IN THE SUPREME COURT OF FLORIDA

LEON COUNTY SCHOOL BOARD and
ROYAL INDEMNITY COMPANY,

Petitioners,

vs.

THELMA J. GRIMES,

Respondent.

CASE NUMBER: **71,694**
FIRST DISTRICT COURT OF
APPEAL NUMBER: BN-95

APPEAL FROM THE FIRST DISTRICT COURT OF APPEAL

# PETITIONER'S INITIAL BRIEF

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TABLE OF CONTENTS

## TABLE OF CITATIONS

STATUTORY AUTHORITY



MISCELLANEOUS AUTHORITY

## STATEMENT

In this brief, Petitioners are referred to as employer/carrier. Respondent is referred to as claimant. References to the record on appeal are designated by the symbol "R" followed by the appropriate page number.

## STATEMENT OF THE CASE AND FACTS

The claimant in this workers' compensation case has been employed by the Leon County School Baord for 21 years. She is employed as a media technician. Her job duties include the handling of supplies, circulars, periodicals and visual and audio materials (R:79). She was afflicted with polio as a small child and has worn a brace on her right leg since that time (R:29). The brace is a full-length brace with a lock at the knee joint (R:7). She has no use of her right leg when it is not encased in the brace (R:2). Periodically, the brace wears out, and she is required to obtain a new one (R:7).

On the day of her accident, the claimant was working at her desk in a normal fashion. Toward the end of the day, she rose from her desk and locked the brace, as she normally does, but for some reason it gave way when she put her weight onto the right leg, causing her to fall (R:8-9). When she fell, her left leg became trapped underneath her (R:10) and, according to her testimony, she fractured her left ankle (R:15). The floor upon which the claimant fell was carpeted (R:30) and she did not hit a desk or chair as she fell **(R:30).** The claimant's leg brace was damaged in the fall and had to be repaired (R:16,22). The claimant also testified that her leg brace had given way on her in a similar fashion prior to this occasion, also resulting in a fall (R:31). In fact, she had sustained this same type of fall at home prior to August 8, 1985 **(R:32).**

The employer/carrier controverted the compensability of this claim (R:73), and the case came on for hearing before the deputy

commissioner on March 11, 1986 (R:1). After hearing the evidence, the deputy commissioner agreed with the employer/carrier that the claiamnt's injury did not "arise out of" her employment and denied the claim (R:78-80).

The district court reversed the decision of the deputy commissioner and certified the following questions as one of great public importance:

> In applying the pertinent provisions of Chapter 440, are accidents suffered by employees in falls which are attributable to idiopathic causes personal to the employee and result in injuries from collision with the floor, equipment or other conditions of the workplace, permissibly treated as arising out of the employment, irrespective of any showing of increased risk or hazard attributable to the workplace?

Petitioners timely filed a notice to invoke the discretional jurisdiction of the Supreme Court.

## SUMMARY OF ARGUMENT

This court should answer the certified question in the negative. The district court improperly reversed the deputy commissioner's order denying compensability since the deputy commissioner properly relied on longstanding Supreme Court precedent and correctly applied the law in finding that the claimant's injury did not "arise out of" her employment.

The law in Florida is clear that for an injury to be compensable under Chapter 440, the claimant must prove that she suffered (1) an "accident" (2) "arising out of" and occurring (3) "in the course of" her employment. In order to arise out of employment, such employment must in some way contribute to the risk or aggravate the injury. In this case, the claimant's accident was due solely to the fact that her knee brace gave way. The knee brace did not give way for any reason connected with the claimant's employment, and the injury was not aggravated by any conditions of employment. Accordingly, although the claimant did suffer an "accident", it did not arise out of her employment and is, therefore, not compensable.

The district court recognized that the application of existing Florida law would result in a finding that the injury was non-compensable, and, in finding the injury compensable, the district court deviated from longstanding Supreme Court precedent. In doing so, the district court formulated a new "actual risk" doctrine.

