

THOUGHT LEADERSHIP

News

## SAN ANTONIO COURT OF APPEALS HOLDS “COMING-AND-GOING RULE” INAPPLICABLE TO TRIP FROM HOTEL TO JOB SITE IN WORKERS’ COMP CASE

Newsbrief

03 FEB 2014

The “coming-and-going rule,” which excludes travel between work and home from the course and scope of employment in a worker’s compensation claim, did not apply to exclude a claim by the beneficiaries of a worker who resided away from his home in employer-provided lodging and drove an employer-provided vehicle, the San Antonio Court of Appeals held on Wednesday. In *Seabright Insurance Company v. Lopez*, No. 04-12-00863-CV, 2014 WL 300975 (Tex. App.—San Antonio Jan. 29, 2014), the decedent’s wife sued after her husband was killed in a motor vehicle accident while driving between a hotel in a small town in the Waco area to a job site 40 miles away. The contested case hearing officer, the appeals panel, and the district court in a summary judgment order all sided with Mrs. Lopez, ruling that Mr. Lopez was killed while acting in the course and scope of his employment.

The coming-and-going rule generally excludes from workers’ compensation coverage travel between work and home. However, an exception to the rule arises when the transportation is paid for by the employer, a fact that was undisputed in this case. Employer-provided transportation is not dispositive, however, and the court of appeals examined the summary judgment record for additional course-and-scope evidence.

Crucial to the court’s resolution of the appeal was the fact that Mr. Lopez was not only driving a vehicle provided by his employer, but also was working away from home. The jobsite was located roughly 450 miles from Mr. Lopez’s residence, and he was given a per diem that he used to stay at a hotel 40 miles from the jobsite. The court deemed the hotel to be “de facto employer-provided housing,” and noted that Mr. Lopez would not have been in the vicinity of the accident but for his work. The evidence in the case was sufficient to establish as a matter of law that Mr. Lopez was acting in the course and scope of his employment, and therefore his wife was entitled to recover worker’s compensation benefits because of his death.