Can You Believe This is Covered by Worker's Compensation?

In the State of Maryland, the courts have taken a particularly liberal approach in determining what degree of relationship an injury must have to an employee's job to be compensable. Maryland uses the "positional-risk test" to determine whether an injury arose out of employment. The positional-risk test is essentially a 'but for' test. Professor Larson best described this test as follows: "an injury arises out of the employment if it would not have occurred but for the fact that the conditions and obligations of the employment placed [the employee] in the position where he [or she] was injured." A. Larson, Workers' Compensation Law § 3.05 (2002). The positional-risk test also encompasses injuries that occur during activities incidental to employment that are not specifically required by the employment.

COURSE OF EMPLOYMENT INJURIES

Under Maryland case law injuries are considered within the course of employment when:
(1) They occur on the premises during a lunch or recreation period as a regular incident of the employment; or
(2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or
(3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life. Arthur Larson, Workers' Compensation Law § 22.01 (2001).

In Mulready v. University Research Corp, 360 Md. 51, 57, 756 A.2d 575, 578, a traveling employee sustained an injury after slipping in a hotel bathtub. Id. at 53-54, 756 A.2d at 576. Mulready was staying in the hotel to conduct employer business but was not actively

engaged in work at the time of her injury. The parties agreed that her injury occurred in the course of her employment but disputed whether it arose out of that employment. The court reasoned that her personal act of bathing was reasonably incidental to the travel required by her employer. *Id*. at 66, 756 A.2d at 583. In effect, but for her travel, Mulready would not have been injured. They held that her injury, which resulted from an incident of her employment, arose out of employment.

In *Montgomery County v. Wade*, 345 Md. 1, the court applied the positional-risk test and held that a police officer's injury, suffered while participating in a voluntary police department program, arose out of employment. See 345 Md. at 9-11, 690 A.2d at 994. Officer Wade, while not on scheduled duty and while operating her personal patrol vehicle (PPV), was hit from behind by another vehicle and injured. Wade was on her way to her mother's home. Her employer, the Montgomery County Police Department, operated a program permitting, but not requiring, employees to utilize patrol vehicles for personal use, subject to certain conditions. The court held that Wade's injury arose out of her employment because Wade 'would not have been operating a PPV but for her employment and consequent participation in the program.' *Id*. at 11, 690 A.2d at 994. The court found the requisite causal link between her work and her injury because her injuries stemmed from use of her police vehicle within departmental guidelines. *Id*., 690 A.2d at 994."

In *Knoche v. Cox,* 282 Md. 447, 455, 385 A.2d 1179, 1183 (1978) the employee was "killed when the dentist for whom she worked accidentally fired a gun that he had been showing to a patient. The bullet struck the hygienist as she was cleaning up dental powder." The court concluded "that the term 'arises out of' requires, not that the performance related task be the direct or physical

cause of the injury, but more broadly that the injury be incidental to the employment, such that it was by reason of the employment that the employee was exposed to the risk resulting in the injury." *Mulready* at 578.

In *Austin v. Thrifty Diversified, Inc*., 76 Md. App. 150, 543 A.2d 889 (1988), the parents of John Austin ("John") brought a claim against John's employer for their late son's wrongful death. *Id*. at 152. On the date of his fatal injury, he received permission to use his employer's welding equipment to repair a friend's automobile exhaust system. Id. Shortly after John's shift ended, while still on his employer's premises and while working on his friend's exhaust system, John was electrocuted by faulty welding equipment supplied by Thrifty Diversified, Inc., t/a Better Engineering ("Thrifty"). The issue presented was whether John's death arose out of and in the course of his employment. The court found the claim to be compensable because the deceased's death "would not have ensued if it had not been for the employment"; it was only because John was an employee of Thrifty that he was permitted to use Thrifty's equipment, on the premises, for a personal project. *Id.*

OFF-PREMISES COMPANY PICNICS AND COMPANY PARTIES

In the area of company picnics and parties, when the degree of employer involvement descends to mere sponsorship or encouragement it becomes necessary to consult a series of tests bearing on work-connection. Among the questions to be asked are:

1) Did the employer in fact sponsor the event?
2) To what extent was attendance really voluntary?

