WCAT Workers' Compensation Appeal Tribunal

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WCAT Decision Number: **WCAT-2013-00994**
WCAT Decision Date: **April 15, 2013**

Panel: Herb Morton, Vice Chair

WCAT Reference Number: 122011-A

Section 257 Determination
In the Supreme Court of British Columbia
Kamloops Registry No. 44585
David Colin Andrews v. Salmon Arm Savings and Credit Union and Neptune Insulated Pools Ltd., Defendants, and Neptune Insulated Pools Ltd. and Salmon Arm Savings and Credit Union, Third Parties

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Applicant: Salmon Arm Savings and Credit Union ("defendant" and "third party")

Respondents: David Colin Andrews (the "plaintiff")

Neptune Insulated Pools Ltd. ("defendant" and "third party")

Interested Person: Community Futures Development Corporation of the Shuswap

Representatives:

For Applicant: Daniel J. Reid, HARPER GREY LLP

For Respondent:

David Colin Andrews: John M. Hogg, Q.C., MORELLI CHERTKOW LLP

Neptune Insulated Pools Ltd.: Sandra A. Besanger, BILKEY LAW LLP

For Interested Person: Corey Sigvaldason

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Introduction

[1] The plaintiff, David Colin Andrews, was employed as the general manager of the Community Futures Development Corporation of the Shuswap (Community Futures), located in Salmon Arm, British Columbia. At approximately 7:55 a.m. on Monday, March 2, 2009, he was injured in a slip and fall while walking a few blocks from his parking spot to his office. Prior to his fall, the plaintiff had taken a small detour for the purpose of checking on the condition of a parking spot which had been obtained for use by one of Community Futures' employees. The plaintiff's fall occurred in the parking lot of the defendant and third party, Salmon Arm Savings and Credit Union (SASCU). The defendant and third party, Neptune Insulated Pools Ltd. (Neptune), had been hired by SASCU to maintain the parking lot. At the time of the accident on March 2, 2009, Community Futures, SASCU, and Neptune were all employers registered with the Workers' Compensation Board, operating as WorkSafeBC (Board).

[2] Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations and certify to the court concerning actions based on a disability caused by occupational disease, a personal injury, or death. This application was initiated by counsel for SASCU on August 13, 2012.

[3] A transcript has been provided of the examination for discovery of the plaintiff on August 11, 2011 (continued on July 27, 2012). The plaintiff also provided an affidavit sworn on February 5, 2013. The legal action is scheduled for trial commencing on January 20, 2014.

[4] Written submissions have been provided by the parties to the legal action. The background facts are not in dispute. I find that this application involves questions of law and policy and can be properly considered on the basis of the written evidence and submissions, without an oral hearing.

Issue(s)

[5] Determinations are requested concerning the status of the parties to the legal action, at the time of the plaintiff's fall on March 2, 2009.

Jurisdiction

[6] Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to the making of the WCAT decision (section 257(3)). WCAT is not bound by legal precedent (section 250(1)). WCAT must make its decision based on the merits and justice of the case, but in so doing must apply a published policy of the board of directors of the Board that is applicable (section 250(2)). Section 254(c) provides that WCAT has exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)). The court determines the effect of the certificate on the legal action: *Clapp v. Macro Industries Inc.*, 2007 BCSC 840.

Status of the plaintiff, David Colin Andrews

[7] On August 22, 2012, the plaintiff submitted a provisional application for workers' compensation benefits in relation to the injuries he sustained in his fall on March 2, 2009. The claim was suspended without adjudication as the plaintiff was pursuing a legal action.

[8] The plaintiff gave evidence at an examination for discovery on August 11, 2011 (continued on July 27, 2012). At the time of his accident on March 2, 2009, he was employed as the general manager of Community Futures (Q 20). He had a staff of 12. His position as general manager involved managing a non-profit corporation which assisted people in starting small businesses through business planning, business counselling, and providing small loans. Community Futures also operated a number of programs for the federal government, a self-employment benefit program and targeted wage subsidy. His job as general manager was to oversee the operations of the corporation and of the programs. The plaintiff also dealt with a few small loan clients on his own. He had ultimate approval of the loans as to which ones would be submitted to the board of Community Futures for final financial approval. Community Futures had approximately 6 million dollars in loan assets, and 2.5 million dollars in liquid cash assets. It also held a subsidiary company that held about $600,000 worth of real estate, which the plaintiff managed. Community Futures had an annual operating budget of approximately 1.2 to 1.4 million dollars. The plaintiff had control of the organization, subject to approval by the Community Futures' board (Q 449).

