

SJR 30 Studies  
Compensable Conditions – Course  
and Scope Issues  
Report to the LMAC

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Compensable Conditions – Course and  
Scope Issues: Background

- “...each insurer is liable for the payment of compensation...to an employee of a covered employer...**who receives an injury arising out of and in the course of employment...**”  
MCA 39-71-407
- “Arising out of” generally requires a causal link between the worker’s injury and his/her employment
- “In the course of employment” generally means the time, place and circumstances of the injury

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## Compensable Conditions – Course and Scope Issues: Background

- Issues of concern to employers/insurers resulting from decisions in the following and similar cases:
  - **Oksendahl v Liberty Northwest** – arthritis aggravated or accelerated by work activities
  - **Coles v. American Motorists Ins.** – establishes a shift in the burden of proof to show suitable work is available
  - **Bevan v. Liberty Northwest** – employee injured while off employer’s premises on a personal errand during a paid break

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## Compensable Conditions – Course and Scope Issues: Background

- **Michalak v. Liberty Northwest** – injury which occurred at a picnic at the home of the employer after employee asked by employer to assist others with using “wave runners”.
- **Popenoe v. Liberty Northwest** – Employee broke his ankle while removing his bicycle from a friend’s truck in the employer’s parking lot 5 minutes before work.
- **Van Fleet v. Montana Assoc. of Cty’s** – Clmt died after falling off a balcony while at an employer paid conference. Blood alcohol level at time of death was .203

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## Compensable Conditions – Course and Scope Issues: Public Policy Issues

- Workers and their advocates believe that any physical condition an individual suffers at work or that could be caused by or aggravated by work activities, regardless of where those activities are conducted should be compensable, especially if the employer was aware of and condoned the circumstances of the work activities.

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## Compensable Conditions – Course and Scope Issues: Background: Public Policy

- The employer and insurer believe they should be responsible only for those conditions that were caused by work and should not be responsible for conditions that are a natural part of the aging process; are primarily caused by some condition other than work; or are caused by a situation not even remotely within the control of the employer.

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## Compensable Conditions – Course and Scope Issues: State Comparisons

- Methods to obtain comparative information from other states:
  1. Case Studies designed using MT's case law and sent to all comparator states
  2. A survey to all states with questions on course and scope issues
  - 9 out of 10 comparator states submitted detailed information on the case studies
  - 30 states completed the all state survey

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## Compensable Conditions – Course and Scope Issues: State Comparisons

- Findings:
  1. Aggravations of preexisting conditions
    - Almost all states responding to the survey treat aggravations of preexisting conditions or conditions of aging as compensable with medical documentation of such connection to work activity.
    - Twelve of thirty states are responsible for those payments until the condition returns to the pr-injury state if temporary. If permanent, there may be some apportionment of permanency benefits.
    - A significant exception is North Dakota which pays 100% of benefits for 60 days and then reduced that to 50% thereafter where there is a preexisting condition

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## Compensable Conditions – Course and Scope Issues: State Comparisons

### ■ Findings:

#### 2. Burden of proof for establishing suitable jobs available:

- In the states of NM, ND and WY, TTD would end at MMI and PPD benefits would begin
- In MT, TTD would end at release to rtw in some capacity; but if no rtw by MMI, and employee has permanent physical limitations, TTD is converted to PPD only after physician approved rtw at a suitable job based on a voc. job analysis performed at employer/insurer's expense.
- In the states of ID, OR, SD and WA, if the employee cannot return to the job at injury due to physical limitations, the employer has some responsibility to offer work the employee can do or demonstrate there are jobs in the local area the employee can do before TTD can be discontinued

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## Compensable Conditions – Course and Scope Issues: State Comparisons

### ■ Findings:

#### 3. Injury off employer's premises during a personal errand on company time

- The majority of comparator states would not cover a situation similar to the Bevan case.
- There are nine states that believed it "maybe" compensable but needed additional facts to determine.

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## Compensable Conditions – Course and Scope Issues: State Comparisons

### ■ Findings:

4. Injury occurs at a picnic at the employer's home after employer asks employee to assist with "wave runners"
  - It would be covered in ID and MT; it might be covered in NM; but would not or probably not be covered in ND, OR, SD, WA, and WY

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## Compensable Conditions – Course and Scope Issues: State Comparisons

### ■ Findings:

5. Injury in friends truck while in the employer's parking lot unloading bicycle prior to work
  - ID, MT, NM, OR, SD and WY would find a similar case compensable
  - ND and WA would not

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## Compensable Conditions – Course and Scope Issues: State Comparisons

### ■ Findings:

6. Intoxicated when injury occurred at convention to which employer sent employee
  - MT and WA are the only two states who would clearly cover such a situation as work related
  - It is unclear in NM and it would not or likely not be compensable in ID, ND, OR, SD, and WY

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## Compensable Conditions – Course and Scope Issues: Consultant's Recommendations

- Exclude injuries that occur off the employer's premises while the employee is attending to a personal, non-work related errand
- Also exclude injuries that occur while the employee is engaging in or performing any recreational or social activity primarily for the worker's personal pleasure during non-work hours, voluntarily and without pay even if the event is sponsored or paid for by the employer.

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