3) Was there some degree of encouragement to attend in such factors as taking a record of attendance, paying for the time spent, requiring the employee to work if he did not attend, or maintaining a known custom of attending?
4) Did the employer finance the occasion to a substantial extent?
5) Did the employees regard it as an employment benefit to which they were entitled as of right?
6) Did the employer benefit from the event, not merely in a vague way through better morale and good will, but through such tangible advantages as having an opportunity to make speeches and awards

The Maryland courts also rely on 5 key factors that were outlined in *Moore's Case*, 330 Mass. 1, 110 N.E.2d 764 (Mass. 1953). *Sica v. Retail Credit Co*. 245 Md. 606, 227 A.2d 33 (1967), The five *Moore* factors are:

(1) The customary nature of the activity,

(2) The employer's encouragement or subsidization of the activity,

(3) The extent to which the employer managed or directed the recreational enterprise,

(4) The presence of substantial pressure or actual compulsion upon the employee to attend and participate,

(5) The fact that the employer expects or receives a benefit from the employee's participation in the activity, whether by way of improved employer-employee relationships . …through greater efficiency in the performance of the employee's duties." *Id.*

In *Sica v. Retail Credit Co*. 245 Md. 606, 227 A.2d 33 (1967), an employee (Sica) was seriously injured when he dove into shallow water at his employer's annual picnic. *Id.* at 611.The

picnic, as well as the employees' Christmas party, were described in Sica's pre-employment interview as fringe benefits of his employment. *Id*. at 609. The picnic was organized by a committee of employees with the authorization of the employer's managers. *Id*. The cost of the picnic was paid for by the employer, and employees were urged by the employer to attend, although attendance was not compulsory. *Id*.at 610. On the date Sica was injured, the picnic was held about thirty miles from where Sica usually worked. *Id*. The Court of Appeals held that the third factor in the Larson Rule had been proven, because the "employer derived substantial direct benefit from the [picnic] activity beyond the intangible value of improvement in employee health and morale common to all kinds of recreation and social life," thus, Sica was entitled to compensation for his injury.

In *Coats & Clark's Sales Corp. v. Stewart*, 39 Md. App. 10, 383 A.2d 67 (1978), the Court of Special Appeals considered whether an employee's (Stewart's) injuries, sustained on a trip to the grocery store to purchase food for a baby sitter "arose out of and in the course of his employment." *Id.* at 14. The babysitter was needed so that Stewart and his wife could attend a dinner party to honor two employees with whom Stewart worked. *Id*. at 11. Stewart was to present a gift to one of the honored employees at the dinner party. Id. The party, scheduled to begin at 6:00 p.m., was to be held at a co-employee's home, and was paid for by the employer. *Id*. At 5:00 p.m., while driving an automobile provided by his employer, Stewart was fatally injured in an accident. The trial court determined that the company-sponsored dinner party was sufficiently work related to be an incident of Stewart's employment. *Id*. at 17. The Court of Special Appeals agreed, saying: "In our view, the task of obtaining food for a baby sitter is a reasonable and necessary incident to obtaining a baby sitter's services. Because that task would not have been undertaken except for the obligation of employment." *Id.* The court explained that

the task of transporting the babysitter, is an integral component of an employee's attendance at a work-related social event. They held that

> an employee's self-contained trip to obtain food for a baby sitter needed to enable him to attend a work-related social event is a special errand or mission. Therefore, an employee's injury sustained during such a trip is one sustained in the course of his employment and is compensable. *Id.*

ON-PREMISE RECREATIONAL ACTIVITIES

According to Professor Larson, one of the most important factors in determining if an activity is connected to employment is the location in which the injury was sustained.

> When seeking for a link by which to connect an activity with the employment, one has gone a long way as soon as one has placed the activity physically in contact with the employment environment, and even further when one has associated the time of the activity somehow with the employment. This done, the exact nature and purpose of the activity itself does not have to bear the whole load of establishing work connection, and consequently the employment-connection of that nature and purpose does not have to be as conspicuous as it otherwise might. 4 Arthur Larson, Workers' Compensation Law § 22.03 (2001).

Larson further reasoned that if the recreational activity takes place somewhere other than the place of employment, several hours after the day's work has ceased, then the claimant must show an independently convincing association with the employment to overcome the initial presumption of disassociation with the employment established by the time and place factors. According to Larson,

> time and place, two overt physical indicia of course-of-employment, are strong factors identifying an activity with the employment. If both [time and place] are present, that is, if the game is played on the premises during a lunch or recreation period, compensability has been seen to be clear. But even if only one of the two elements is present, the case has made a very strong start. Thus, if the game is played outside hours, the fact that it is played on the premises is a heavy, although not necessarily decisive, weight on the side of coverage, and may offset a serious deficiency in some other component of the case." Id.

