THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

Appellate Case No.: 2013-001778
Trial Court Case No. 1203664

Nathalie I. Davaut, Employee, Claimant, Appellant,

v.

University of South Carolina, and
State Accident Fund, Defendants, Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

Whether the Worker's Compensation Commission erred as a matter of law in denying benefits for medical treatment and temporary total disability compensation in connection with a work-related injury sustained by the Claimant when she was struck by a vehicle while walking across a public street from her Employer's office building to her car in a University employee/staff parking lot?

I. Whether the Commission erred as a matter of law in holding the mere act of crossing a public street within the boundaries of the Employer's property removed the Claimant from the course and scope of her employment even though she had not yet left her employer's premises?

II. Whether the Commission erred as a matter of law in holding that the factual situation was controlled by Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987), because this Claimant had not yet had the opportunity to get to her car to leave work?

III. Whether the Commission erred as a matter of law in relying upon the fact that the Claimant made a discretionary choice as to which available University lot she parked her car when she arrived at work on the day of the accident?

STATEMENT OF THE CASE

This workers' compensation case arises from a work-related accident that occurred when the Claimant, an employee of the University of South Carolina, was struck by a truck as she was walking to her car which was parked on the Employer's property after exiting the building where she had been working late on the evening of February 16, 2012. Claimant filed the Employee's Notice of Claim on April 18, 2012. [ROA 20.] Claimant filed her Request for Hearing on May 22, 2012. [ROA 22.] Employer timely filed an Employer's Answer denying the claim. [ROA 25.] The matter was heard by the Single Commissioner on September 25, 2012. [ROA 31.] The Single Commissioner found that Claimant had failed "to prove an injury by accident arising out of and in the course and scope of her employment" in an Order of November 6, 2012. [ROA 8.]

Claimant timely filed a Request for Commission Review on November 26, 2012. [ROA 26.] The Appellate Panel heard the Claimant's appeal on March 18, 2013. The Panel issued an Order on July 22, 2013 affirming the decision of the Single Commissioner. [ROA 1.] Claimant filed this appeal on August 20, 2013. [ROA 28.]

STATEMENT OF THE FACTS

The Employer, The University of South Carolina-Lancaster, is a branch of the University of South Carolina located in Lancaster, South Carolina. The campus is dissected by a public highway, Hubbard Drive, which runs west to east. [ROA 159, John Rutledge, Ph.D. deposition at p.6] The University owns property on the north and south side of Hubbard Drive, but most of the campus classrooms are located on the south-side of Hubbard Drive. [ROA 159, John Rutledge, Ph.D. Dep. at p.6.]

Claimant is a professor of foreign languages at the University, where she teaches Spanish and French. [ROA 96, Claimant's Dep. at p.14.] She has achieved multiple degrees, including a Bachelor's in English Studies, and Masters' in English Linguistics, French Literature, and Spanish, and she also has a Ph.D. in French Literature and Civilization. [ROA 89, Claimant's Dep. at p.7.] She has been a full-time professor with the Employer at the Lancaster campus since 2008. [ROA 95, Claimant's Dep. p. 13.] Her office is located in the Medford Building which is located on the south-side of Hubbard Drive. [ROA 96, Claimant's Dep. p.14; ROA 159, John Rutledge, Ph.D. Dep. at p.6., ROA 183, Exhibit Number 1 to John Rutledge, Ph. D Dep.] The Medford Library is housed in the same building. [ROA 152, Exhibit Number 1 to Claimant's Dep.; ROA 209, Bruce Nims, Ph.D. Dep. at p.5.]

The Claimant does not have an assigned, reserved faculty parking spot designated for her personal, exclusive use. [ROA 110, Claimant's Dep. at 28.] On the morning of the accident, Tuesday, February 16, 2012, the Claimant looked for a parking space in the University faculty/student lot on the south-side of Hubbard Drive nearest her office, which has only a limited number of spaces specifically designated for faculty. [ROA 110, Claimant's Dep. at p.28.] The Claimant was unable to find any available spaces in that lot. [ROA 108, Claimant's Dep. at p.26.] She then drove to the next closest University parking lot which is adjacent to the University's Carole Ray Dowling Center located on the north-side of Hubbard, where she was able to find a space and parked. [1] [ROA 108, Claimant's Dep. at p.26.] The parking lot, owned and maintained by the

[1] There are two parking lots on either side of the Carole Ray Dowling building, both of which were on the north-side of Hubbard Drive. [ROA 159, John Rutledge, Ph.D. Dep. p.6; ROA 183, Exhibit Number 1 to John Rutledge, Ph.D. Dep.] Claimant parked in the lot closest to the Medford Building. [ROA 152, Exhibit Number 1 to Claimant's Dep.]