The "actual risk" doctrine would consider compensable any injury to a worker during the course of his or her employment

resulting from a fall at any place where the employee's duties require him to be, regardless of whether the act of falling was initiated by a condition personal to the claimant.

In applying the doctrine to the facts of this case, the district court considered this injury to be one caused as the result of impact with the floor, yet the only testimony available, that of the claimant, supports the conclusion that she fractured her ankle in the course of the fall, not as the result of an impact with the floor or any work related condition.

Finally, the courts of Florida should not attempt a construction of the statutes which is so clearly contrary to the legislative intent of the statute. If it is to become the policy of the State of Florida to convert workers' compensation into a mandatory general health insurance policy instead of a program which limits the burden on industry to those ailments which are produced by the hazards and risks of the industry, then it should be the legislature, not the courts, which makes that determination.

## ARGUMENT I

**THE DISTRICT COURT OF APPEAL ERRED IN REVERSING THE DECISION OF THE DEPUTY COMMISSIONER WHEN THE DEPUTY COMMISSIONER'S DECISION WAS BASED ON LONG STANDING SUPREME COURT PRECEDENT.**

In its opinion of December 15, 1987, the First District Court of Appeal reversed and remanded the deputy commissioner's order denying compensability for the injury suffered by the claimant. In doing so, the district court acknowledged that it was ruling "somewhat inconsistently'' with the Supreme Court, and certified the following question as being one of great public importance:

> In applying the pertinent provisions of chapter 440, are accidents suffered by employees in falls which are attributable to idiopathic causes personal to the employee and result in injury from collision with the floor, equipment or other conditions of the workplace, permissibly treated as arising out of the employment irrespective of any showing of increased risk or hazard attributable to the workplace?

Grimes v. Leon County School Board, 518 So. 2d 327, 336 (Fla. 1st DCA 1987).

In certifying the above question to this court, the First District Court of Appeal is asking this court to reverse a longstanding principle of workers' compensation law. The principle is simply stated: In order to be compensable, an injury must not only be an accident and occur in the course of employment, it must also "arise out of that employment." Each of these separate elements must be proven before a compensable injury can be found to exist. Southern Bell Telephone and

Telegraph Company v. McCook, 355 So. 2d 1166 (Fla. 1977). A question of whether an injury "arises out of" employment frequently occurs when an idiopathic condition is a factor in the questioned injury. In McCook, this court reviewed the case law on idiopathic injuries and held:

> These holdings recognize the universal principle of workmen's compensation law that an idiopathic condition which results in injury to the worker does not 'arise out of' employment unless the employment in some way contributes to the risk or aggravates the injury.

355 So. 2d at 1168.

Paradoxically, the district court held that the claimant's employment had contributed to the risk of her injury, consistent with its holding in Cheney v. F.E.C. News Distribution Company, 382 So. 2d 1291 (Fla. 1st DCA 1980), yet recognized in its certified question that the fall in this case was "attributable to idiopathic causes personal to the employee'' and that there was no "increased risk or hazard attributable to the workplace." It is respectfully submitted that the district court cannot have it both ways. Either this case is controlled by Cheney, in which event there should have been no occasion to certify the question presented herein, or this case is controlled by McCook, in which event the district court should have affirmed the deputy commissioner's order, while at the same time certifying the question. The employer/carrier submits that the district court should have followed the latter course of action.

This court has clearly articulated the proper course of action for a district court to follow when it determines that

established precedent should be overruled:

> We recognize that in this fast changing world the general welfare requires from time to time reconsideration of old concepts. When the district courts decide that ancient precedents should be overruled, we welcome their views and such should be unhesitatingly rendered but, in cases such as this, it is the duty of the district courts under the plain constitutional language to adhere to the former precedents and then certify the decision to us. This will assure uniformity.