In *McNamara v. Town of Hamden*, 176 Conn. 547, 398 A.2d 1161 (Conn. 1978), the Supreme Court of Connecticut considered whether an injury sustained while an employee was playing ping-pong on his employer's premises arose out of and in the course of his employment. *Id.*. The claimant's work day was from 8 a.m. to 4:30 p.m. *Id.* Approximately eighty of the claimant's co-employees were in the habit of assembling at their employer's garage before work about 7:30 a.m. every day. *Id.* Several months prior to the date of injury, this group of employees received permission from the employer to purchase a ping-pong table and accessories at the employees' own expense, and to install the table in the garage. At 7:55 a.m. on the date he was injured, the claimant tripped and fell while playing ping-pong; he claimed workmen's compensation benefits for lost time from work and medical expenses due to his fall. *Id.* Given that the employer sanctioned the ping-pong games by regulating permitted playing times, by allowing equipment on the premises, and by setting aside actual work hours in the afternoon for the activity, and that the games occurred regularly on the employer's premises, the court held that sufficient facts existed upon which to conclude that the games were an incident of the employment. *Id.*. The court concluded by outlining a rule for determining whether an activity is incidental to employment: "If the activity is regularly engaged in on the employer's premises within the period of the employment, with the employer's approval or acquiescence, an injury occurring under those conditions shall be found to be compensable." Id.

In *Nazario v. New York State Department of Correction*, 86 A.D.2d 914, 448 N.Y.S.2d 531 (N.Y. App. Div. 1982), a prison guard’s injury sustained during a softball game was determined to be compensable. The court outlined the relevant factors; the claimant's team was comprised exclusively of co-employees and was managed by a sergeant at the facility, participation was voluntary, however, the claimant testified that the essential purpose of the team was to promote employee morale. *Id.* The

claimant further stated that written application to the superintendent of the institution was necessary for approval to use the field. *Id.* The employer acquiesced in the use of its name on T-shirts worn by team members, but the employer did not provided financial support. Game scores and schedules were posted on the employer's bulletin board. The Nazario court affirmed the lower court's decision in favor of the claimant, holding that;

> the determination of whether claimant's accident arose out of and in the course of employment presents a factual question for the board. Pertinent herein is the fact that the employer could terminate the athletic activities on its premises at will. Moreover, it is not insignificant that the activity benefited [sic] employer-employee relations. In our view, there is substantial evidence to sustain the determination of the board. The essential nexus between the softball game and the employer has been established. *Id.*

LUNCH AND COFFEE BREAKS

The Maryland courts have repeatedly and consistently observed that in borderline course-of-employment situations, such as going and coming, or having lunch, the presence of the activity on the premises is of great importance. Accordingly, it is not necessary, in the typical case of injury during a noon-hour ball game on the company's ball diamond or in its gymnasium to bolster the case by adding proof of employer sponsorship of the activity or to show that the employer benefits from the activity. It is generally sufficient that the activity is an accepted and normal one, making it a regular incident and condition of the employment. 4 Arthur Larson, Workers' Compensation Law, § 22.03[1] (2001). The Court of Special Appeals has also articulated that "The modern institution of the 'coffee break' benefits the employer, in maintaining the employees' morale, as well as the participating employees. There can be little question but that an accident sustained during such an interval on the portion of the employer's premises set aside for that activity arises out of the employment."

In Mack Trucks, Inc. v. Miller, 23 Md. App. 271, 326 A.2d 186 (1974), an employee of

Mack Trucks ruptured a kidney during a lunch break while playing touch football on a plot of land owned by the employer and located near the plant where the employee worked. *Id*. at 272. Football had not been expressly authorized by Mack Trucks, but the employer's safety director had been a spectator at previous games - which had been going on for three months prior to the claimant's injury. *Id*. Judge Lowe, explained that "Not only do the employer's actual knowledge and acquiescence establish the recreational activity as an "incident of employment," but the period over which it had persisted would, itself, permit that inference." 1 Larson's Workmen's Compensation, § 22.12; citing Moore's Case, 330 Mass. 1, 110 N.E.2d 764, analyzed and relied upon in *Sica v. Retail Credit Co.* 245 Md. 606, 227 A.2d 33 Md. (1967). The court found that the injury sustained in this case was compensable under part one of the Larson Rule. *Id.*