University, is provided for faculty/staff/students and the general public having business on the campus. [ROA 194, John Catalano, Ph.D., Dep. at p. 11.]

According to John Catalano, Ph.D., Dean of the School, there is insufficient faculty parking on the south-side of Hubbard Drive during certain times of day and days of the week, particularly on Tuesdays and Thursdays. He further testified that on those busy Tuesdays and Thursdays, faculty and staff members regularly use the parking lots on the north-side of Hubbard Drive, where Claimant parked her vehicle on that Tuesday, the day the accident. "Not unusual at all for faculty members or a staff member to park in this parking lot on the west side of Carol Ray Dowling. I have seen faculty members and staff members park there on Tuesdays and Thursdays especially." [ROA 193, John Catalano, Ph.D., Dep. at p. 10, Lines 4-10.]

After parking, the Claimant walked across Hubbard Drive to the Medford Building where her office was located and she went about her duties throughout the day. [ROA 108, Claimant's Dep. p. 26.] She normally worked from 9-5pm, but on that day, she did not leave her work at the usual time. Instead, she walked downstairs to the Library to work on a special project. [ROA 106-107, 114, Claimant's Dep. p. 24-25, 32]

The special project consisted of serving on a University faculty search committee and involved reviewing resumes of applicants for a foreign languages instructor's position. Those resumes were on reserve in the Library.[2] [ROA100, Claimant's Dep. at p.18 and ROA 214, Bruce Nims, Ph.D. Dep. at p.10] While this committee was not part of the Claimant's assigned teaching duties, her participation in the project had been requested specifically by her supervisor, Bruce Nims, Ph.D.[ROA 210, Bruce Nims,

[2] The resumes could not be removed from the Library. [ROA 103-104, Claimant's Dep. at p. 21-22 and ROA 255, Deposition of David Helwer p. 21 and ROA 214, Deposition of Bruce Nims, Ph.D. p.10.]

Ph.D. Dep. at p.6 and ROA 100, Claimant's Dep. p. 18.] He had requested that the Claimant, as well as other faulty members, review the resumes to assist in the selection of the appropriate foreign language instructor to fill the vacancy that then existed at the University. [ROA 210, Bruce Nims, Ph.D. Dep. p. 6 and ROA 102, Claimant's Dep. at p. 20] Both the Dean (Dr. Catalano) and Dr. Nims testified that while her participation in the selection process was not mandatory, it is expected that all faculty members provide service to the University and it would have reflected negatively upon her on her annual evaluation if she did not participate as requested. "...it is voluntary, but again serving on such committees is part of our university service commitment. And so...an area in which our faculty members are evaluated, so serving on the committee is...professionally beneficial." [ROA 225, Bruce Nims, Ph.D. Dep. at p. 21, Lines 3-18.; ROA 197, John Catalano, Ph.D. Dep. at p. 14; ROA 143, Claimant's Dep. at p. 61.]

A meeting was to be scheduled the next week to discuss the faculty's review of the resumes, so the Claimant decided to make the effort that evening to review applications so as to be prepared for that meeting. [ROA 108-109, Claimant's Dep. at p.26-27 and ROA 212, Bruce Nims, Ph.D. Dep. at p. 8.] Claimant testified that while she had discretion as to when to review the resumes, "it has to be done outside of my other duties, such as teaching, etc." [ROA 105, Claimant Dep. p. 23 Lines 9-13.] So she left her office at the end of her normal work-day around 5:00 p.m. and proceeded downstairs to the Library. [ROA 108-109, 114, Claimant's Dep. at p.26-27, 32.] As confirmed by a Library staffer, Claimant reviewed the resumes from approximately 5:00 p.m. until the Library closed at 9:00 p.m. [ROA 239, David Helwer Dep. at p. 5 and ROA 109, Claimant's Dep. p. 27.] Immediately before 9:00 p.m., the Claimant returned the resumes to the Library staffer on duty. [ROA 109, Claimant's Dep. at p.27 and ROA

