

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS
FROM: JOE TRUCE
DATE: May 17, 2004
RE: COURT UPHOLDS GOING AND COMING EXCEPTION

In a case certified for **non-publication**, the Court of Appeal in Sharp Coronado Hospital v. WCAB (Brown)¹ has annulled a 2 to 1 WCAB decision that awarded compensation benefits to a worker injured while crossing the street to "enter her work place."

At Trial the applicant testified that she drove to work and parked her car on a public street. Pursuant to hospital policy, she did not park on Prospect Place which was a small street in front of the hospital, as the hospital wanted to keep "the spaces in that area open for patients and visitors..."

While crossing Prospect Place to enter the work premises, the applicant was struck by a vehicle and sustained injuries.

At Trial, Judge J.P. McHenry found in favor of the applicant (no surprise here) based on the "special risk exception" to the going and coming rule.

On the defendant's Petition for Reconsideration, the Board affirmed Judge McHenry's ruling but Chairman Merle Rabine dissented on the basis that "the special risk exception does not apply unless the worker is placed at a risk of injury 'peculiarly or to an abnormal degree' greater than to which the general public is exposed..."

In overturning the Board's decision, the Court of Appeal adopted Chairman Rabine's dissent and held that although the applicant in this case met the first part of the two prong test for the special risk exception to the going and coming rule as she was brought to the accident site by her job, the applicant did not meet the second prong by showing that the applicant's risk in crossing the street "was greater than that common to the public..."

The court relied on the Supreme Court decision in General Insurance Co. v. WCAB (Chairez) (1976) 16 Cal. 3rd 595, 4 CWCR 45, 41 CCC 162.

¹This case is cited as 32 CWCR 68.

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The Court of Appeal in reversing the WCAB held that Chairez is still good law and should be cited in any case with comparable facts.


WJT:ab