[9] In March, 2009, Community Futures was operating from a temporary location. The offices in which it normally operated had been flooded due to a break in a sprinkler pipe. They had moved to a temporary location on or about December 15, 2008. At the time of the accident, Community Futures had been operating from its temporary premises for about 2.5 months (Q 450 to 451).

[10] Due to the move to temporary premises, Community Futures required new parking spaces for its employees. They obtained parking in the lot behind a pub (Q 452 to 453). The plaintiff had usually parked at that location since December 15, 2008 (Q 453). The owner of the building that they were renting also owned the pub and arranged for the rental of these parking spaces to Community Futures (Q 454). The plaintiff approved the rental of these parking spaces (Q 455). The pub was named the Old Dog Pub (Q 162), and was located between the Trans Canada Highway and Hudson Avenue NE in Salmon Arm.

[11] On the morning of March 2, 2009, the plaintiff exited the pub parking lot mid-block on Hudson Avenue NE (Hudson) between 6th Street NE and 4th Street NE (4th), and walked west on Hudson (Q 162). The temporary offices of Community Futures were located near the intersection of Hudson and Ross Street. If the plaintiff had continued walking west on Hudson, this would have taken him to his office. However, he turned right at the intersection of Hudson and 4th, and walked north towards the SASCU parking lot. A Scotiabank building was located on the corner of Hudson and 4th, and the plaintiff walked north on 4th past this building and then turned into the SASCU parking lot. There was a slope leading down into the SASCU parking lot. The plaintiff reached the point where the slope started to flatten out to the parking lot area, when he slipped on ice and fell (Q 162).

[12] At the time of his accident, the plaintiff was carrying a fold-up type of cane in one hand, and a cup of coffee in his other hand. The cane was not for his own use, and was in a folded position (Q 49 to 60).

[13] The plaintiff had surgery in 2006 for a right hip replacement. In the March 2, 2009 fall, he fractured his right femur and prosthetic hip (Q 31, 37).

[14] The plaintiff did not have a usual route for walking from his car to his office. He had four or five different routes that he could take (Q 200). However, he had never taken the route leading through the SASCU parking lot (Q 201).

[15] One of Community Futures' employees, Ms. Scott, had bad arthritis (Q 202, 484). She was employed to do the books and financial recordkeeping, and to keep time sheets, under the plaintiff's direction (Q 559).

[16] Parking had been provided for all of the employees of Community Futures behind the pub (Q 479). However, Ms. Scott had difficulty in walking the distance between the pub and the Community Futures' offices. She requested alternate parking at a closer location (Q 542 to 543). The plaintiff had arranged the rental of a parking space for her at a closer location, behind the Scotiabank (Q 544). The plaintiff explained (Q 202):

> One of my employees at Community Futures has, had at that time bad arthritis and needed a parking place closer to our office and I had arranged for a parking space in an undercover lot immediately behind the credit union one and when I had seen the lot, the space on the previous Friday it had a pile of snow in it. I was going through the credit union lot to make sure that snow had been cleared away so that she could get into it to park.
>
> [reproduced as written]

[17] Community Futures paid for the rental of this parking space (Q 545). Community Futures was renting 12 spaces behind the Old Dog Pub. The same landlord owned the building in which Community Futures was located, as well as the parking space underneath or behind the Scotiabank which had been arranged for Ms. Scott (Q 549 to 551). This was going to be an exchange of parking spots (Q 549). The plaintiff stated (Q 553):

> Q Would you agree that accommodating staff requests and staff disabilities was one of your responsibilities as general manager?
> A Was it an assigned responsibility, no. This was something that I did because I cared for my staff.

[18] There was no one else in the office who had responsibility for this (Q 554).

