

CONSTRUCTION LAWLETTER

For Industry Professionals, Directors, Officers, Managers, Agents, Trades and Suppliers

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COMMUTING EMPLOYEE; INJURIES COMPENSABLE, WHEN.

An employee was injured while traveling to a remote worksite. The controversy centered upon the question of whether the injury was compensable, within the course and scope of employment, and. The Court held: ¶ 15} "In the course of" refers to "the time, place, and circumstances of the injury." Ruckman v. Cubby Drilling, Inc. (1998), [81 Ohio St.3d 117](#), 120, 689 N.E.2d 917 (citing Fisher, 49 Ohio St.3d at 277-78, 551 N.E.2d 1271). Generally, an **employee** with a fixed place of employment (a "fixed situs" **employee**), who is **injured** while traveling to or from his place of employment, cannot establish that he received his injuries in the course and scope of employment. See MTD Products, Inc. v. Robatin (1991), [61 Ohio St.3d 66](#), 572 N.E.2d 661, at syllabus. The rationale for this "coming-and-going" rule is to compensate the **employee** for hazards the **employee** encounters "in the discharge of the duties of his employment," but not for "risks and hazards, such as those of travel to and from his place of actual employment over streets and highways, which are similarly encountered by the public generally." Ruckman, 81 Ohio St.3d at 119.

¶ 16} "In determining whether an **employee** is a fixed-situs **employee** * * * the focus is on whether the **employee** commences his substantial employment duties only after arriving at a specific and identifiable work place designated by his

employer." Id. Thus, even if an employee's work site changes monthly, weekly, or even daily, each particular job site may constitute a fixed place of employment. Id. at 120.

¶ 17} A finding that the **employee** is a fixed situs **employee** does not, however, necessarily end the inquiry. A fixed situs **employee** may avoid application of the coming and going rule if "he can, nevertheless, demonstrate that he received an injury in the course of and arising out of his employment." Id.

¶ 18} "The phrase 'in the course of employment' limits compensable injuries to those sustained by an **employee** while performing a required duty in the employer's service." Id. "An injury is compensable if it is sustained by an **employee** while that **employee** engages in activity that is consistent with the contract for hire and logically related to the employer's business." Id. * * *

(To be concluded in the next issue.)

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