

# Compensability and Causation

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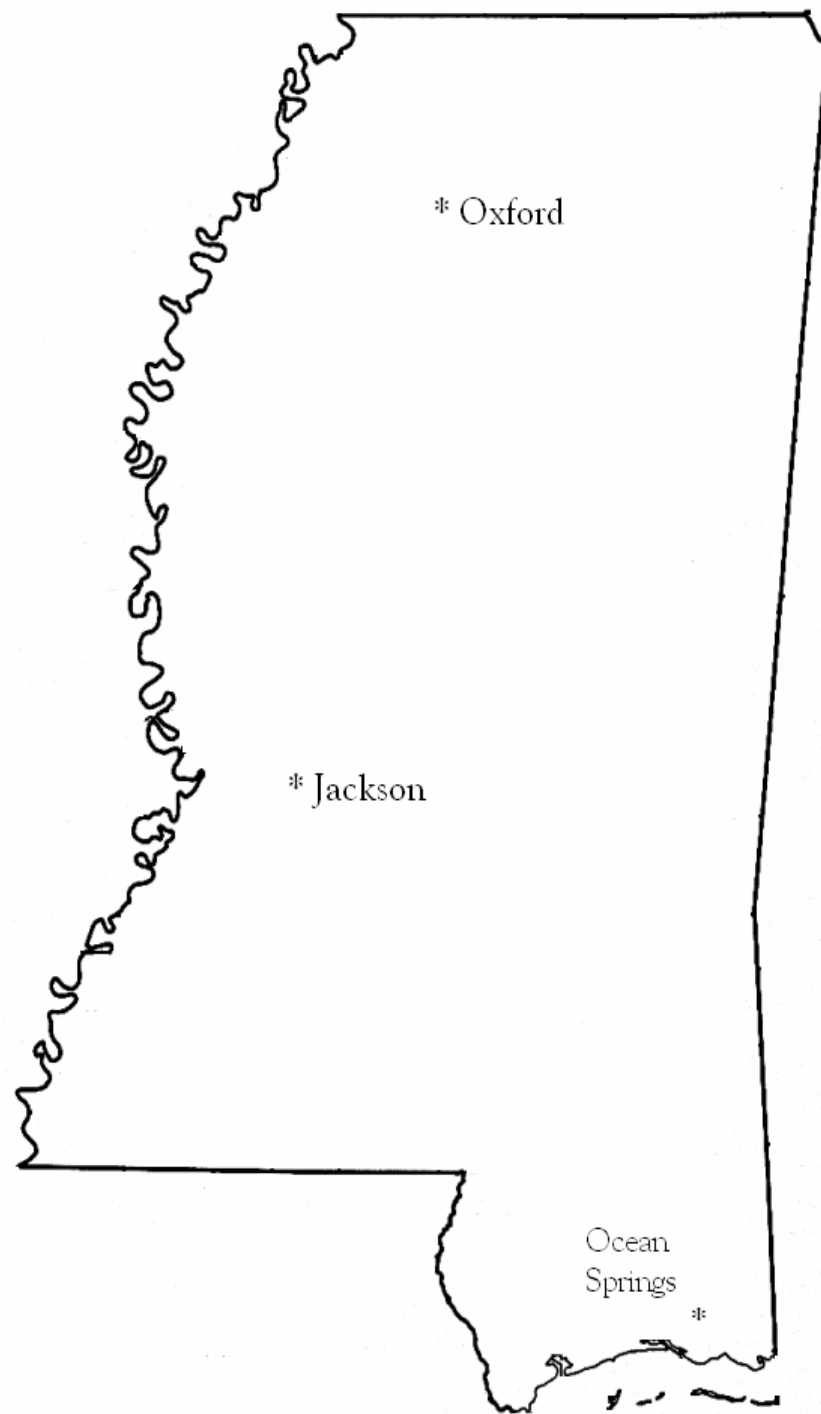
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# Compensability and Causation: Outline

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- Determining Compensability of a Claim
  - Arising Out of the Employment
  - Course and Scope
- Causation
  - Burden of Proof and Importance of Medical Evidence
  - “Mental / Mental” Claims
  - Stroke cases

# Compensability

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- There is a distinction between:
  - “Arising out of employment” and
  - “In the course and scope of employment”

# Compensability

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- Distinction:
  - “Arising out of employment” goes to causal connection with work
  - “In the course and scope of employment” goes to time and place of occurrence

# Compensability

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- Did injury “arise out” of the employment?
  - There must be at minimum a causal connection between the injury and work environment.
  - “Rational contribution”? No need to be sole cause
  - Referred to as the “work connection test”

2/6/2008 (*Sharpe*)

# Compensability

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Arising out of Employment

- Forces of Nature
  - Injury resulting from dangers of the elements
  - Did work duties expose employee to dangers?
  - “Positional Test”: Did work require him to be there?