239, 243, David Helwer Dep. at p. 5,9] She then left the building to walk to her vehicle which was still parked in the University lot on the north-side of Hubbard. [ROA 110, 126, 140-141, Claimant's Dep. at p. 28, 44, 58-59 and ROA 243, David Helwer Dep. at p. 9.] The Claimant was using the designated crosswalk that connected the south-side of the Employer's premises to the north-side across Hubbard Drive. [ROA 141, 144, Claimant's Dep. at p. 59,62 and ROA 245, David Helwer Dep. at p.11.] Before she reached the University parking lot, she was struck by a truck. [ROA 245, Deposition of David Helwer at p. 11 and ROA 127-128, Claimant's Dep. at p. 45-46 and Exhibit Number One to Claimant's Deposition.] The Claimant testified that she walked the most-direct route from the Library to the place where the accident occurred. [ROA 140-141, Claimant's Dep. at p. 58-59.]

The Library staffer, David Helwer, testified that he closed the building immediately after the Claimant exited the building. [ROA 243, David Helwer Dep. at p. 9] As he was walking to his car, Helwer heard a commotion on or near Hubbard Drive, just minutes after the Claimant had left the building, and he found the Claimant, lying, injured in the crosswalk. [ROA 244, 247, David Helwer Dep. at p. 10, 13]

SUMMARY OF ARGUMENT

The Applicable Law and Standard of Review

The fundamental precepts applicable to this case are well established as recited in the Supreme Court's recent decision of Bentley v. Spartanburg Cnty., 398 S.C. 418, 422, 730 S.E.2d 296, 298 (2012):

> Workers' compensation pays an employee benefits for damages resulting from personal injury or death by accident arising out of and in the course of the employment. S.C. Code Ann. § 42–1–310 (Supp.2011). In determining whether a work-related injury is compensable, the Workers' Compensation

> Act (Act), S.C. Code Ann. §§ 42–1–10 to –19–10 (1976 & Supp.2011), is liberally construed toward the end of providing coverage rather than denying coverage in order to further the beneficial purposes for which it was designed. *Shealy v. Aiken Cnty.*, 341 S.C. 448, 535 S.E.2d 438 (2000) (citation omitted). Any reasonable doubt as to the construction of the Act will be resolved in favor of coverage. *Mauldin v. Dyna–Color/Jack Rabbit,* 308 S.C. 18, 22, 416 S.E.2d 639, 641 (1992).

As noted, the Worker's Compensation Act establishes benefits for workers injured "by accident[s] arising out of and in the course of employment." S.C. Code Ann. § 42–1–160(A); Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E.2d 601, (1965); Howell v. Pac. Columbia Mills, 291 S.C. 469, 471-72, 354 S.E.2d 384, 385 (1987). This case presents a question of whether the Claimant was injured "in the course of her employment."

"[T]he term 'in the course of' refers to the time, place, and circumstances under which the accident occurred." Howell, *id.* at 385. "An injury occurs in the course of employment 'when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto.' " Baggott v. Southern Music, Inc., 330 S.C. 1, 5, 496 S.E.2d 852, 854 (1998).

One component of the "in the course of employment" analysis includes the "going and coming rule" which is a general rule "that an injury sustained by an employee away from the employer's premises while on his way to or from work does not arise out of and in the course of employment" Howell, *id.* at 385. However, the Appellate Courts have recognized five exceptions to the general "going and coming rule": 1) if the employer provides the means of transportation or pays travel time; 2) if the employee performs duties during his commute; 3) if the way used is inherently dangerous; 4) if the place where the injury occurs is in such close proximity to the workplace that it is brought

within the scope of employment; and 5) if the injury occurs while the employee is on a special errand for the employer. *Id.*

The Commission's findings of fact are subject to review under the substantial evidence standard. S.C. Code Ann. §1-23-380; Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981); Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987). However, questions of law are viewed de novo. See Lizee v. S.C. Dep't of Mental Health, 367 S.C. 122, 126, 623 S.E.2d 860, 863 (Ct. App. 2005) ("[W]here the Commission's decision is controlled by an error of law, this court's review is plenary."). "The South Carolina Court of Appeals exercises freedom and independence in deciding an issue of law in a workers' compensation case." Thompson ex rel. Harvey v. Cisson Const. Co., 377 S.C. 137, 154, 659 S.E.2d 171 at 179(Ct. App. 2008).