[19] The morning of the accident would have been the first day for Ms. Scott to use the parking space (Q 477). The plaintiff had viewed the parking spot on Friday, February 27, 2009, and there was snow in the parking spot at that time. The plaintiff decided to check on the parking spot as he was concerned it would not be fit for Ms. Scott's use. That was the reason that he took the route that he took prior to his fall (Q 555 to 556). If the spot had been filled with snow, it would have been the plaintiff's responsibility to deal with it (Q 557).

[20] The plaintiff was a couple of hundred feet away from the parking spot at the time of his fall (Q 206). He was on the most direct route for going to the parking spot (Q 207).

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[21] The offices of Community Futures were open from 8:30 a.m. until 4:00 p.m. (Q 532). The plaintiff was there every day during office hours (Q 532). He stated that he tried to be there before 8:30 a.m. (Q 533):

> It would depend on the day. I usually try to be there before 8:30. You get the overnight e-mails out of the way before staff arrived or before clients start to come in and quite often I don't get out at 4 o'clock.

[22] He seldom arrived earlier than 8:00 a.m. (Q 535).

[23] In his affidavit of February 5, 2013, the plaintiff further explained (paragraph 5):

> This idea I got that I would check the parking space to see if it was clear of snow is one that just came to me in the spur of the moment at some point after I got out of my car at my parking lot and was actually walking towards the office. It was not something that I had to do or was directed to do; I was self-directed and it just came to me in a moment's thought. If that parking space had not been clear of snow I would have heard about it in due course even if I had not checked it. I simply thought I would do a favour for my employee on my walk to work that day; a walk I had to take in any event to get to my office.

[24] The plaintiff has furnished a large map showing the relevant locations (of the pub parking lot, the route that he walked on Hudson, the spot where he fell (marked with an "X"), the location of the parking space he was intending to view, and the location of Community Futures' offices. It is evident from this map that the most direct route for the plaintiff to have walked from his parking space in the pub parking lot to Community Futures' offices would have been to walk directly west on Hudson. He embarked on a minor detour when he turned right on 4th to walk behind the Scotiabank building and to enter the parking area of SASCU, for the purpose of viewing the parking space.

[25] By letter dated December 24, 2012, Community Futures confirmed that the plaintiff was employed by it at the time of his accident, and noted: "What is not known is if Mr. Andrews was at Salmon Arm Savings and Credit Union for personal or business purposes." Community Futures declined to provide further submissions.

[26] SASCU requests determinations that Community Futures was an employer as defined by the Act, engaged in an industry within the meaning of Part 1 of the Act. I consider that these determinations are incidental to the determination of the plaintiff's status, as to whether he was engaged in a relationship of employment with Community Futures.

[27] The plaintiff was employed by Community Futures as its general manager, and was paid an annual salary. There is no dispute regarding his status as a worker. I find that at the time of his accident on March 2, 2009, the plaintiff was a worker within the meaning of Part 1 of the Act. I further find that Community Futures was an employer engaged in an industry within the meaning of Part 1 of the Act. The contentious issue is whether the plaintiff's injuries in the accident on March 2, 2009 arose out of and in the course of his employment. Detailed submissions have been provided by the parties on this issue.

[28] In terms of the background facts regarding the occurrence of the plaintiff's fall on March 2, 2009, I accept the plaintiff's evidence as forthright and credible. The determination in this case concerns the application of policy, based on the factual evidence provided by the plaintiff.

[29] At the time of the accident on March 2, 2009, the policies in Chapter 3 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) included the following:[1]

> **#14.00 ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT**
>
> Before a worker becomes entitled to compensation for injury under the *Act*, the injury must arise out of and in the course of employment. Confusion often occurs between the term "work" and the term "employment". Whereas the statutory requirement is that the injury arise out of and in the course of employment, it is often urged that a claim should be disallowed because the injury is not work related or did not occur in the course of productive activity. There are, however, activities within the employment relationship which would not normally be considered as work or in any way productive. For example, there is the worker's drawing of pay. An injury in the course of such activity is compensable in the same way as an injury in the course of productive work.
>
> Lack of control of a situation by the employer is not a reason for barring a claim otherwise acceptable. Control by an employer is an indicator that a situation is covered under the *Act* at a particular time, but if that control does not exist **there may be other factors which demonstrate an employment connection**.

[1] In this decision, I have applied the policies in effect at the time of the accident on March 2, 2009. While the board of directors of the Board has approved a revision to the policies in Chapter 3 of the RSCM II, those new policies only apply to injuries or accidents that occur on or after July 1, 2010.