In *King Waterproofing Co. v. Slovsky,* 71 Md. App. 247, 524 A.2d 1245 (1987), Slovsky was struck by a car while crossing a highway. *Id*. at 249. Slovsky was working a four-hour shift from 4:00 p.m. to 8:00 p.m. on the day of his injury. *Id*. At 6:30 p.m., during a paid meal break, he was struck while going to a carry-out restaurant located across a public highway from his office. *Id*. The Commission found that Slovsky's injury arose out of and in the course of his employment, and on appeal, the trial court agreed and granted summary judgment in favor of Slovsky. *King Waterproofing Co*., 71 Md. App. 247 at 251-52. This Court framed the issue for consideration as whether the employee sustained an accidental injury while engaged in some personal comfort activity incidental to his employment. *Id.* They likened the facts of the case to prior cases where courts had said, in dicta, that an injury sustained during a coffee break on the employer's premises is deemed to have arisen out of the employment. *Id*. (citing *Mack Trucks, Inc., supra*, and *Sica v. Retail Credit Co.* 245 Md. 606, 227 A.2d 33 Md. (1967), supra. The Slovsky court reasoned:

> If an injury that occurs during an on-premises coffee break can arise out of employment, in the sense that it results from an incident of the employment, it follows that an injury sustained during an off-premises coffee break also can arise out of employment. There would appear to be a greater likelihood, however, that an employee who leaves his employer's premises during a coffee break or rest break may depart from the course of his employment. *Id.*

The *Slovsky* court also relied on the analysis of Professor Larson in regard to the compensability of injuries sustained during off-premises coffee breaks;

> "It is clear that one cannot announce an all-purpose 'coffee break rule,' since there are too many variables that could affect the result. The duration might be five minutes, seven minutes, 10 minutes, or even 20 minutes by which time it is not far from that of a half-hour lunch period. Other variables may involve the question whether the interval is a right fixed by the employment contract, whether it is a paid interval, whether there are restrictions on where the employee can go during the break, and whether the employee's activity during this period constituted a substantial personal deviation. *King Waterproofing*, 71 Md. App. 247 at 253-54 (quoting 1 Arthur Larson, Workmens' Compensation Law § 15.54, at 4-116.38 to .40 (1985)

The appellants argued that it was unnecessary for Slovsky to leave the employer's premises to obtain refreshments because the employer provided coffee and instant soup mixes on the premises. *King Waterproofing Co. v. Slovsky,* 71 Md. App. 247, 524 A.2d 1245 (1987) Although the employer may have provided certain refreshments, the employer permitted employees to leave the premises, because the limited fare available on the premises did not satisfy those who, like Slovsky, preferred a cold drink. *Id.* Upon consideration of all the circumstances, the court determined that at the time Slovsky was injured, he was reasonably engaged in ministering to his personal comfort, and that his conduct did not constitute a departure from the course of his employment. *Id.* at 255-56.

The Court found the circumstances in *King Waterproofing* to be significantly distinguishable from those in *Maryland Casualty Co. v. Insurance Co. of North America*, 248

Md. 704, 238 A.2d 88 (1968). In *Maryland Casualty,* the Court of Appeals held that an injury sustained by an employee of a racing stable occurred in the course of employment where the employee was injured while en route by automobile to a restaurant near the race track to have coffee. *Id.* The employee in *Maryland Casualty* was on call around the clock and was paid on that basis. Although there was a cafeteria located at the race track, the record indicated that its location was far enough away from the employee's work area that a car was considered necessary to get there and return. The Court relied on those facts, "coupled with the knowledge of the employer that his employees frequently left the track for coffee and meals and that they did so with his approval," in concluding that the employee was injured "within the course of his employment." *Id* at 708. The court pointes out that the fact that the employee "on call," and therefore arguably within his employer's control, was of no practical significance because the employee could not have returned to his place of employment, when summoned, in less than 20 minutes. *Id.*

. In *Spencer v. Chesapeake Paperboard Co.,* 186 Md. 522, 528 (Md. 1946) the court stated "if we assume that the fire was caused by a lighted cigarette, then the injury may have arisen from an incident of the employment." It is recognized that there are many occasions where the employer must expect the employee to resort to the use of tobacco as a common adjunct to the discharge of his employment. *Puffin v. General Electric Co.*, 132 Conn. 279, 43 A. 2d 746; *Dzikowska v. Superior Steel Co*., 259 Pa. 578, 103 A. 351, L. R. A. 1918F, 888. As the Supreme Court of California stated during the First World War: "Tobacco is universally recognized to be a solace to him who uses it, and it may be that such a one, unless he finally shakes off the habit, cannot perform the labors of his life as well without it as with it. In the present war one of the constantly recurring calls upon the public of the world is for tobacco for the comfort of the

participants in the conflict." *Whiting-Mead Commercial Co. v. Industrial Accident Commission*, 178 Cal. 505, 173 P. 1105, 1106, 5 A. L. R. 1518.