In this case, the Commission denied benefits on the reasoning that the Claimant was injured on a public street not controlled by the Employer and she made the choice to park in a lot that required her to cross Hubbard Drive. The Claimant does not challenge the factual findings, but respectfully submits the Commission erred as a matter of law.

This case presents a novel question to the extent that the Appellate Courts have not yet addressed the issue of whether an injury on premises not controlled by the employer (such as a public street) is "in the course of employment" if the employee is going between an employer-maintained parking area and the employer's place of business. See Howell, 354 S.E.2d at 386. The Claimant submits that under the analysis that can be found in Williams v. South Carolina State Hospital, 254 S.C. 377, 140 S.E.2d 601 (1965) and Camp v. Spartan Mills, 302 S.C. 348, 396 S.E.2d 121 (Ct.App.1990), she had not left the Employer's premises yet, and she still was in the course of her

employment while walking to her car in the University lot, because she had yet to access the ability to exit the employer's property.

As discussed more fully below, the Commission has misapplied the Court's decision in Howell v. Pacific Columbia Mills, supra, because in that case, the employee, who had been struck by a vehicle in a public street on her way into the mill, had never entered the employer's parking lot; rather, she was hit after she was dropped off across the street by her husband. In addition, the Commission had no reasonable basis for denying benefits because the Claimant had a choice of which University parking lot to use.

Ultimately, in relying upon these two facts, the Commission has ignored the guiding principle that undergirds the entire workers' compensation system – namely, that workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Act." James v. Anne's Inc., 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010); Hutson v. S. Carolina State Ports Auth., 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012). The Commission's reasoning creates an impracticable and absurd rule where an employee may walk in and out of coverage in the path of his/her travel to/from their car in an employer lot. Under Williams and Camp, "the course of employment includes not only the actual doing of the work, but also a reasonable margin of time and space to use in passing to and from the place where the work is done," and "[t]he act of leaving the employer's premises is "in the course of" one's employment if the employee leaves the premises as contemplated at the close of the work day. Camp v. Spartan Mills, 396 S.E.2d at 122. The Court should adopt the divided premises rule to provide coverage for an injury on a public street that the employee travels across in route

to/from their car; rather, than the Commission's hopscotch rule where an employee jumps in and out of coverage traveling to his/her car in the employer's lot.

ARGUMENT

THE CLAIMANT IS ENTITLED TO BENEFITS FOR THE WORK-RELATED INJURY SHE SUSTAINED WHEN SHE WAS STRUCK BY A VEHICLE WHILE WALKING ACROSS A PUBLIC STREET FROM HER EMPLOYER'S OFFICE BUILDING TO HER CAR WHICH WAS PARKED IN A UNIVERSITY EMPLOYEE/STAFF PARKING LOT AT THE END OF HER WORK DAY.

I. The claimant was "in the course of employment" when she walked from her Employer's office building, over a public highway to her Employer's parking lot, so as to allow her access her car and exit the Employer's premises at the end of her work day.

As noted above, the phrase "in the course of employment" refers to the time, place, and circumstances under which the accident occurred. An injury occurs "in the course of" employment within the meaning of the Workers' Compensation Act when it occurs within the period of employment and at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto. Notwithstanding that the Claimant was crossing a public street at the end of her work day, the Claimant still was in the "course and scope of her employment" as she had yet to access the University parking lot and she was injured before she ever had an opportunity to leave the Employer's premises.

The factual and legal difference between "going and coming" to and from work and traversing to and from an Employer parking lot was contemplated and considered in Williams v. South Carolina State Hospital, when the Supreme Court stated as follows:

> ...Employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the expressed or implied consent of the employer, to or from his work by way over the employer's premises, or over those of another in such proximity and relation as to be in practical affect a part of the employer's

> premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. In other words, the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached.