No single criterion can be regarded as conclusive for deciding whether an injury should be classified as one arising out of and in the course of employment. Various indicators can be and are commonly used for guidance. These include:

(a) whether the injury occurred on the premises of the employer;

(b) **whether it occurred in the process of doing something for the benefit of the employer;**

(c) whether it occurred in the course of action taken in response to instructions from the employer;

(d) whether it occurred in the course of using equipment or materials supplied by the employer;

(e) whether it occurred in the course of receiving payment or other consideration from the employer;

(f) whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;

(g) whether the injury occurred during a time period for which the employee was being paid;

(h) whether the injury was caused by some activity of the employer or of a fellow employee;

(i) whether the injury occurred while the worker was performing activities that were part of the regular job duties; and

(j) whether the injury occurred while the worker was being supervised by the employer.

This list is by no means exhaustive. All of these factors can be considered in making a judgement, but no one of them can be used as an exclusive test.

[emphasis added]

[30] It is evident from the opening paragraphs of the policy at item #14.00 that the determination as to whether an injury is one which arose out of and in the course of the worker's employment does not turn solely on whether the worker was engaged in productive work activity, or whether the worker's actions were carried out during paid working hours. While such factors provide strong evidence of employment-connectedness (where they are present), there may be other circumstances which establish employment-connectedness even where those factors are not present.

[31] The determination as to whether the worker's injury arose out of and in the course of his employment requires an evaluation of the extent to which the circumstances of the worker's injury were employment-connected. The ten factors set out in item #14.00 assist in this evaluation, but are not exhaustive. Regard must also be had to the particular policies concerning travel set out in Chapter 3 of the RSCM II.

[32] In terms of the factors set out in item #14.00, these do not provide strong evidence of employment-connectedness in the present case. I find that the only factor which is met is (b). I consider that the plaintiff's actions, in checking to see if the parking spot which had been arranged to accommodate a worker's disability was clear of snow, were of benefit to the employer. While the plaintiff was not obliged to carry out this task, it demonstrated that he cared about the employees under his direction (as the plaintiff described). He was verifying that the arrangement he had made regarding this parking space, on behalf of Community Futures, had in fact been implemented, in terms of the parking space being made available for an employee of Community Futures who required a closer parking space. Given that the plaintiff was the general manager (reporting to the Community Futures' board), he was not subject to being provided with instructions regarding the day-to-day tasks necessary to carrying out his role. While arranging for parking for the employees was one of the tasks within the plaintiff's area of responsibility, it was not necessary that he personally inspect the spot. Accordingly, the factors at item #14.00 provide only limited support for a finding of employment-connectedness. It is, however, also necessary to have regard to the other policies in Chapter 3 concerning travel. These include the following excerpts:

> **#18.00 TRAVELLING TO AND FROM WORK**
>
> The general position is that accidents occurring in the course of travel from the worker's home to the normal place of employment are not compensable. But where a worker is employed to travel, accidents occurring in the course of travel are covered. This is so whether the travel is a normal part of the job or is exceptional.
>
> *#18.22 Payment of Travel Time and/or Expenses by Employer*
>
> The payment of wages or travelling allowances etc. may in some circumstances be a factor to be considered, but it usually will not be a significant factor, nor is it ever the sole criteria in determining the acceptability of a claim.
>
> **#18.30 Journey to Work Also Has Employment Purpose**
>
> **There may be situations where the journey is not simply a routine matter of driving to and from work, but there are also some additional circumstances which connect the journey with some particular aspect of the worker's employment. This additional**

circumstance may be sufficient to bring all or part of the journey within the scope of the employment.

#18.32 Irregular Starting Points

There are a number of different situations that have to be considered under this heading. One is where the worker is injured in the course of a journey between home and a normal or regular operating base. That situation is substantially similar to the case of a worker travelling between home and a fixed place of employment and an injury occurring in the course of that journey would not be covered.