THE PROXIMITY AND PREMISES RULE

The general rule is that if you are on your way to work and have not arrived or you have left the work premises and are on your way home there is no Worker's Compensation coverage. The "exceptions" to the general going and coming rule recognized in Maryland are the "proximity rule" and the "premises rule".

The elements of the "proximity rule" were defined by Chief Judge Murphy in *Stoskin v. Board of Education of Montgomery County*, 11 Md. App. 355, 274 A. 2d 397 (1971),

> The proximity rule -- an exception to the general going and coming rule is that an employee is generally considered to be in the course of his employment while coming to or going from his work, when, though off the actual premises of his employer, he is still in close proximity thereto, and is proceeding diligently at an appropriate time, by reasonable means, over the natural, practical, customary, convenient and recognized way of ingress or egress, either on land under the control of the employer, or on adjacent property with the express or implied consent of the employer. *Id.*.

As analyzed in *Pariser Bakery v. Koontz*, 239 Md. 586, 591, the rule "allows compensation for an injury to an employee when, under the special facts of the case, the employment itself involves peculiar and abnormal exposure to a common peril which is annexed as a risk incident to the employment." The gravamen of the proximity rule "is not that the employee is in close proximity to his place of employment, but rather that by reason of such proximity, the employee is subjected to danger peculiarly or to an abnormal degree beyond that to which the general public was subjected." *Id.*

The "premises rule", also a creature of case law, is designed to allow compensation for injuries sustained before or after actual working hours while on the premises of the employer and/or under an

extension of the literal concept of "premises". Larson, *supra*, § 15.12; *Salomon v. Springfield Hospital*, 250 Md. 150, 242 A. 2d 126 (1968); *Proctor-Silex Corp. v. DeBrick,* supra; *Saylor v. Black & Decker Manufacturing Co.*, 258 Md. 605, 267 A. 2d 81 (1970).

Speaking for the Court of Appeals in the *Salomon* case, Judge Marbury articulated the "premises rule" in the following context:

> we recognize that ordinarily an employee who has arrived *on his employer's premises* as usual, in preparation for beginning his day's work, is considered to be *on the premises* and therefore covered by workmen's compensation *even though his actual employment has not begun*. . . ." *Id.* (Emphasis added.)

In addition there are numerous Maryland cases which involve an injury on the employer's premises while not actually working.

> An injury arises in the course of employment when it happens during the period of employment at a place where the employee reasonably may be in the performance of his duties and while he is fulfilling those duties or engaged in something incident thereto.' Inquiries pertinent in this regard include: When did the period of employment begin? When did it end? When was its continuity broken? How far did the employee, during the period of employment, place himself outside the employment? Watson v. Grimm, 200 Md. 461, 466." Id. at 183-84.

Ordinarily an employee who has arrived on his employer's premises as usual, in preparation for beginning his day's work, is considered to be on the premises and therefore covered by workmen's compensation, even though his actual employment has not begun; however, "premises" does not necessarily include all property owned by an employer. Salomon v. State, 250 Md. 150, 242 A.2d 126 (1968).

Maryland law recognizes that collecting wages and gathering personal effects are incidents of employment and that on-premises injuries suffered while performing these activities may occur in the course of employment. *See Consolidated Eng'g Co. v. Feikin*, 188 Md. 420, 52

A.2d 913 (1947); *Nails v. Market Tire Co*., 29 Md. App. 154, 347 A.2d 564 (1975). Professor Larson echoes this notion, stating that;

> injuries incurred by an employee while leaving the premises, collecting pay,or getting his clothing or tools within a reasonable time after termination of the employment are within the course of employment, since they are normal incidents of the employment relation." A. Larson, *supra*, at § 26.00.