254 S.C. at 381, 140 S.E.2d at 603. In Williams, the Supreme Court clearly and expressly recognized that the period of employment includes a reasonable period of time necessary for the employee to travel to a point where the employee can access the place of work and travel to the point where the employee can egress the place of work. The Court of Appeals considered the Williams decision in Camp v. Spartan Mills, 302 S.C. 348, 396 S.E.2d 121 (Ct.App.1990), in discussion of a "passing to and from" scenario as compared to the "going and coming" rule:

> The course of employment includes not only the actual doing of the work but also in a reasonable margin of time and space to use in passing to and from the place where the work is done, [citing *Williams*]. The act of leaving the employer's premises is "in course of" one's employment if the employee leaves the premises as contemplated at close of the work day.

396 S.E.2d at 122.[3]

It is crucial to note that in Williams, the Supreme Court recognized in plain language that the movement of the employee from the place where the work was to be performed to a place where the employee can egress and ingress the employer's premises including travel "over those [property] of another" where such premises were so close in proximity and so close in relation so as to be in practical affect a part of the employer's premises. The Claimant's case falls squarely within the Williams description in that she traveled over a public street in close proximity and so close in relation as to be in practical affect a part of the University's premises. As related above in the Statement of the Facts and seen on the campus map [ROA 152, Exhibit Number 1 to Claimant's Dep.] Hubbard Drive dissects the

[3] In Camp, the Court held that a four hour delay between clocking out and walking to the parking lot was outside the reasonable time scope. Here, it is undisputed, that there were mere minutes between the time the Claimant left the Library and was struck in the crosswalk.

University campus between the Medford Building and the University parking lot (next to the Carole Ray Dowling Center) where the Claimant parked her car. The designated crosswalk where she was struck is located mid-block providing the closest access from the Medford Building area to that parking lot.

The Commission's denial rests on the single fact that Hubbard Drive is a public street. However, it is of no consequence that Claimant was traversing across the public street in a direct path to reach the University parking lot. Under Williams and Camp, an employee has a reasonable period of time to travel between the employer's parking lot and the employee's worksite. The pivotal fact, which is undisputed, is that the Claimant was injured as she walked directly from the place where work was performed to a parking lot, controlled and maintained by her Employer, where she could access her vehicle to exit the Employer's premises. Egress and ingress from Claimant's workplace (her office and the Library within the Medford building) across the public street to the University owned, maintained and controlled parking lot were clearly in the course of her employment with the University. Likewise, clearly the Claimant was within the margin of time and space contemplated in Camp. While it is undisputed that she was on a public highway when she was struck by the vehicle, she had not had the opportunity to access her vehicle to exit the Employer's premises. She was attempting to access her car that was parked on property maintained, owned and controlled by the employer.

As referenced in the Court's opinion in Williams, the Supreme Court extended the definition of "place and time" to an area not owned by the employer in Evans v. Coats & Clark, 338 S.C. 467, 492 S.E.2d 806 (1997). The employee had sustained an injury when she slipped on the floor while leaving work through the lobby of a building in which the employer leased office space on the third floor. While the lobby was not an area owned, leased, controlled or maintained by the employer, it was one of several routes the employees regularly took going to and from the employer's office and the

Court held that it was "for purposes of workers' compensation the premises of the employer." *Id.* at 808. This Claimant's case again falls squarely within the same parameters contemplated by the Evans decision. She used the most direct route from where her work was performed to access her vehicle on the employer's premises across Hubbard Drive, and according to the Dean, it was a path regularly and routinely used on busy Tuesday's such as the day of this accident.

Williams draws no distinction between exiting the employer's premises by way of car and by way of foot. The act of exiting the employer's premises by way of her automobile was a reasonable incident to her leaving the place of her work and the injury therefore resulted from a risk reasonably incident to her employment and "arose out of" the employment.