# Compensability

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Arising out of Employment

- Complications Developed After Initial Injury:
  - Liable for all disabilities from compensable injury
  - Liable for medical procedures, involving unrelated conditions, necessary for treatment of compensable injury
    - Heart condition

# Compensability

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Arising out of Employment

- Imported Danger Doctrine
  - Defense only applies to injuries by the employee who brought or created the hazard.
  - Compensable if use of “hazard” is reasonably incidental to one’s employment.

# Compensability

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## Imported Danger Doctrine

- Examples:
  - Employee shoots himself in car – did not arise out of employment.
  - Employee injured playing with fireworks – did not arise out of employment.

# Compensability

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Arising out of Employment

- Assault (malicious acts and “horseplay”)
  - Employee cannot be intentional aggressor
  - Different rule applies if injury caused by co-worker acting outside course and scope of their employment.
    - Co-employee considered third party when outside course and scope. Sole connection cannot be knowing each other through work.

# Compensability

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Arising out of Employment

- Assaults by “Third Party”
  - Defined:
    - Stranger to the employer-employee relationship OR
    - Fellow employee acting outside the scope of employment
  - Is there a “reasonable nexus” between the assault and the employment?
  - Assault must be directed toward the employee “because of” the employment.

# Compensability

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## Arising Out of Employment

- What does “because of employment” mean?
  - Personal Vendetta – known assailant, involves a private dispute.
  - Attack by unknown assailant for unknown reason is considered to arise out of employment

# Compensability

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## Arising Out of Employment

- Assaults by Third Party: "Zone of Risk" test
- RULE: When employment or conditions of employment expose employee to a greater "zone of risk" than the general population, the assault arises out of employment
  - Cab driver killed on duty
  - Convenience store clerk assaulted while working in high crime area
  - Traveling salesman assaulted by motorist he stopped to help
  - Nurse arriving for work on late shift assaulted in parking lot

# Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

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- New case discussing assault by third party
- Husband/Wife truckers developed truck problem in Wyoming.
- Wife dropped him off at truck stop while she went to get truck fixed.

# Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

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- Husband had 2 hours sleep in 2 days, almost nothing to eat
- Pair had been arguing
- Husband wanted to eat and “get away” from the truck
- He signed “off duty”

# Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

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- Wife returned a couple hours later, but could not find him in truckstop
- Did not look for him in the bar
- Called her dispatcher and finally parked truck near truckstop and went to sleep
- Left at 6:00 a.m. when husband not back

# Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

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- Husband ate food, played pool and drank in bar until 2 a.m.
- Sought a ride from a third party in order to get back to repair station
- Shot and killed on the way.
- BAC was .137, company had alcohol policy

# Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

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- ALJ, Commission and Circuit Court all found compensable
- ALJ reasoned claimant was in “zone of special danger”
- Determined assault was reasonably incident to traveling employment

# Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

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- Supreme Court reversed, laid out the standard from 71-3-3:
  - A compensable injury includes “an injury caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job.”

# Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

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- Court distinguished between claimant having to be in a truckstop for meals versus his presence in bar at 2 a.m.
- The “extended escapade...exposed him to risks that cannot reasonably be viewed as being associated with the trucking business or arising out of or in the course of his employment.”

# Compensability

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- Aggravation of Pre-existing Condition
  - RULE: If one's employment aggravates, accelerates or combines with a pre-existing condition so as to produce a disability for which claim is made, such claim will be compensable.
  - The employment need only be a "substantially contributing cause" of the disability.

# Compensability

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## Course and Scope of Employment

- How is course and scope of employment determined?
- Was employee furthering the employer's business at a time and place incidental to the employment?