Another situation is where there is an injury occurring in the course of a journey between what might be called two working points. That is, where the worker terminates productive activity at one point and then has to travel to commence productive activity at another point. If that occurs in the course of a working day, then the travel is one of the requirements of the job. It is one of the functions that the worker has to perform as part of the employment whether or not the worker is paid for it. Where the worker terminates productive activity at one point and is required to commence productive activity at another point, travel between those points is part of the employment and is in the course of employment as long as the worker is travelling reasonably directly and is not making major deviations for personal reasons.

#18.33 Deviations From Route

Where an employee is instructed by the employer to perform some activity related to work while on the way to or from the normal place of work, this does not necessarily provide coverage for the whole journey. Generally speaking, it will only provide coverage to the extent that the employee has, because of these instructions, to do something which would not normally be done while travelling to or from work or go somewhere where the employee would not normally go. This is particularly so when the instructions only require a minor diversion from what is essentially a normal journey to work.

In one case, an employee was asked to stop on his way to work and have snow tires put on his employer's car that he was driving. His claim was denied because he was injured close to his home and at the beginning of a normal journey to his office. He still had a fair distance to travel before he would divert from this route to work to carry out his employer's instructions. The place where the snow tires were to be fitted was close to his office and the fact that he had to go there did not appear to have significantly affected the initial part of his journey. Though road conditions were bad and thus provided some risk, this risk was one that he would, in

any event, have to meet in travelling to work. He had to leave earlier to enable him to carry out his employer's instructions, but this reduced rather than increased the risks of the journey.

Where a worker is covered while travelling to a place of work, that worker must proceed with reasonable expedition and without substantial deviation from the most convenient route. Otherwise the worker may be regarded as no longer in the course of employment.

#19.20 Parking Lots

For the purpose of determining whether an injury occurring in a parking lot is compensable, the Board looks at five basic questions.

First, was the lot provided by the employer for the worker? The unauthorized use of a parking space by a worker would normally exclude the acceptance of a claim on the basis that the injury was not work related. There will, however, be exceptions where the employer, while not authorizing the parking, has condoned the practice by default in failing to take action to prohibit the practice.

Second, was the lot controlled by the employer? (The fact that a lot is owned or leased by an employer does not, in itself, automatically imply that it is controlled by the employer.) Claims are received for injuries occurring in parking lots not owned by the employer, but as a result of some arrangement, the worker is permitted to park there. If the lot is controlled by the employer, a claim may be acceptable. In claims involving shopping centre or shopping mall parking lots which are designed primarily for customer use and not controlled by the individual employer of a worker, an injury occurring on such premises would not normally be considered as acceptable.

Third, was the injury caused by a hazard of the premises? This is intended to limit acceptance to only those injuries which have a connotation of "employment relationship". For example, a slip on a pool of oil or a trip over an obstruction would qualify. On the other hand, workers who nip their fingers in their own car doors would not have their claims accepted. (7) There will also be claims which are not a direct result of the premises which may qualify, such as a pedestrian struck by a fellow employee's car. The term "hazard of the premises" is not an absolute requirement for compensation coverage. Rather it illustrates the distinction between injuries resulting from personal causes and those resulting from the employment. In effect, the type of injury that would qualify for acceptance if it occurred on a factory floor would also qualify for acceptance if it occurred in a parking lot.

> Fourth, was the parking lot contiguous to the place of employment? The word "contiguous" is defined as meaning both adjacent to and attached to. While desirable, it should not be deemed a mandatory prerequisite for acceptance. Non-contiguous lots, particularly those under the direction, supervision or control of an employer do qualify although coverage does not normally extend to workers while they are making their way to them across and along public thoroughfares.
>
> Finally, did the injury occur proximal to the start or stop of the shift? If there is a significant time gap between the time of an accident and the start or stop of the shift, the matter is investigated to determine whether there is an employment relationship.
>
> [emphasis added; footnote deleted]

[33] The first point which may be made is that workers' compensation coverage would not normally apply in relation to the plaintiff's travel by automobile from his home to the pub parking lot, or in relation to his travel on foot from the pub parking lot to the offices of Community Futures. The general policy, as set out in item #18.00, is that accidents occurring in the course of travel from the worker's home to the normal place of employment are not compensable. The penultimate paragraph of the policy at item #19.20 provides that workers' compensation coverage does not normally extend to workers while they are making their way across and along public thoroughfares, in going to and from the employer's premises and a non-contiguous parking lot.