Gilliam v. Stewart, 291 So. 2d 593, 594 (Fla. 1974). This procedure was also discussed in Hoffman v. Jones, 280 So. 2d 431, 434 (Fla. 1973), where this court states:

> To allow a District Court of Appeal to overrule controlling precedent of this Court woud be to create chaos and uncertainty in the judicial forum. . . . This is not to say that the District Courts of Appeal are powerless to seek change: they are free to certify questions of great public interest to this Court for consideration, and even to state their reasons for advocating change. They are, however, bound to follow the case law set forth by this Court. (Emphasis supplied).

The proper procedure for the court to follow would have been an affirmance of the deputy commissioner's order. The court could have stated its reservations about the standing precedent and certified the question.

**A. THE CLAIMANT'S ACCIDENT WAS NOT ONE ARISING OUT OF *HER* EMPLOYMENT AND IS THEREFORE NOT COMPENSABLE UNDER THE FLORIDA WORKERS' COMPENSATION ACT.**

The issue in this case is whether claimant suffered an accident on August 8, 1985, which is compensable under Chapter 440, Florida Statutes. Section 440.09(1), Florida Statues,

states in its relevant portion:

> **440.09 Coverage. –**
> (1) Compensation shall be payable under this chapter in respect of disability or death of an employee if the disability or death results from an injury arising out of and in the course of employment. (Emphasis added).

Florida case law has interpreted the above requirements as follows. This court held that three separate elements must be proven before a compensable injury can be found to exist. There must be (1) an accident, (2) arising out of and occuring (3) in the course of the claimant's employment. There is no question in this case that the claimant suffered an "accident" and that it occurred "in the course of" her employment. However, this accident is not compensable because it did not "arise out of" her employment with the Leon County School Board. McCook; Foxworth v. Florida Industrial Commission, 86 So. 2d 147 (Fla. 1955).

This court has addressed the "arising out of" requirement on several occasions. The rationale of Foxworth is applicable to the instant case. There, the claimant suffered a fractured hip as a result of a fall onto an unpholstered chair in a hotel lobby during attendance at a work related convention. In denying compensability, this court stated:

> It is well settled that injuries which arise out of risks or conditions personal to the claimant do not arise out of the employment unless the employment contributes to the risk or aggravates the injury.

*86* So. 2d at 151.

The claimant in Foxworth had suffered a stroke resulting in his fall. As in the instant case, claimant failed to present any competent, substantial evidence that the employment contributed

to the risk of the injury or in any way aggravated the injury. This court stated:

> There is not one word of evidence in the record to show that this stroke was caused by circumstances other than those personal to the claimant; and the claimant in this action does not seek compensation for the effects of the stroke but only for the effects of the fall. Concededly, any fall against the chair which may have occurred was the sole result of claimant's personal physical condition. (Emphasis added).

Id at 151.

This court went on to state:

> The evidence in the instant case wholly fails to meet any of these tests to show that the claimant's employment in any way served to increase the hazard of his alleged fall. An upholstered chair is not a dangerous object. And the presence of such a chair in the hotel lobby was not in any view of the circumstances a special hazard peculiar to the claimant's employment. Nor in an idiopathic fall against the stuffed arm of such a chair in the hotel lobby can there be found exposure peculiar to the employment and beyond what is ordinarily experienced by the public as a whole. We can conclude only that any effects from such a fall, even under the claimant's version of the event, could not be held to arise out of his employment.

Id at 151-152.

This court also considered the same issue in McCook. There, the claimant had a congenital abnormality in her lower back. She went to the restroom during a regularly scheduled work break, and as she attempted to use the toilet tissue, it fell to the floor. While seated, she reached down to pick up the tissue and suddenly experienced sharp pain across her back. This pain was diagnosed to have resulted from pressure on a nerve root which was triggered by the claimant's movement in bending over while

seated. In holding that the claimant's condition was not compensable because it did not "arise out of" her employment, this court cited several other cases and noted:

> These holdings recognize the universal principle of workmen's compensation law that an idiopathic condition which results in injury to the worker does not 'arise out of' employment unless the employment in some way contributes to the risk or aggravates the injury.