# Compensability

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## Course and Scope of Employment

- Temporary Deviation
  - Employment relationship temporarily suspended:
    - Employee turns away from employer's business AND
    - Serves a purpose of his own AND
    - Activity is disconnected from the employment
  - But resumes employment relationship if:
    - Employee abandons personal purpose and
    - Employee resumes employment-related business

# Compensability

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## Course and Scope of Employment

- For when life isn't so simple, there is the "mixed purpose"
- When employee selects alternate route to benefit himself or another, question is whether they are furthering employer's business to "appreciable extent"?

# Compensability

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## Course and Scope of Employment

- “Going and Coming” Rule
  - Injuries while traveling to / from a fixed place of employment are generally not compensable
  - Does not apply to “traveling employees”
    - Includes activities “necessary to travel”
    - Travel must be “integral” part of the job

# Compensability

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## Course and Scope of Employment

- Exceptions to “Going and Coming” Rule:
  - Employee parking lot is considered Employer’s premises, whether owned outright or leased
  - Work at home for mutual benefit of employer, not just employee convenience
  - Special Errand/Mission
  - Designated Route or Special Hazard
    - Dangerous condition during route?
    - Employee exposed to greater risk than public?

# Compensability

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## Course and Scope of Employment

- Exceptions to “Going and Coming” Rule:
  - Transportation Provided by Employer
    - Provides transportation to employee
    - Reimburses travel expenses (to and from work)
    - Provides company vehicle
      - Deviation from route home for personal mission is likely not compensable

# Compensability

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## Course and Scope of Employment

- Exceptions to “Going and Coming” Rule:
  - Where place of injury is in such proximity as to be, in effect, part of the employer’s premises

New Case – *Jesco, Inc. v. Cain*, 954 So. 2d 537 (Miss. Ct. App. 2007)

# Compensability

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*Jesco, Inc. v. Cain*

- Electrician doing renovations on hospital
- Employer required employees to park in particular non-public lot, required them to cross street for reporting at trailer every morning
- Hit by car while crossing dark street and Employer argued not yet clocked in

# Compensability

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*Jesco, Inc. v. Cain*

- Employee has burden of showing exception to “going and coming” rule
- Court found a “special hazard” existed due to the early reporting time and lack of light on street
- Court also found public street qualified as “premises” because of order to park in specific lot and proximity of crossing road

# Compensability

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## Course and Scope of Employment

- Injuries sustained during recreational activity
  - Not compensable unless the activity is encouraged or required by the employer
  - Fact that employer furnishes a recreational facility does not, in and of itself, place the use thereof within the course of employment
    - Substantial business benefit from recreational trip?
    - Penalty for employees who did not attend?

# Compensability

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## Course and Scope of Employment

- What if activity in violation of rules leads to injury?
  - Course of employment if:
    - Activity is in furtherance of employer's business and
    - Is normal function of employees engaged in that type of work
  - Exception:
    - Employer expressly objects to a particular activity and
    - Objection is made at or near the time it is performed

# Causation

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## Overview

- Burden of Proof
  - Claimant must prove causal connection by preponderance of the evidence
- Importance of Medical Evidence
  - Probability over mere possibility
  - Conflicting medical evidence
    - Treating physician over Employer Medical Examination?
    - Complete examination? Review all medical records?
    - Specialty in area related to injury? Experience?
    - Objective findings vs. subjective complaints

# Causation

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## Mental Injuries

- “Mental / Mental” Claims
  - Defined: Mental injury absent physical trauma
  - Burden of Proof is Higher - Clear and Convincing
  - Must be caused by something beyond the ordinary incidents of employment
    - Evaluated on a case-by-case basis
    - Layoff does not qualify as beyond ordinary
    - Defense: Pre-existing psychiatric condition / treatment?

# Causation

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- Stroke cases
  - Employment related stress or exertion that aggravates, accelerates or contributes to the stroke?
  - *Woolfolk*, 920 So.2d 1024 (Miss. Ct. App. 2005)
    - Nurse suffered aneurysm rupture after call from patient
    - Was call an untoward event that caused, exacerbated or aggravated the aneurysm, causing it to rupture?
    - Medical opinion: stress can cause elevation of blood pressure which causes pressure on wall of blood vessel in brain = rupture of existing aneurysm
    - NOT COMPENSABLE: no substantial evidence that call from patient upset claimant and induced stress