In Holston v. Allied Corp., 300 S.C. 174, 177, 386 S.E.2d 793, 795 (Ct. App. 1989), the Court affirmed coverage to an employee who was injured even after she had reached her car because she had not yet left the employer parking lot. As described by the Court, after completing her normal work responsibilities, the employee "left the plant, walked through her employer's parking lot, got into her vehicle, backed out of the parking space, began her movements forward to exit the parking lot on her way home and was struck in the rear by a vehicle owned and operated by a fellow employee who, likewise, was leaving work. *Id.* at 794. The Court held that "the act of exiting the employer's premises by way of her automobile was a reasonable incident to her leaving the place of her work and the injury therefore resulted from risk reasonably incident to her employment and "arose out of" the employment. *Id.*

So, under established precedent reviewed above, the rules appear to be that:

- An employee is covered if injured while walking through a work office building lobby even when the lobby is not owned, controlled or maintained by the employer. Evans.
- An employer is covered if injured while traveling across the employer's premises to reach his/her car in the employer's parking lot. Williams.

- And, the employee still is covered if injured while driving out of the employer's parking lot, and the employee is also covered if injured while walking through the employer's landlord's lobby. Holston.

Claimant submits that under a proper application of these rules and the reasoning of those decisions, she was "in the course of her employment," because her path from her Employer's office building to her Employer's parking lot necessarily included traversing a public street.

II. The decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987), does not support denying the Claimant benefits because she not yet had the opportunity to get to her car in the Employer's parking lot to leave work.

The Commission found that the Court's decision in Howell v. Pacific Mills controlled the facts presented by claimant; however, the Howell case is not factually analogous to the case at bar. In Howell, the claimant was struck by a car in a crosswalk, on a public street in front of the place of her employment. The claimant had exited her husband's vehicle while the vehicle was parked in a public street at or near a crosswalk, and she was struck by a vehicle **before** she could reach the employer's property. The critical difference in the Howell case from the one at bar is the claimant in the Howell case **never** accessed the employer's premises so as to fall under the "reasonable margin of time and space to use in passing to and from the place where the work is done." Camp at 350, 122. The claimant in Howell was never on the premises of the employer before she stepped on the public street and she never accessed the employer's premises prior to the accident.

The Williams and Camp holdings are based upon the employee having first accessed the employer's premises, while the claimant in Howell never entered the "passing to and from" sphere. In the instant case, the Claimant had accessed the

Employer's premises where she had accomplished most of her task and was then attempting to leave the Employer's premises. She was unable to exit the Employer's premises because she never accessed her vehicle which was situated on an Employer controlled, maintained and owned property.

While the Commission denies coverage to the Claimant because she was injured in a public street, other jurisdictions follow the divided premises rule and recognize that when an employee is attempting to access one side of the employer's property from another that is separated by a public street, the employee is still within the course and scope for employment. For example, in our sister State of Georgia, in the case of Knight Rider Newspaper Sale, Inc. v. Desselle, 335 S.E.2d 458, ___ (Ga. 1985), the court recognized that "[t]he period of employment generally includes a reasonable time for ingress to and egress from the place of work, while on the employer's premises," and stated: "[i]t is not significant that appellee in the instant case was injured on a public street. He could not have reached the parking lot without crossing the street. What is important is that he was taking a direct route from part of the employer's premises to another." See also West Point Pepperell v. McIntire, 150 Ga. App. 728, 258 S.E.2d 530 (1979) (an employee was held to have been in the course of her employment when struck by a car on a public street while going from her place of work to a company controlled parking lot); Department of Human Resources v. Jankowski, 147 Ga. App. 441, 249 S.E.2d 124 (1978).

In Quality Car Wash v. Cox, 438 A.2d 1243, 1246 (Del. Super. 1981), *rev'd* 449 A.2d 231 (Del. 1982).[4] The claimant was struck by a car while crossing a public

[4] The Delaware Supreme Court reversed on the sufficiency of the evidence with no challenge to the "employer's premises" rule and its two exceptions.

highway walking to his car which was parked in the parking lot of a shopping center across the road from the employer's carwash. The Court held that while the general rule is that injuries occurring while employees are going to and from work are compensable if they occur on the employer's premises, they are not compensable if they occur off the premises. Id. at 1245. However, the Court further found that the general rule is subject to two exceptions:

> (1) Injuries sustained while the employee travels along or across a public road between two parts of his employer's premises are compensable, and (2) an injury sustained as a result of a special hazard encountered while traveling a normal route to and from work are compensable ....

