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New Decision Narrows Required Vehicle Exception In CA

In California, employees traveling to and from work are generally not considered to be within the course and scope of their employment while commuting, a doctrine known as the "coming-and-going rule."

There are exceptions to the coming-and-going rule, including situations where the employee is required to have a car at work. In such situations, known as the "required vehicle exception," the employee *is* considered to be within the course and scope of employment while commuting.

In a new decision, however, the Court of Appeal significantly narrowed the required vehicle exception to encompass only situations where the employee was required on the particular day of the accident to have a vehicle for work.

The case, *Newland v. County of Los Angeles*, arose out of a car accident involving a County employee. The employee, Donald Prigo, worked as a deputy public defender. On the day of the accident, Mr. Prigo left his office to drive home. When he stopped at a nearby post office on a personal errand, he hit a car, which was then forced off the road and significantly injured the pedestrian Plaintiff.

The evidence at trial demonstrated that, as a trial attorney, Mr. Prigo frequently needed his vehicle for work. For instance, he needed to attend hearings in branch courts throughout Los Angeles, interview witnesses, and visit clients at the jail.

On the particular day of the accident, however, Mr. Prigo did not need his car. His court appearances for the day were in the courthouse where his office was located, and there was no evidence that he planned to go offsite for any pre-trial tasks.

At trial, the issue of vicarious liability was submitted to the jury, which found that Mr. Prigo was required to use his vehicle for his job (and thus was in the course and scope of his employment, making the County vicariously liable). The jury went on to award Plaintiff in excess of $13 million.

On appeal, the Court reversed and directed the trial court to enter judgment in favor of the County. In reaching its conclusion, the Court found that for the required vehicle exception to apply, a plaintiff must show that (1) the employer required the employee to drive his car at the time of the accident, or (2) the employee's use of a car provided a benefit to the County at the time of the accident.

Focusing on the "at the time of the accident" requirement, the Court found that the employee in this case did not need his car for work every day, and knew in advance when he had tasks for which he needed a car.

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Using Satisfactions Of Judgment To Cut Off Fees

Judgment debtors can often find themselves in a seemingly impossible-to-resolve situation in cases where a judgment creditor is entitled to recover his attorneys' fees for enforcement activities, leading to a circular situation where the judgment debtor is never able to pay the actual amount "owed" because of ever-increasing fees.

Take for instance the situation of a contractor against whom a claimant obtains a judgment, including attorneys' fees pursuant to the terms of the construction contract. The claimant then commences enforcement activities against the contractor.

Under California law, because the claimant was entitled to recover attorneys' fees under the contract, the claimant can likewise pursue his fees for the enforcement activities. As a result, the amount "owed" increases on a daily basis. If the claimant refuses to settle, how can the contractor ever pay the amount "owed" to stop the bleeding?

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The Importance Of Updating Beneficiary Designations

In the recent case of *Estate of Jerome Norman Post*, the Court of Appeal addressed whether the Probate Court's jurisdiction may be invoked where the only assets of the probate estate to be addressed are proceeds of a life insurance policy and the beneficiary of said policy is not the decedent's estate.

The matter arose from a dispute over the proceeds of a joint life insurance policy belonging to the decedent, Jerome Norman Post, and his then-wife. The decedent named her as the beneficiary of the policy and Kenneth Post and Eric Post, his sons from a prior relationship, as contingent beneficiaries of the policy.

The subsequent series of events is surprisingly frequent: the decedent divorced his then-wife but neglected to change the policy's beneficiary designation, although he did work with an attorney to prepare a codicil to his will stating he did not want his ex-wife inheriting anything from him "under any circumstances."

In a far-too-typical turn of events, a dispute arose between the ex-wife and the decedent's family regarding the rightful beneficiary of the policy after the decedent passed away. The life insurance company that issued the policy requested a court order or an agreement by the parties regarding how the policy proceeds were to be distributed.

An agreement was not reached, and after the Probate Court granted the decedent's sister authority to administer the decedent's estate, she, along with Kenneth and Eric Post, petitioned the Probate Court for an order designating them as the rightful beneficiaries of the Policy. Both sides conceded the policy was not part of the probate estate, consistent with established case law. The Probate Court nonetheless ruled on the issue and found that the Petitioners were the proper beneficiaries of the policy's proceeds. The ex-wife then appealed.

