ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES

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RE: GEORGE THE BARTENDER AND THE "GOING AND COMING" RULE OR "DON'T EVEN GO THERE" [1]

FROM THE LOBBY BAR AT THE HYATT:

After a hard day denying benefits, I arrived at the lobby bar and was greeted with the wonderful visage of Ron Summers, George the Bartender's workers' compensation attorney, wearing a scowl on his face.

From experience, I knew that a less than sunny Ron meant good news for the defense so once I received my Beefeater's martini, straight up with two olives from Kim, the Hyatt's breathtakingly beautiful cocktail waitress, I thought to myself, "There apparently is justice in the world but who do I have to thank?"

So as to prod Ron as to the depths of his despair, I also ordered a drink for him and waited eagerly in anticipation for him to reveal the name of my would-be hero.

After thanking me for his drink, Ron told me that he had received an adverse decision from a Workers' Compensation Judge (I'm being kind here, as Ron actually described it as "terrible") denying his client's legitimate injuries by way of the infamous "going and coming" rule.

Ron told me that he thought he had this case nailed on the "special mission" and/or "zone of danger" exception and without being prodded, he lapsed into the facts of the case.

Ron's client works for the Easy Riding Tire Company, which has several locations throughout Southern California. The applicant worked at the main office in Santa Ana.

The tire company issues its payroll checks every other Friday and on the date of the injury (Friday), the tire company's courier service did not show up.

Ron went on to tell me that the applicant's boss wanted him to deliver the payroll checks to those employees who worked at outlying locations. After his client's normal workday, which ended at 5:00 p.m., the applicant drove substantial distances to deliver all of the payroll checks to three locations in Orange and Los Angeles counties.

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[1] For those new patrons to the lobby bar , George the Bartender's workers' compensation case involves an injury to his elbow, lateral epicondylitis (tennis elbow), sustained from the repetitive serving of martinis to me. If there ever was an admitted industrial injury, this is it!

The applicant managed to deliver all of the payroll checks to each employee except one. He then headed toward a restaurant where he was going to meet a friend for dinner.

While he was on the way to the restaurant, the applicant received a call from his boss indicating that the employee that did not get his check would meet the applicant at the restaurant to pick it up.

By this time, the applicant's dinner plans had been cancelled. After giving out the last check to the grateful employee, the applicant drove home and on the way sustained injuries arising out of a car accident.

Ron told me that he had prepared a trial brief for the trial arguing that the applicant was injured while on a "special mission" for his employer (delivering checks). The fact that the applicant was delivering checks certainly put him in a "zone of danger" as he was out on the freeways at night.

Enter the hero of our tale. Ron was so despondent because a Workers' Compensation Judge found that simply because the applicant worked late on this one occasion this did not constitute a special mission, nor did it put the applicant in a "zone of danger." Therefore the commute from the restaurant back to the applicant's home was covered by the "going and coming" rule.

Ron hoped to break free of this gloom and confidently told me that he was preparing a Petition for Reconsideration that he was certain he was going to win.

As I love to rain on Ron's parade, I told Ron about a recent decision by the Board, *Choi v. Workers' Compensation Appeals Board, Lee Construction, Incorporated, State Compensation Insurance Fund*, 75 Cal. Comp. Cases 750, in which the Board reaffirmed the trial judge on almost the identical facts as in Ron's case.

In *Choi*, the applicant also was requested to deliver checks by his boss after work and although the applicant did not complete this task until after 10:00 p.m., the Workers' Compensation Judge and the Board held that his car accident on the way home was still barred by the "going and coming" rule.

Choi is a writ denied case and can be brought to the attention of the Board and/or Workers' Compensation Judge by virtue of Labor Code §5703(d) or pursuant to the authority of the Court of Appeal in *Wings West*.

A crestfallen Ron requested that I send him a copy of the *Choi* case and I cheerfully agreed. I left Ron not knowing where he was going, but I was more than sure of where I was coming from.

DISCLAIMER:

George's attorney, Ron Summers, is a fictional character that only exists in my warped imagination.

The moral of the *Choi* case is that simply because the applicant performs additional duties outside his regular working hours does not, as a matter of law, make the case compensable.

Make mine a double, George.

-Joe Truce