[34] The applicant submits that the plaintiff's accident occurred in the course of travel between two working points, so that workers' compensation coverage would apply under item #18.32. I agree with the plaintiff that this policy does not apply. Even if the parking space the plaintiff intended to view on the morning of March 2, 2009 could be described as a working point, he had not reached his first working point by the time the accident occurred. Accordingly, I do not consider that the plaintiff was engaged in travel between two working points at the time of the accident.

[35] Policy at RSCM II item #18.30 explains that there may be situations where the journey is not simply a routine matter of driving to and from work, but there are also some additional circumstances which connect the journey with some particular aspect of the worker's employment. This additional circumstance may be sufficient to bring all or part of the journey within the scope of the employment. I find that it is necessary to consider whether the plaintiff's short detour amounts to an additional circumstance which connected the plaintiff's journey to his employment so as to bring part of that journey within the scope of his employment. This detour involved deviating a half block off a direct route leading to the offices of Community Futures to walk behind the Scotiabank building and through the SASCU parking lot so as to view the parking space arranged for Ms. Scott.

[36] Policy at item #18.33 provides additional guidance in this regard. It concerns "Deviations From Route" and provides that where an employee is instructed by the employer to perform some activity related to work while on the way to or from the normal place of work, this does not necessarily provide coverage for the whole journey. Generally speaking, it will only provide coverage to the extent that the employee has, because of these instructions, to do something which would not normally be done while travelling to or from work or go somewhere where the employee would not normally go. This is particularly so when the instructions only require a minor diversion from what is essentially a normal journey to work.

[37] In this case, the plaintiff was not provided with instructions from his employer to inspect the parking space on his way to work. However, given his position as general manager, I consider that the plaintiff was self-directed. His own decisions as to the activities he would carry out may therefore be considered analogous to instructions from the employer. Alternatively, I do not consider that the requirement for instructions from the employer is a prerequisite to the application of this policy in the case of a self-directed employee.

[38] The plaintiff notes that if he had walked straight down Hudson directly to the offices of Community Futures, and glanced over at a parking space along the way, that would not support the provision of workers' compensation coverage. He submits:

> Surely the argument can be no stronger if he only deviates from a direct line to his office by about 200 feet to the north and then never gets an opportunity to glance over at the parking space at all because he falls.

[39] It is evident from the wording of item #18.33 that workers' compensation coverage may apply even in the case of "a minor diversion from what is essentially a normal journey to work." Accordingly, it does not matter that the plaintiff's detour to check the condition of the parking space only involved a minor diversion or detour which did not significantly change his travel time or distance in walking to the offices of Community Futures. A key point is that the route taken by him was directly connected to his intended purpose of viewing the parking space. He had never taken that particular route through the SASCU parking lot before. His exposure to whatever risks attached to walking through the SASCU parking lot were therefore linked to his intended purpose of viewing the parking space.

[40] The plaintiff submits that his actions involved the performance of a simple or trivial little favour for a co-worker, rather than an employment-related task. He also cites *WCAT-2009-01002 / 01003, Rees v. Missfeldt et al.*, and *WCAT-2008-01799, Bal v. Harrop* (noteworthy[2]). This latter decision reasoned:

> I am not persuaded that the making of a brief phone call from a home office, or some brief activity in performing paperwork at a home office, necessarily amounts to having commenced productive activity at one work site for the purposes of the policy at RSCM II item #18.32 so as to provide coverage for the whole of the subsequent journey to a work site. It is commonly the case that a worker may make a work-related phone call, check work e-mails, or perform some brief paperwork, before driving to the employer's premises. Such a brief activity is not, in my view, sufficient to transform a journey which would normally not be covered for workers' compensation purposes into a journey between two working points as contemplated by RSCM II item #18.32. Such activities may be characterized as being preparatory or consequential in nature, rather than involving the performance of productive activity for the purposes of the policy at RSCM II item #18.32. I consider that some clearer or more substantial evidence is required to establish that the defendant's home office had become a "working point," before the defendant's travel to a jobsite would be covered for workers' compensation purposes.
>
> I appreciate, in this regard, that there are activities within the employment relationship which would not normally be considered as work or in any way productive (as set out in RSCM II item #14.00). An injury in the course of such activity is compensable in the same way as an injury in the course of productive work. My consideration as to whether the defendant had been engaged in productive activity at home on the morning of October 1, 2004 was directed towards considering whether the defendant's activities came within the terms of the particular policy at RSCM II item #18.32 (regarding the termination of productive activity at one point followed by travel to commence productive activity at another point).