The Court of Appeal held that the Probate Court lacked subject matter jurisdiction because the "probate court has jurisdiction over the property of the estate of the deceased only" and the policy was not part of the probate estate.

This holding articulates the principle that although probate courts have equitable powers, their jurisdiction is not without bounds. Here, the decedent's right to designate a beneficiary of the policy did not create an interest on the part of the decedent's estate in the proceeds of the policy. As such, the Probate Court's order regarding the rightful beneficiaries of the policy was void for lack of jurisdiction.

This case has several significant implications. First, it provides guidance to entities – like the insurance company in the case – that require individuals to obtain court orders to resolve disputes regarding the rightful beneficiary to certain assets before funds are distributed.

More significantly, this case highlights a common estate planning pitfall. Although having a well-rounded estate plan is crucial for life planning and providing for loved ones both during and after one's life, signing a will and funding a trust may not be the final step in ensuring your assets end up in the right hands. It is critical for individuals to perform both periodic reviews of their estate plans, as well as more thorough reviews after significant life events like divorce or the birth of children.

For a review of your estate plan, contact Danica Brustkern in LGC's San Diego office.

LGC Sponsors Autism Society Fundraiser

AUTISM SOCIETY San Diego

LGC recently participated in the Autism Society of San Diego's 16th Annual Splash for Cash event as its "Big Kahuna" sponsor.

This year's event raised over $22,000 for Autism Society programs like its Surf Camp and monthly Family Pizza and Pool Party, as well as swim lesson scholarships. In addition to sponsoring the event, LGC donated Padres tickets to the Splash for Cash silent auction.

The focus of Autism Society of San Diego is to improve the lives of all San Diegans affected by autism by promoting meaningful participation and self-determination for autistic individuals and their families.

LGC takes pride in its community involvement and looks forward to supporting the Autism Society in future events.

Using Satisfactions Of Judgment To Cut Off Fees

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Luckily, California statutes and case law have recognized the difficulty of this situation, and have provided a road map to permit the judgment debtor to pay the judgment, with interest, and thereby cut off all post-judgment attorneys' fees that have not been incorporated into the judgment.

California Code of Civil Procedure section 685.040 generally permits a judgment creditor to recover "reasonable and necessary costs of enforcing a judgment," including attorneys' fees, if "the underlying judgment includes an award of attorney's fees to the judgment creditor . . . ." The judgment creditor may request costs, including attorneys' fees, by either filing a memorandum of costs (Section 685.070(b)) or a noticed motion (Section 685.080(a)).

Section 685.070, however, imposes a critical limitation, clarifying that the fees and costs are recoverable "before the judgment is fully satisfied but not later than two years after the costs have been incurred."

A money judgment is satisfied by payment of the full amount of the judgment, including post-judgment interest (Section 724.010(a)). When a money judgment is satisfied, the judgment creditor must immediately file an acknowledgment of satisfaction of judgment (Section 724.030).

Several cases have confirmed that, even if recoverable attorneys' fees have been incurred since entry of the judgment, a judgment is fully satisfied if the judgment, with post-judgment interest, is paid in full prior to the judgment creditor filing a supplemental memorandum of costs or motion for attorneys' fees. (*Gray1 CPB, LLC v. SCC Acquisitions, Inc.*, (2015) 233 Cal.App.4th 882; *Conservatorship of McQueen*, (2014) 59 Cal.4th 602.) In other words, even if the creditor has incurred fees, if the creditor has not yet amended the judgment to incorporate those fees, a judgment debtor can wipe out those fees by satisfying the judgment.

LGC recently used this procedure in an insurance coverage dispute to eliminate hundreds of thousands of dollars in collection fees purportedly incurred by creditors who obtained a judgment against the insured.

The underlying lawsuit was filed by two homeowners, Pia Altavilla and Chris Warner, against a contractor insured by LGC's client, resulting in a judgment in the homeowners' favor, including attorneys' fees. The insurer believed that only a small portion of the judgment was covered.

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He never had an emergency situation where he needed a car unexpectedly for work. It was undisputed that, on the particular day of the accident, Mr. Prigo did not require his vehicle for his work, and thus the required vehicle theory did not apply.