355 So. 2d at 1168. To hold otherwise, the court stated, would convert the workers' compensation statute into a mandatory general health insurance policy which does not limit the burden on industry to those ailments produced even remotely by the hazards of the industry. 355 So. 2d at 1169. Similarly, in the instant case, the claimant's employment contributed nothing to risk of her leg brace giving way, nor did it aggravate the injury to her left ankle in any way.

Nor would the fact that the claimant allegedly worked in a "crowded" workplace make this accident one "arising out of" her employment. There was absolutely no evidence presented to show that the alleged "crowded" conditions played any part whatsoever in causing the accident. In fact, the uncontroverted evidence was that the sole cause of the claimant's fall was that her leg brace gave way at the knee joint (R:8-9). This was also the same type of fall which the claimant had previously suffered at home (R:32). Thus, the "crowded" workplace did not contribute to the risk or aggravate the injury. Further, the fact that the claimant may have been required to stand and sit more often at work than at home does not make this accident compensable.

Claimant's unsupported, self-serving testimony is insufficient to meet the tests described in Foxworth and McCook. Claimant must go beyond unsupported allegations of the existence of these conditions and show how those conditions caused the injury.

The First District Court of Appeal recently addressed a similar argument in The Bison Company v. Shubert, 494 So. 2d 253, (Fla. 1st DCA 1986). In Shubert, the claimant worked for an employer engaged in the manufacture of vacuum cleaners and in the preparation of shampoo. The preparation of this shampoo caused the employer's facility to become dirty and dusty, forcing the claimant to sneeze more frequently at work than at home. The claimant injured his back at work when he sneezed while reaching down three feet to open a bottom desk drawer. In denying the compensability of the claim, the district court held:

> We cannot accept claimant's argument that his injury is compensable because the employment conditions exposed him to a greater risk of injury than that which he was exposed in his non-employment life. Although the evidence discloses that the work-related condition may have exposed the claimant to a greater risk of frequency in sneezing than in his non-employment environment, such fact does not mean that the workplace exposed claimant to a greater risk of injury than he would have necessarily encountered in his non-employment life. (Emphasis by the Court).

494 So. 2d at 254.

The same principle applies in the instant case. The mere fact that the claimant allegedly was required to stand and sit more frequently at work than at home does not mean that the workplace exposed the claimant to a greater risk of injury than she would have necessarily encountered in her non-employment

life. The record is completely devoid of any competent, substantial evidence to support that allegation.

Further, the record is completely devoid of any medical evidence supporting the conclusion that the claimant broke her ankle as the result of her impact with the floor or any work related condition. In fact, the only testimony about the fall, that of the claimant, would tend to indicate the ankle fracture occurred during the course of the fall, not as the result of the impact with the floor.

As previously stated, the uncontroverted evidence in this case shows that the claimant was not involved in any exertion or strain greater than that which she would necessarily encounter in her non-employment life. Also instructive are Market Food Distributors, Inc. v. Levenson, 383 So. 2d 726 (Fla. 1st DCA 1980) (accident not compensable where claimant injured his back while bending over to pull out a twenty-to-thirty pound desk drawer); Baker Mobiles of Florida v. O'Neil, 412 So. 2d 34 (Fla. 1st DCA 1982) (accident not compensable where claimant sustained a compound fracture of L1 and L3 vertebrae while lifting a cinder block). The claimant in Medeiros v. Residential Communities of America, 481 So. 2d 92 (Fla. 1st DCA 1986), sustained injuries in a non-compensable automobile accident which resulted in headaches and dizziness. Once she returned to work, she became dizzy, fell on a staircase and injured her knee. The district court denied the compensability of the claim and stated:

> The claimant herein has not demonstrated that her physical surroundings on the job in any way contributed to the risk of the injury any more than they would have in her non-

> employment life. Although there was evidence that she had no stairs in her own home, there was no evidence that the stairway in any way contributed to the risk of the injury, either by tripping on a stair step or otherwise. On the contrary, the evidence is that she became dizzy, a symptom she had been complaining of since the accident and fell striking her knee. (Emphasis supplied).