Along the same line, the court in *Livering v. Richardson's Rest*., 374 Md. 566, 823 A.2d 687 (2003) held that "checking a work schedule is similar to collecting a paycheck or removing personal effects, and checking a work schedule--like collecting wages and personal effects--is incident to employment." *Id.*

Another line of cases under the premises rule that involves parking lots. In *Proctor-Silex v. DeBrick,* 253 Md. 477, 252 A.2d 800, an employer's parking lot in Baltimore County was located across Coolidge Avenue from the employer's plant and the employee was injured when she slipped and fell as she was crossing from the parking lot to the building in which she was employed, the injuries were held to be compensable. In a comprehensive opinion reviewing Maryland cases and leading cases in other jurisdictions principally involving the subject of "premises", Judge Smith quoted from Larson, *op. cit., supra*, § 15.41, with respect to parking lots:

> As to parking lots owned by the employer, or maintained by the Employer for his employees, the great majority of jurisdictions consider them part of the premises whether within the main company premises or separated from it." (Emphasis added.). *Giant Food v. Gooch*, 245 Md. 160, 225 A. 2d 431 (1967); *Smith v. General Motors Assembly Division*, 18 Md. App. 478, 307 A. 2d 725 (1973).

He also discussed the compensability of injuries sustained by an employee while traveling between two parts of an employer's premises:

> One category in which compensation is almost always awarded is that in which the employee travels along or across a public road between two portions of his employer's premises, whether going and coming, or pursuing his active duties. "Since, as shown later, 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 of passage between two parts of the premises is not available, and an employee crossing a public street to get to the parking lot is not protected.

WHAT IS NOT COVERED BY WORKER'S COMPENSATION

Maryland Courts have consistently held that when an injury is the result of the unrestrained curiosity of an employee it is not compensable, because such an injury arose neither out of nor in the course of employment. In *Coates v. J.M. Bucheimer Co*., 242 Md. 198, 218 A.2d 191 (1966), a curious employee, during her coffee break, went to see the lounge in a new building her employer was constructing and fell from a partially completed loading dock. In "curiosity cases" the compensability of a claim depends largely on what the employee was doing at the time of the injury, whether it was "a momentary or impulsive act or a deliberate and conscious excursion involving deviation from the usual place of employment." *Id.* The court further reasoned that;

> Every time an employee deviates from his immediate employment in order to satisfy his curiosity and an injury occurs it does not mean that he will be precluded from receiving compensation under the statute. If the deviation is trifling and momentary it should be disregarded like any other inconsequential act of turning aside. *Id.*

Upon consideration of the relevant facts and circumstances of this case, the court held that the employee's claim was not compensable because her injuries did not "arise out of" and were not "in the course of" her employment, but resulted instead from her unrestrained curiosity. *Id*

In *Keystone Steel & Wire Co. v. Industrial Commission*, 40 Ill. 2d 160, 238 N.E.2d 593 (Ill. 1968), the claimant was a steel-mill recorder, who participated in an organized softball game, an activity

commonly engaged in by co-employees. *Id.* The claimant broke his leg while sliding into third base. *Id.* The injury occurred on land managed and controlled by the employer after the claimant had completed his day's work. *Id.*. The employees sponsored the softball game and paid for equipment, bases, services of umpires, and a trophy awarded at the end of the season. *Id.* The court said that it did not believe the scope of employment could be stretched to include the softball game in which claimant was injured. *Id.*. The court reasoned that;

> The company in the case at bar exerted no pressure or encouragement for participation and derived no advertising benefit from the games. Moreover the company did not sponsor the event, nor was it held during regular working hours. The ball game was solely for the recreation and personal diversion of the employees, without any substantial business advantage to the company. Whatever improvement may have resulted in morale or employee-employer relations is far too tenuous to provide a basis for saying the injury was sustained either out of or in the course of the employment. *Id.*

The court did not consider it important on this issue that the company acquiesced in the activities, provided the use of its land for the ball diamond, permitted the canteen machines to be located in the plant, and allowed employees to trade shifts in order to play. *Id.*

> All the company did, in essence, is to cooperate in enabling employees to engage in social and recreational activities on their own time. To hold that such gratuitous contributions entail liability without fault for injuries at play penalizes the mere providing of benefits and will most certainly tend to discourage it. Facts such as those in this case are totally insufficient to convert this recreational activity into an incident of employment. *Id.*

The court thought it unlikely that the company, the employee, or anyone else engaged in or watching the game considered it part of the employment or that the claimant was on the job at the time. *Id.* The court pointed out that the claimant was not hired as a ballplayer but as a factory worker, and his hours of work had ended for the day, leaving the only reasonable inference under the circumstance to be that he was no longer in the course of his employment. *Id.*