[2] As set out in item #19.3 of the WCAT *Manual of Rules of Practice and Procedure*, noteworthy decisions may provide significant commentary or interpretive guidance regarding workers' compensation law or policy, comment on important issues related to WCAT procedure, or serve as general examples of the application of provisions of the Act, policies or adjudicative principles. Noteworthy decisions are not binding on WCAT. Although they may be cited and followed by WCAT panels, they are not necessarily intended to be leading decisions.

[41] The reasoning in *Rees* and *Bal* concerned whether certain limited work-related activities carried out at home, in preparation for travelling to work, might be viewed as sufficient to make the subsequent travel to work part of the employment as involving travel between two working points. In this case, I have already found that the policy at item #18.32 involving travel between two working points does not apply in this case. The issue does not concern whether the whole of the plaintiff's journey on foot, after viewing the parking space, would be part of his employment. Rather, the issue is whether the plaintiff's actions, while he was actually engaged in the short detour to view the parking space, arose out of and in the course of his employment.

[42] Consideration must also be had to the policy at RSCM II item #21.00, "Personal Acts," which provided:

> There is a dilemma that is always inherent in workers' compensation. **The difficulty, of course, is that the activities of workers are not neatly divisible into two clear categories, their employment functions and their personal lives. There is a broad area of intersection and overlap between work and personal affairs, and somewhere in that broad area the perimeter of workers' compensation must be mapped**. **An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied.** For example, it has long been accepted that compensation is not limited to injuries occurring in course of production. Where persons are injured while at work in the broader sense of that term, claims will not be denied on the ground that at the precise moment of injury they were blowing their noses, using the toilets or having their coffee break. Similarly it has long been accepted that when a truck driver stops for a meal in the course of a long journey and is injured while crossing the road the driver is just as much entitled to compensation as a factory worker injured on the way to the works canteen. **Conversely, the intrusion of some aspect of work into the personal life of an employee at the moment an injury is suffered will not entitle the employee to compensation.** For example, if someone slips in the living room at home and is injured, that person is not entitled to compensation simply on the ground that at the crucial moment the person was reading a book related to work. **In the marginal cases, it is impossible to do better than weigh the employment features of the situation in balance with the personal features and reach a conclusion (which can never be devoid of intuitive judgment) about which should be treated as predominant.**
>
> Where the common practice of an employer or an industry permits some latitude to employees to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries

> occurring at those moments is not denied simply on the ground that the employee is not at the crucial moment in the course of production. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment.
>
> [emphasis added]

[43] The plaintiff had made the arrangement regarding the provision of an alternate parking space for Ms. Scott. If the snow had not been removed from her parking spot, it would have fallen to him to take action to ensure that the parking space was made accessible to Ms. Scott (such as by calling the landlord when the plaintiff was at his office).

[44] The boundaries of the plaintiff's detour to view the parking space are readily identified. His travel away from 4th, and back to 4th, marked the extent of this detour in a north and south direction (although this detour also brought the plaintiff closer to the offices of Community Futures to the extent it involved walking west).

[45] The plaintiff was not merely performing a simple favour for a co-worker, such as might have been the case if some other Community Futures' employee (who had no involvement in making the parking arrangements) had thought of walking past her parking spot on the way to work to check on its condition. I consider it significant that the plaintiff had made the arrangements for this parking space as part of his work responsibilities.

[46] On balance, I find that the weight of the evidence supports a conclusion that the plaintiff's detour, while involving consideration for an employee, involved a work purpose in checking on the status of the parking space arranged to accommodate the particular needs of an employee. I find that the policy at items #18.32 and #18.33 support the provision of workers' compensation coverage in relation to the plaintiff while he was engaged in his minor diversion from what would otherwise have been essentially a normal journey to work. This coverage applies to the extent the plaintiff had, because of this work purpose or task, to do something which would not normally be done while travelling to or from work or to go somewhere where he would not normally go. I find that at the time of the plaintiff's fall on March 2, 2009, he was at a location to which he would not normally go, for the express purpose of walking to view the condition of the parking space he had arranged for an employee of Community Futures.