Id. The Delaware Superior Court referred to Exception No. 1 as the "parking lot exception," and held:

> [s]ince, ..., a parking lot owned or maintained by the employer is treated by most courts as part of the premises, the majority rule is that an injury in a public street or other off premises place between the plant and the parking lot is in the course of employment, being on a necessary route between the two portions of the premises. But if the parking lot is a purely private one, the principle passages between two parts of the premises is not available. An employee crossing a public street to get to the parking lot is not protected.

Id. at 1245-1246, quoting *1 Larson Workers' Compensation Law* § 15.14, p. 4-36.

Likewise, in the case of Lewis v. Workers' Comp Appeals Bd., 15 Cal. 3d 559, 542 P.2d 225 (1975) (citing *1 Larson Workers' Compensation Law* § 15.14), the Court held that the dissection or fragmentation of the employer's premises by public highway does not interrupt the employer/employee relationship that gives rise to an "in the course of employment" finding. The court stated as follows:

> The fragmentation of the physical premise of the employer into the parking lot on the one hand and the place of work on the other does not fracture the employer/employee relationship; it is the commencement of that relationship by the employee's entrance into the employer's parking premises that is determinative.

542 P.2d at 229.

In Howell, the Court of Appeals declined to adopt the divided premises rule. Finally, here and now, the Claimant would urge the Court to adopt the rule – whether denominated as the divided premises rule or the parking lot rule – that an employee is covered while traveling a direct path to and from an employer's lot within a reasonable time (without unnecessary, unreasonable, personal detours) without regard to whether the path includes premises of another.

In urging the Court to adopt such rule, the Claimant would ask the Court to consider that the "going and coming rule" is not a statutory rule limiting coverage. Rather it is a "rule" of judicial creation evolving over the years from various opinions under the rubric of determining the application of the basic "in the course of employment" element. Thus, as a "rule" of coverage is it subject to the fundamental precept that "workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Act; only exceptions and restrictions on coverage are to be strictly construed." James v. Anne's Inc., 701 S.E.2d at 735.

An illustrative example of our Appellate Court's application of the concept of liberal construction is seen in Baldwin v. Pepsi-Cola Bottling Co., 234 S.C. 320, 323-24, 108 S.E.2d 409, 410 (1959), which involved an employee struck while crossing a street on his way to work. The employee, whose job was to load trucks, was late for work and being driven to work by his brother, and on the way they met the loaded truck that stopped for him. His brother stopped on the opposite side of the road, and as the employee was crossing the street, he was struck by another vehicle. While the employer argued that benefits should be denied under the going and coming rule, the Court

followed the precept that "doubts are to be resolved in favor of compensability," *id.* at 412, and found that the rule did not apply:

> Respondent was simply going to work, and within the exclusionary rule, until his car was stopped opposite the truck of the employer, upon which respondent worked. When the truck, driven by his superior, was stopped for him to board it, it was an implied direction of the employer to him to cross the street and do so; he was no longer the master of his movements. The crossing of the street thereby became incidental to the employment and injury there incurred was in the course of his employment and arose out of it. The street became, for the time being, a part of respondent's work environment; he was not a mere member of the public, traveling upon it.

Id. at 410-11. This Claimant was not a mere member of the public crossing Hubbard Drive, rather, in crossing the street to a parking lot provided by her Employer, she was in the course of her employment. To further follow the reasoning of the Court, when the University placed parking lots on the north-side of Hubbard Drive which requires the Claimant to across a public road to reach his/her car from their worksite, it was the implied direction of the employer to him to cross the street.

The divided premises/parking lot rule is a fair and reasonable construction of "in the course of employment" that serves the beneficent purpose of providing coverage to injured workers. In contrast, the Commission's rationale creates an absurdity where an employee virtually can play legal hopscotch – jumping in and out of coverage -- on the way to/from his/her vehicle in an Employer parking lot at the end or beginning of the work day. To illustrate the absurdity, consider an example using the main campus of the University in Columbia, where a member of the faculty at the USC Law School has been asked by the Dean to attend an evening reception at the National Advocacy Center. Under the Commission's reasoning, the Professor might pass in and out of worker's compensation coverage at least four times when crossing public streets (South Main, Sumter, Greene, and Pickens Streets) to return to his/her car parked in Lot D-2 adjacent

to the Law School at the end of the evening. Or, more generally, one could contemplate that with the size and configuration of the main Columbia campus, any University employee might cross one or more public streets to reach a staff parking lot. The employee should be covered if injured anywhere on a reasonably direct path from his worksite to the Employer's parking lot.

