

SOUTH CAROLINA LAWYERS WEEKLY

June 27, 2011

www.sclawyersweekly.com

Court: Quadriplegia made heatstroke foreseeable

By ERIC T. BERKMAN

A quadriplegic who suffered severe heatstroke when his caregiver left him in her car on a hot day was entitled to workers' compensation benefits for the stroke as a compensable consequence of the workplace injury that paralyzed him in the first place, the South Carolina Court of Appeals has ruled.

In disputing the claim, the workers' comp insurer argued that both the claimant's decision to ride in his caretaker's non-air-conditioned car on a scorching day and the caregiver's negligence constituted unforeseeable intervening acts that broke the chain of causation.

But the Court of Appeals disagreed, affirming decisions by both the Circuit Court and the South Carolina Workers' Compensation Commission.

"Claimant's compensable injury, quadriplegia, caused his heatstroke because it prevented him from extricating himself from an overheated car," wrote Judge John D. Geathers for the court.

"[Additionally, the claimant] was injured by an act of his own caregiver, who was employed by the home health company chosen by [the insurer]," the judge continued. "Injuries due to the negligence of non-physicians connected with the process of treatment or convalescence are within the compensable range of consequences of the original work-related injury."

The eight-page decision is *Tims v. J.D. Kitts Construction*, Lawyers Weekly No. 011-093-11. The full text of the ruling can be found at www.sclawyersweekly.com.

Gary Poliakoff of Spartanburg, who represented the claimant, called the ruling a "good affirmation of workers'

compensation being applied as the law says it's supposed to be." Both statute and case law mandate that workers' comp claims be liberally construed in favor of compensation, Poliakoff said.

He also said that while this case may have involved a somewhat unusual fact pattern, the ruling was perfectly in accord with the "direct and natural consequences rule," a doctrine well-established in South Carolina that when someone suffers a work-related injury, any subsequent injury that occurs as a direct and natural consequence of the original injury also is covered under workers' comp.

"A lot of people aren't aware that a second event like this can be covered under this rule," he said.

Steven D. Haymond of Harris & Graves in Columbia, who represents workers' comp claimants but was not involved in this case, said he was surprised the claim was contested and tried, much less appealed.

"New injuries resulting directly from treatment of the original injury are compensable, and this situation would follow along those same lines," he said.

He also pointed out that in South Carolina, the insurance carrier dictates who will provide home care to an injured worker, regardless of what the injured worker may feel comfortable with.

Jeffrey S. Jones, a workers' comp defense attorney with Willson Jones Carter & Baxley in Greenville, who also was not involved in the case, said that while the causal link between the



Poliakoff

workplace injury and the heatstroke was "somewhat tenuous," he believed the court properly applied the law.

Nonetheless, Jones downplayed the potential broader impact of the decision. "It involves an unusual set of facts that will have limited applicability to other cases," he said.

Weston Adams III of McAngus Goudelock & Corie in Columbia and Helen F. Hiser of the firm's Charleston office represented the insurer. Neither responded to calls for comment.

Double catastrophe

Plaintiff Phillip Tims fell from a 12-foot scaffold while working for his employer, defendant J.D. Kitts Construction. He suffered a spinal cord injury in the fall that resulted in him becoming quadriplegic.

In 2006, the plaintiff began receiving medical benefits and lifetime indemnity benefits from defendant South Carolina Home Builders Self-Insured Fund, his employer's workers' comp carrier.

The carrier also started providing home health care services as prescribed by the plaintiff's treating physician. After initially using other providers, the carrier insisted on using HomeWatch Caregivers of Greenville.

On June 9, 2007, the plaintiff's HomeWatch caregiver, Dana Earle, took the plaintiff on an outing to Wal-Mart at his request. The outside temperature approached 100 degrees that day and Earle's car did not have air conditioning.

While at Wal-Mart, Earle realized she had lost her car keys and left the plaintiff in the back seat while she went to look for them. By the time they returned home, the plaintiff was unconscious.

■ See **HEATSTROKE** on next page

HEATSTROKE

■ Continued from previous page

The plaintiff was diagnosed at Greenville Memorials as being in a coma due to heatstroke. He emerged from the coma a week later before lapsing back in.

Later he re-emerged, but remained in the hospital on a ventilator, unable to speak and having incurred brain damage.

The plaintiff sought medical benefits related to his heatstroke, but the carrier denied his claim. A single commissioner of the Workers' Compensation Commission ordered the carrier to pay the benefits and the commission's appellate panel affirmed, finding his heatstroke a natural consequence of the quadriplegia he suffered in the workplace, since he was unable to extricate himself from the car.

Circuit Court Judge John C. Few affirmed. The defendants' appeal followed.

Natural consequence

On appeal, the defendants argued that the plaintiff's decision to ride in his caretaker's non-air-conditioned car on such a hot day was unreasonable and thus constituted an unforeseeable

independent intervening act for which they shouldn't be held accountable.

The court rejected this argument, distinguishing this case from the court's 2008 decision in *Sanders v. Wal-Mart Stores, Inc.*

In that case, the claimant had injured her knee while climbing a ladder at work. After her injury – for which she was compensated – had healed, she fell down the stairs at home and re-injured her knee. The Court of Appeals found that the fall down the stairway was not caused by her prior knee condition and thus was an intervening act rendering the new injury non-compensable.

Unlike that case, however, the plaintiff in this case suffered heatstroke because his quadriplegia made him unable to escape on overheated car, said Geathers. "Further, [the plaintiff's] quadriplegic condition continued up to, during and after" he became trapped in the car – the accident for which he claimed compensation.

The court also disagreed that it was unreasonable for the plaintiff to ride in the caretaker's car that day.

"He could not have predicted that his caretaker would leave him in the car while she went to look for a set of lost keys," Geathers stated.

Similarly, the court found that the caretaker's negligence itself was not

an independent, intervening act that broke the chain of causation, as suggested by the defendants.

Specifically, the defendants argued that the caretaker was merely a "babysitter" who couldn't be considered to have been providing "medical treatment" such that her negligence would be a foreseeable consequence of the plaintiff's original work-related injury.

But Geathers pointed out that the caretaker's services were "medically necessary" for a quadriplegic living in a private home rather than a residential treatment facility.

"Although the services by themselves may not have required any heightened degree of skill, they were connected with the process of treatment of a quadriplegic, and thus the negligent delivery of these services by [the defendants'] chosen caregiver was a foreseeable consequence of [the plaintiff's] condition."

In fact, the judge observed, just weeks before the incident, one of the claimant's doctors recommended that the plaintiff take excursions for his emotional well-being. "Therefore, the June 9 excursion was within the scope of Earle's care of [the plaintiff]."

Eric T. Berkman, an attorney and formerly a reporter for Massachusetts Lawyers Weekly, is a freelance writer.