[47] I find that the plaintiff's injuries in the fall on March 2, 2009 occurred in the course of his employment. Section 5(4) of the Act provides:

> In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment.

[48] The plaintiff's injury was caused by accident. Pursuant to section 5(4) of the Act, a rebuttable presumption arises that the plaintiff's accident arose out of his employment. I find that this presumption is not rebutted by the evidence in this case. I find that the plaintiff's injuries in his fall on March 2, 2009 arose out of and in the course of his employment.

Status of the defendants, Salmon Arm Savings and Credit Union and Neptune Insulated Pools Ltd.

[49] By memorandum dated December 7, 2012, a research and evaluation analyst, Audit and Assessment Department of the Board, advised that SASCU, account number 346081, and Neptune, account number 278812, were both registered with the Board at the time of the March 2, 2009 accident. These employers had been registered with the Board since January 1, 1985 and March 1, 1981, respectively.

[50] The plaintiff's fall occurred in SASCU's parking lot. Neptune was the company hired by SASCU to maintain the parking lot.

[51] SASCU seeks determinations that at all material times to the action, it was an employer engaged in an industry within the meaning of Part 1 of the Act. I so find.

[52] Neptune seeks determinations that at all material times to the action, it was an employer engaged in an industry within the meaning of Part 1 of the Act. I so find.

[53] Determinations have not been requested as to whether any action or conduct of a defendant or third party, or its servant or agent, which caused the alleged breach of duty of care, arose out of and in the course of employment within the scope of Part 1 of the Act. In the event that any further determination is required for the legal action, a request may be made for a supplemental certificate.

Conclusion

[54] I find that at the time of the March 2, 2009 accident:

(a) the plaintiff, David Colin Andrews, was a worker within the meaning of Part 1 of the Act;

(b) the injuries suffered by the plaintiff, David Colin Andrews, arose out of and in the course of his employment within the scope of Part 1 of the Act;

(c) Community Futures Development Corporation of the Shuswap was an employer engaged in an industry within the meaning of Part 1 of the Act;

(d) the defendant and third party, Salmon Arm Savings and Credit Union, was an employer engaged in an industry within the meaning of Part 1 of the Act; and,

(e) the defendant and third party, Neptune Insulated Pools Ltd., was an employer engaged in an industry within the meaning of Part 1 of the Act.

Herb Morton
Vice Chair

HM:gw

NO. 44585
KAMLOOPS REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

DAVID COLIN ANDREWS

PLAINTIFF

AND:

SALMON ARM SAVINGS AND CREDIT UNION
and NEPTUNE INSULATED POOLS LTD.

DEFENDANTS

AND:

NEPTUNE INSULATED POOLS LTD.
and SALMON ARM SAVINGS AND CREDIT UNION

THIRD PARTIES

C E R T I F I C A T E

UPON APPLICATION of the Defendant, SALMON ARM SAVINGS AND CREDIT UNION, in this action for a determination pursuant to section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of action arose, March 2, 2009:

1. The Plaintiff, DAVID COLIN ANDREWS, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, DAVID COLIN ANDREWS, arose out of and in the course of his employment within the scope of Part 1 of the *Workers Compensation Act*.

3. COMMUNITY FUTURES DEVELOPMENT CORPORATION OF THE SHUSWAP was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

4. The Defendant and Third Party, SALMON ARM SAVINGS AND CREDIT UNION, was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

5. The Defendant and Third Party, NEPTUNE INSULATED POOLS LTD., was an employer engaged in an industry within the meaning of Part 1 of the *Workers Compensation Act*.

CERTIFIED this day of April, 2013.

_____
Herb Morton
Vice Chair

NO. 44585
KAMLOOPS REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

DAVID COLIN ANDREWS

PLAINTIFF

AND:

SALMON ARM SAVINGS AND CREDIT UNION and NEPTUNE INSULATED POOLS LTD.

DEFENDANTS

AND:

NEPTUNE INSULATED POOLS LTD. and SALMON ARM SAVINGS AND CREDIT UNION

THIRD PARTIES

SECTION 257 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
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