreational or social activity is within the course of employment, this Court considers whether the activity falls within one of the following factors established by Professor Arthur Larson:

(1) [It occurs] on the premises during a lunch or recreation period as a regular incident of the employment; or

(2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or

(3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life."

The court concluded:

"We agree that Whigham was impliedly required to attend the kickball game he organized and that it became part of his services; therefore, the event was brought within the scope of his employment. Although the event may have been voluntary for company employees generally, the undisputed facts unequivocally indicate Whigham was expected to attend as part of his professional duties. Accordingly, we hold Whigham's injury arose out of his employment as a matter of law."

Whigham v Jackson Dawson Communications and The Hartford (S.C., 8/27/14).

Similarly, a New York court awarded benefits to the family of an employee who collapsed and died during a softball game at the company picnic. The court noted that the employer had financially contributed to the event and an executive gave a speech at the picnic dealing with the past performance and future expectancy of the company. Gore v New York Air Brake Company, 305 N.Y.S. 2d 815 (App. Div. 1969).

However, an Arizona court denied benefits where an employee drowned while tubing down a river at the annual picnic. The court found that even though the employer paid for the food and attendance was voluntary, the event was for the primary benefit of the employees and not the company. Atkinson v Industrial Commission, 545 P. 2d 968 (Ariz. App. 1976).

And, a North Carolina court denied benefits for an injury sustained during a volley ball game between faculty members and new medical residents at the medical school. The court said that there was no benefit to the medical department and attendance was voluntary. Chilton v Bowman Gray School of Medicine, 262 S.E. 2d 347 (NC App. 1980).

Company Sponsored Teams

It would seem that the very words "company sponsored teams" should result in a finding that an injury is compensable. In cases in New York and Colorado benefits were awarded for employee injuries during organized, uniformed and scheduled games in which company premises were used, the employers subsidized the league, received favorable publicity in the media, games were held during work hours and the uniforms had the employers' names and logos printed on them. The courts had no problem finding obvious benefit to the employers. Tedesco v General Electric Co. 114 N.E. 2d 33 (NY 1953), City and County of Denver v Lee, 450 P. 2d 352 (Colo 1969).

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But, in a similar Massachusetts case, benefits were denied. Westinghouse furnished softball shirts with the name "Westinghouse" on them and a baseball cap with a "W." Employees on the team were allowed to change their clothes on Westinghouse's premises. However, the games were not played on Westinghouse's premises, but rather on public softball fields. Westinghouse did not compel participation and did not participate actively in the activities of the team. The games were played after work, usually in the evenings. And, they were played in a league sponsored by the city of Boston.

The court concluded that the claimant's after-work injury sustained on a public playground in the course of a softball game in which there was no employer compulsion to participate, and played in a league sponsored by the city of Boston, was not compensable solely because Westinghouse provided each participant with a shirt and a cap with identifying symbols and allowed each player to change his clothes on its premises. The court noted that when an employee's recreational activity (1) occurs

after work and off the employer's premises, (2) is not the result of compulsion or pressure by the employer, and (3) is not sponsored by the employer, the benefit to the employer is "...at best inferential...insignificant...[and] incidental." In re Kemp, 437 N.E. 2d 526, 530 (Mass 1982).

Holiday Parties

Holiday parties have always been a prolific source of these cases. In a New York case, a male employee was stabbed at the annual company Christmas party by a jealous male co-worker because the former was dancing with a female co-worker on whom the stabber had his eye. The court ruled that the employer had supplied the liquor, entertainment and place for the party and the dancing and drinking at the party had stimulated the conflict. Torres v Triangle Handbag Manufacturing Co., 211 N.Y.S. 2d 992 (App. Div. 1961).

But, compensation was denied in another New York case where the deceased employee died from an alcohol overdose after he had a contest with another employee at the company Christmas party to see who could drink the other "under the table." The court ruled that the death arose out of the decedent's voluntary excessive drinking and not the employment relationship. Herman v Greenpoint Barrel and Drum Recon. Co., 189 N.Y.S. 2d 353 (App. Div. 1959), affirmed 168 N.E. 2d 721 (NY 1960).

Whether such injuries are covered by workers' compensation benefits depends on whether the injury arose "out of and in the course of the employment."

So, in the last analysis, is there a workable test as to how to know if an injury at a company event "arises out of and in the course of employment?" Perhaps it comes from the late Justice Potter Stewart of the U.S. Supreme Court who said during oral argument on the definition of pornography, "I can't define it, but I know it when I see it!"

About the Author

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Editor's Comment

In an August 25, 2014 decision, the New York Workers' Compensation Board, Panel affirmed a WCLJ decision denying benefits to a worker for injuries (injuries to his ACL and meniscus) sustained while playing softball on company property with his coworkers. All of the players on the softball team were company employees', the equipment was provided by the employer's health clinic and stored in a shed on the employer's property.

In affirming the denial of benefits, the Board panel noted that when an employee is injured in a voluntary athletic activity which is not part of the employee's work-related duties, the New York Workers' Compensation Law § 10 (1) precludes the awarding of benefits unless one of three conditions is met. These conditions are "the employer (1) required the employee to participate in the activity; (2) paid the worker to do so; or (3) sponsored the activity." The Board panel found that the employer did not require the employee to participate or pay the employee to participate, and there was no obvious benefit to the employer.

General Electric, 114 NYWELR 142 (N.Y.W.C.B., Panel 2014)