The Court further found that there was no evidence that the employee's use of a car provided a benefit to the County on the particular day of the accident. There was no evidence, for instance, that the County relied on or expected Mr. Prigo to have his vehicle at work and available as needed. In fact, there was evidence at trial that Mr. Prigo sometimes carpooled or took public transportation to work, which emphasized that the County was not relying on Mr. Prigo to have his car available, and thus was not receiving a direct or indirect benefit from Mr. Prigo having his car there on the day of the accident.

This case represents an important step in reigning in the required vehicle exception to the coming and going rule. The required vehicle exception has been frequently invoked to try to get around the otherwise clear-cut coming and going rule. Plaintiffs have previously been able to escape the coming and going rule by simply arguing that the employee sometimes needed his vehicle at work or that there were times where the employee having a vehicle at work benefitted the employer.

This new decision, however makes clear that the exception is narrower, and only applies to situations where the employee needed a vehicle on the particular day of the accident, or having a vehicle on that particular day benefitted the employer. For more information about the case and its impact, please contact Chris Schmitthenner in LGC's San Diego office.

Chris Schmitthenner

Using Satisfactions Of Judgment To Cut Off Fees

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As a result, the insurer paid the covered portion, and litigation ensued over the balance. At the same time, the homeowners' counsel, Peter Pritchard, launched into aggressive collection activities rather than waiting to mediate.

Ultimately, the insured and the insurer reached an agreement to each fund portions of the balance of the judgment, but the homeowners refused to accept the joint offer by the insured and the insurer. Indeed, the homeowners even rejected multiple offers in excess of the amount of the remaining judgment, dubiously claiming that they had incurred $265,000 in attorneys' fees.

Mr. Pritchard, however, never filed a supplemental memorandum of costs or otherwise amended the judgment to incorporate those purported attorneys' fees.

As a result, LGC's client and the insured delivered a cashier's check to claimant's counsel for the balance of the judgment, with interest, which was cashed. With the judgment satisfied, the claimants were forced to file an acknowledgement of satisfaction of judgment, eliminating all of their post-judgment attorneys' fees.

For more information, contact Chris Schmitthenner in LGC's San Diego office.

Two Appellate Decisions Expand Duty Of Property Owners

In the past several months, two different decisions from the Court of Appeal have expanded the duty of California property owners to keep their premises safe.

In June, in *Coyle v. Historic Mission Inn Corp.*, the Court of Appeal for the Fourth District reversed summary judgment granted to the historic Mission Inn Hotel and Spa in Riverside. In that case, the plaintiff was eating lunch at the hotel when she was bitten by a black widow spider, allegedly leading to significant complications. The hotel argued it had pest control procedures in place and no prior notice of black widow spiders on the premises. The Court of Appeal reversed, finding that it was a matter of common knowledge that black widow spiders are found in the region, and thus a reasonably thoughtful property owner would take that into account in warning patrons about the spiders or otherwise protecting them from spiders.

Two months later, in *Staats v. Vinter's Golf Club, LLC*, the Court of Appeal for the First District reversed a trial court's order granting summary judgment to a golf course owner in a case where a patron was attacked and seriously injured by a swarm of yellow jackets. The trial court granted summary judgment in favor of the golf course, finding that the golf course had no duty to protect patrons against a swarm of yellow jackets of which the owner had no prior notice. The Court of Appeal reversed, finding that the golf course had a duty to keep its premises reasonably safe, including protecting patrons from yellow jackets' nests.

Notably, the Courts reached their conclusions despite precedent holding there was no duty of a homeowner in a case where a visitor was bitten by a brown recluse spider, and another case where there was no duty to prevent a visitor from being bitten by a tick and contracting Lyme disease.

In both cases, the Courts emphasized that their analysis was focused not on the specific facts of the cases, but rather on a determination of the threshold legal question of whether a duty existed. The property owners were still free to present evidence that they met the standard of care.

As a practical matter, though, these two decisions will make it nearly impossible for property owners to dispose of such specious cases via summary judgment. While property owners may instead bring summary judgment based on an argument that they met the standard of care (rather than the non-existence of a duty), plaintiffs will be able to defeat such motions by propping up any "expert" to declare that the standard of care was not met, thereby creating a disputed fact for trial.

For more information about these cases and their implications, contact Chris Schmitthenner, a partner in LGC's San Diego office.