481 So. 2d at 93.

Likewise, in Federal Electric Corporation v. Best, 274 So. 2d 886 (Fla. 1973), this court held that the claimant did not suffer a compensable accident when he suffered a seizure, fell either onto a desk or the floor, and fractured his skull. Whether the claimant had hit his head on the desk was held to be irrelevant since the desk was not shown to be any more of a hazard of employment than any ordinary piece of furniture would be. In the instant case, the evidence was uncontroverted that the claimant did not hit a chair or desk as she fell (R:30) and that the floor upon which she fell was carpeted (R:30). Moreoever, even if the floor was concrete, this fact would not cause the accident to be compensable. The claimant's injury, a fracture of her left ankle, was caused not by the hardness of the floor. In fact, no medical evidence was presented by the claimant to explain exactly how claimant's ankle was broken.

Petitioner would submit that the case law presents a clear standard to the court. The application of that standard can result in no other finding but that the claimant's employment did not contribute to the risk or aggravate the injury. Therefore, based on the holdings of Foxworth and McCook, the claimant's injury did not "arise out of" her employment.

**B. THE DISTRICT COURT RULING IN CHENEY V. S.E.C. NEWS DISTRIBUTION COMPANY IS INAPPLICABLE TO THE INSTANT CASE.**

The district court relied on Cheney v. F.E.C. News Distribution Company, 382 So. 2d 1291 (Fla. 1st DCA 1980), as supportive of its decision to reverse the deputy commissioner's order. This reliance is erroneous. Cheney is clearly distinguishable from the instant case.

In Cheney, the claimant suffered from dizziness caused by a non-work related automobile accident. At the time of the injury at work, the claimant became dizzy, fell to the floor, and fractured his skull. In ruling the injury compensable, the district court stated that:

> While it is true that the conditions which caused this Appellant's dizziness did not arise from his job, the activities demanded by his work increased the chances of his becoming dizzy.

382 So. 2d at 1292.

The district court analogized that scenario to the facts of the instant case as follows:

> In Cheney, the claimant suffered from a pre-existing injury which caused headaches and dizziness. While working in a job that required him to bend, turn, and twist, the claimant became dizzy, fell and injured his head. In the instant case, claimant's job required her to constantly get up an down from her desk, and to work in an area which was considerably more crowded than her home environment. As in Cheney, it is less likely the claimant would have fallen at home where she could have better or more selectively controlled her positional changes. As in

> Cheney, claimant could have also controlled the amount of her activities at home, while she could not do so at work. We hold that claimant's employment exposed her to conditions which substantially contributed to the risk of her injury, and that she suffered a compensable injury arising out of and in the course of her employment within the meaning of that term as in used in Chapter 440.

Grimes v. Leon County School Board, 518 So. 2d 327, 328 (Fla. 1st DCA 1987).

That analysis is flawed in two major respects. First, in Cheney, the cause of the "dizziness" which caused the injury was completely unknown. Thus, an argument could be advanced that the working conditions somehow caused the dizziness. In the instant case, however, the cause of the fall is fully known and uncontroverted. The sole source of the fall was that the claimant's leg brace "gave way at the knee joint" (R:8-9), a totally fortuitous event which was entirely personal to the claimant.