III. The fact that the Claimant made a discretionary choice as to which available University lot she parked her car in when she arrived at work on the day of the accident does not sustain the denial of benefits.

The Commission based its denial, in part on the facts that there were other University parking lots on the south-side of Hubbard Drive and the Claimant made the choice to park in the north-side lot without first driving through all the south-side lots to try to find an available faculty designated space. The Commission's decision is not well founded in fact or law.

First, to clarify the reasonableness of the Claimant's "choice," the undisputed testimony from the Dean was that there is not sufficient faculty parking in the south-side lots and that faculty and staff regularly, as a routine, use the parking lot on the north-side particularly on busy Tuesdays, such as the day of the Tuesday of this accident. While the north-side parking lot did not have any faculty designated spots, faculty was permitted to park in any available space in that lot. So the Claimant did not violate any Employer directive, and her right to choose was authorized under the Employer's parking policy and practices.

Further, and foremost, the workers compensation jurisprudence does not support the denial of benefits because the employee has a choice of where to park. In a review of relevant case law that addresses the "parking lot" exception and the divided premises rule, it does not appear that the employee's discretion as to where to park has been

identified as a disqualifying fact. See Knight-Ridder Newspaper Sales, Inc. v. Desselle, 335 S.E.2d at 459 ("the parking lot was provided by the employer for the convenience of the employer and of the employees, who were encouraged to use the lot. It is immaterial that the appellee was not required to park in the lot. He did so on this occasion.")

As discussed above, the Commission's rationale for considering the Claimant's discretion in choosing between different available parking lots also creates another impracticable absurdity. As in the earlier example of the USC Law Professor walking back to his car in the Law School faculty lot from the National Advocacy Center, the Professor has the option of several routes, one of which might include crossing College Street – if the Professor made that choice and was struck crossing that street, would coverage be denied because he/she could have taken a different path avoiding College Street? Or, in a variation of the same example, what if the Professor chose to cross Pickens Street and was struck – would coverage be denied because he/she could have used the University overpass and avoided crossing the street?

In this case, would the Commission require the Claimant have to prove which parking lots she drove through or how many times she circled the parking lots looking for a space south of Hubbard Drive? Would the Commission be allowed to deny coverage on the reasoning that the Claimant could have arrived earlier to find a parking spot in the lot adjacent to her office building? These are not relevant or practical considerations. The undisputed facts are that the Claimant was injured while traversing a reasonable, permissible path from her worksite to her Employer's parking lot at the end of her work day, and she is entitled to workers' compensation benefits.

CONCLUSION

The Claimant was injured in the course of her employment when she was struck by a vehicle while crossing the street from her office building to the University parking lot where she had parked her car. And, the Commission erred, as a matter of law, is denying the Claimant workers' compensation benefits based on the facts that she was crossing a public street and she made a choice to park on the north-side of Hubbard Drive without first searching harder for a vacant space on the south-side.

WHEREFORE, based on the foregoing, the Claimant respectfully requests that the Court reverse the Commission's decision and remand this matter for the award of benefits to which she is entitled under the Workers' Compensation Act.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

Paul L. Reeves

The State of South Carolina
In the Court of Appeals

Appeal from S.C. Worker's Compensation Commission
Appellate Panel
Susan S. Barden, Commissioner
Avery B. Wilkerson, Commissioner
Gene McCaskill, Commissioner

W.C.C. File No. 1203664
Appellate No. 2013-001778

Nathalie I. Davaut,

Appellant,

v.

University of South Carolina,
and State Accident Fund,

Respondents.

Certificate of Service

I certify that I have served the Final Brief of Appellant on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on April 8, 2014, to the Counsel of Record, as listed below:

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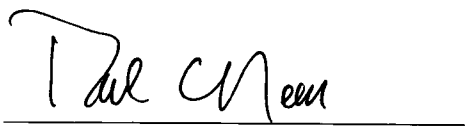

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