Secondly, in Cheney, the court found that based on the evidence presented, positional changes required by the duties of the job contributed to the particular bout of dizziness which caused the fall. In Cheney, it was the bending, twisting and turning which caused the fall; activity quantitatively different from his non-employment activity. Evidence was presented that this unusual exertion caused the claimant's dizziness, which in turn resulted in the fall. In the instant case, there was not a scintilla of competent, substantial evidence presented as to how the claimant's working conditions or duties in any way contributed to the risk of her leg brace giving way. In fact,

evidence was presented that the same sort of leg brace failure occurred at home, causing a similar fall (R:31-31). The court should have more properly applied its rationale in Medeiros:

> The claimant herein has not demonstrated that her physical surroundings on the job in any way contributed to the risk of the injury any more than they would have in non-employment life. Although there was evidence that she had no stairs in her own home, there was no evidence that the stairway in any way contributed to the risk of injury, either by tripping on a stairstep or otherwise. On the contrary, the evidence is that she became dizzy, a symptom she had been complaining of since the accident and fell, striking her knee. (Emphasis supplied).

481 So. 2d at 93.

Another major factual distinction can be made between the instant case and of Cheney and Protectu Awning Shutter Company v. Cline, 16 So. 2d 342 (Fla. 1944), another case cited by the district court to support its finding in this case. In both Cheney and Cline, medical evidence was presented that it was the collision with the floor which caused the injury. In Cheney, the claimant's head hit the floor, causing a skull fracture. In Cline, similarly, the claimant's head hit the floor, resulting in a fatal skull fracture. In the instant case, there was no medical evidence presented to explain how the injury occured. No testimony was presented that the hardness of the floor caused the claimant's ankle to break. The district court, in its opinion in the instant case, touched upon the significance of this factual distinction, without grasping its importance. Note this excerpt from the court's opinion:

> The court in Protectu v. Cline . . . looked primarily to the fall onto the floor as the

> cause of the injury, rather than focusing on the precipitating cause of the fall -- claimant's pre-existing heart condition.

518 So. 2d at 329. The district court then, in attempting to fit the instant facts to those in Cheney, and Cline, drew a conclusion based on facts which are not in evidence, specifically, that the floor caused the claimant's ankle to break. It is equally reasonable to speculate that claimant's ankle broke as a result of claimant's leg buckling caused by the failure of the leg brace. Speculation is all we are left with as a consequence of the lack of medical testimony in the record on this point.

Most instructive on the error of the district court's reliance on Proctectu v. Cline is an excerpt of this court's opinion in Foxworth discussing the Cline case:

> In the Cline case we upheld recovery for effects of a fall caused by the heart attack of the claimant, who as a result, fractured his skull on the concrete floor. This decision is justified on the basis that the hardness of the floor was an increased hazard attributable to the employment, but that case represents that outer limits of the doctrine. To extend the rule further would be to eradicate completely the statutory requirement that the injury must be one arising out of employment. The employment in some manner must contribute an increased hazard particular to the employment. (Emphasis supplied).

86 So. 2d at 151. Clearly, the court's ruling in Cline represents the "outer limits'' of the doctrine. The district court, in its analysis in this case, has taken a quantum leap where no Florida court has gone before.

## ARGUMENT II

### THE FIRST DISTRICT COURT OF APPEAL'S "ACTUAL RISK" TEST IS CONTRARY TO THE CLEAR LEGISLATIVE INTENT OF THE STATUTE.

As previously dicussed, Chapter 440.09, Florida Statutes, states that compensation shall be payable " . . . from an injury arising out of and in the course of employment." It is clear that the statutory phrases "in the course of" and "arising out of" were not intended to be identical in meaning. Bituminous Casualty Corporation v. Richardson, 148 Fla. 323, 4 So. 2d 378 (1941). The district court's opinion in the instant case results in a rule of law which would make compensable every injury arising out of an idiopathic condition, providing only that it occur in the course of employment. Therefore, the requirement that the injury must also be one "arising out of" the employment is, in effect, eliminated from the statute.

The district court proposes to do away with the established rule of Florida law and instead substitute its "actual risk" test. A review of the case law makes it clear that the path that the district court would have Florida follow is the decided minority in the United States. 1 Larson, The Law of Workmen's Compensation, §12.14(a) 3-321-3-322 (1984). In support of its new rule of law, the district court has cited cases from a small minority of state courts which are throwing away the whole test because they find it too painful to draw the line.

The district court liberally quotes Professor Larson as its legal support for the "actual risk" approach. Additionally, the

district court cites language from a Texas case, General Insurance Corp. v. Wickersham, 235 S.W. 2d 215 (Tex Civ. App. 1951), as supportive of its reasoning in the instant case. Curiously, that case appears in Professor Larson's treatise, in a section entitled "The Fallacy of the Gradualist Approach", a section detailing the folly of taking the district court's intended path in dealing with idiopathic falls.

As Professor Larson points out, the most common argument in favor of the level-floor, idiopathic-fall award is that based on the impossibility of distinguishing between falls from small heights or onto relatively familiar objects, on the one hand, and falls onto the plain floor, on the other. It is precisely this difficulty about which the district court complains. The district court adopts the new "actual risk" doctrine in the longing for a "straightforward construction," "thus avoiding inconsistency and uncertainty." Grimes at 331. The district court then constructs a rule of law providing compensability of all injuries to a worker which occur in the course of his employment resulting from a fall at any place that the employee's duties require him to be. In doing so, the district court would have Florida abandon the principle behind the statutory language of Chapter 440.09, Florida Statutes. Professor Larson eloquently summarizes the difficulties involved in following such a path:

> Granting that it is difficult to distinguish between a fall from a low height and a fall from no height -- once it is decided to compensate idiopathic, level-floor falls, how is the basic principle which connects such an injury with the employment to be phrased? This entire line of cases is based on one simple theory: Although the cause of the fall

> was originally a personal one, employment conditions contributed some hazard that led to the final injury. This theory can be stretched to the breaking point, as it indeed has by the evolution already sketched out; but having reached that point by virtue of this theory, one cannot throw away the entire test because it is painful to draw the final line, and because the stretching of the test has made it difficult to defend the ultimate distinctions that have to be made.
>
> Let us assume, for the sake of argument, that an epileptic employee suffers a seizure in the office of a senior partner of a law firm, on a **2** inch thick carpet, and falls and breaks his arm. It will, of course, be argued that there is no valid distinction between falling on a bare floor and falling on a carpeted floor; and the jurisdictions that have employed the kind of reasoning quoted above may feel constrained to make this additional extension. But then suppose the employee, employed in a mattress factory, falls directly onto an **8** inch thick deluxe inner spring mattress and still breaks his arm. Can one distinguish a **2** inch rug and an **8** inch mattress if in any case the employee ended up with a broken arm?
>
> This is the kind of result one ends with if cases are decided solely by measuring how small the distance is to the last precedent, without checking the result against the underlying principle on which the whole field of law rests. In this last example, the employment not only does not contribute **a** hazard, it clearly reduces it below what it would be in almost any conceivable nonemployment setting. Therefore, if a general statement of the rule applied should ever be attempted, it would have to be this: When an employee falls, solely because of an internal disease or weakness, the effects of the fall arise out of the employment even if the conditions of employment reduced the hazards of such a fall below what they would otherwise be. (Emphasis supplied).

Larson, **3-328-3-329.**

Or, for example, let us assume **a** claimant's knee brace buckled and the sudden wrenching caused by this unexpected event

forced him to misstep and fracture his ankle without falling. Would the court then not feel compelled by the factual similarities to extend the doctrine still further?

As Professor Larson points out, the fallacy of the reasoning permitting the continuous extension of this doctrine of law

> lies in the failure to realize that, while most of the qualities, virtues, and faults of daily life vary by infinitesimal degrees, rules of law must, by their very nature, proceed by categories. Lines must be drawn on either side of which occur situations that seem so similar that to attach widely different consequences to them may seem ridiculous and cruel.

Larson at 3-329.

The court must instead look to the principles underlying rules of law, rather than allowing the facts of any particular case to stretch the rules beyond which they have no logical meaning. The underlying principle in workers' compensation law is clear. In General Properties Company v. Greening, 18 So. 2d 908 (Fla. 1944), the court stated:

> This very valuable statute [Chapter 440, Florida Statutes], while fulfilling a long standing public need, was not designed to take the place of general health and accident insurance . . . The purpose of workers' compensation is to shoulder on industry the expense incident to the hazards of industry. . . . Our act provides no relief for diseases or physical ailments not produced by industry. (Emphasis supplied).

See also Victor Wine & Liquor v. Beasley, 141 So. 2d 581 (Fla. 1962), City of Hialeah v. Warners, 128 So. 2d 611 (Fla. 1961), Arkin Construction v. Simpkins, 99 So. 2d 557 (Fla. 1957), and McCook.

It is abundantly clear that the district court's opinion in

the instant case is but another attempt to pursuade this court to reconsider an issue it has decided on numerous occasions. The district court of appeal's attempt to eviscerate the "arising out of" requirement, while sparing the court from the occasional tough decision, results in a standard under which all injuries, which by fate happen to occur at work, are compensable, even if the conditions of employment add nothing to the hazard or risk of injury. Such a standard would, in effect, convert the workers' compensation statute into a mandatory general health insurance policy. Such a standard is not and was never the intent of workers' compensation in Florida.

If, as a matter of policy, the State of Florida should decide that every injury sustained in the course of employment is to be made compensable, then it should be the Legislature, rather than the courts, that should make that determination. However, as long as the statute expressly requires that the injury be one arising out of the employment, the court should not ignore the statutory mandate. This very principle has been recognized by the court in McCook:

> We cannot permit the Commission to convert the Workers' Compensation statute into a mandatory general health insurance policy which does not limit the burden on industry to those ailments produced even remotely by the hazards of indutry. We have previously indicated that the Commission has no such authority. A transformation of this magnitude must be made by the Legislature. (Emphasis supplied).

355 So. 2d at 1169.

Further, the district court has failed to consider the ramifications its findings will have on other aspects of workers'

compensation law. For example, it has long been the rule of law in Florida that heart attacks occurring on the job are not compensable unless they are caused by an unusual strain or over exertion, not routine to the type of work the employee was accustomed to performing. Victor Wine, id at **588-589.** In this entire line of cases, it is clear that the requirment of "unusual strain or over-exertion" was mandated in order to meet the "arising out of" requirement of the statute.

Since the net effect of the district court's opinion below is the elimination of this "arising out of" requirement, can it not now be analogized that all heart attacks are compensable provided they occur in the course of employment? The employer/carrier would respectfully suggest to this court that in eliminating the "arising out of" requirement, the district court has opened a Pandora's box which will have a similar ripple effect on many other aspects of workers' compensation law.

**A** clearly foreseeable result of the district court's new doctrine will be a great increase in the number of compensable injuries. It is not difficult to realize that such a circumstance will lead to higher workers' compensation premiums and eventually a greater final cost to the ultimate consumer.

**As** previously stated, if the State of Florida is to embark on such a course, it should be the result of a well thought out legislative study of the goals and purposes of workers' compensation. It should not be the result of a judicial construction which eviscerates the clear legislative intent of the statute.

## CONCLUSION

Based on the foregoing, employer/carrier would respectfully request that this court answer the certified question in the negative, quash the decision of the district court, and reinstate the order of the deputy commissioner.

Respectfully submitted this 5th day of April, 1988.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Mr. H. George Kagan, Esquire, Miller, Hodges, Kagan, and Chait, 455 Fairway Drive, Suite 101, Deerfield Beach, Florida 33441, and Mr. Richard M. Powers, Esquire, 850 Barnett Bank Building, 315 South Calhoun Street, Tallahassee, Florida 32301, this 5th day of April, 1988.

Gus Vincent Soto