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Workers' Compensation - Death Knell of a Good Samaritan! - Culpepper v. Fairfield Sapphire Valley

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NOTE

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INTRODUCTION

A certain man went down from Jerusalem unto Jericho, fell among thieves which stripped him of his raiment, wounded him, and departed, leaving him half dead.¹

The Good Samaritan found the injured man, bound the injured man's wounds, and took the injured man to an inn.² The Good Samaritan went out of his way, at some cost to himself, to help another in need of assistance.³ The story of the Good Samaritan formed the basis of a positive public policy doctrine appropriately called the Good Samaritan Doctrine.⁴ The doctrine creates a distinction between the moral duty and the legal duty to render assistance to one in need.⁵ Absent a special relationship, no legal duty exists for a person to render aid "to one for whose initial injury he is not liable."⁶ The Good Samaritan, however, renders assistance to one in need based upon his moral duty towards humanity, not his legal duty.⁷

5. Annotation, Duty of One Other Than Carrier or Employer To Render Assistance to One for Whose Initial Injury He Is Not Liable, 33 A.L.R. 3d 301, 303 (1970).
6. Id. at 305. Situations giving rise to a special relationship include but are not limited to the relationship between the driver and the passenger, the owner or occupier of the premises and the invitee, the carrier and the passenger, the employer and the employee, the jailer and the prisoner, and the school and the students. Other relationships which create a duty to render aid may depend upon family relationships. Id.
7. Id. at 303.
Courts have consistently struggled with the application of the Good Samaritan Doctrine. In the area of Workers' Compensation, the Good Samaritan Doctrine creates an unusual dilemma for the employer. To be eligible for Workers' Compensation benefits an employee must be injured by an accident which arises out of and in the course of employment. Compensation awards to an employee, injured while rendering assistance to a third party require that the employee be engaged in some authorized activity calculated to further, directly or indirectly, the employer's business.

In *Culpepper v. Fairfield Sapphire Valley*, the North Carolina Court of Appeals expanded the statutory definition of injury under the North Carolina Workers' Compensation Act. The court held compensable injuries sustained by an employee while rendering aid to a third party. The court reasoned that rendering aid to

8. Application of the Good Samaritan Doctrine to areas of law other than Workers' Compensation consistently illustrates the court's struggle. See generally Parrish v. Atlantic Coast Line R.R. Co., 221 N.C. 292, 20 S.E.2d 299 (1942) (one at fault in causing the injury of another is under a duty to mitigate that injury); Tubbs v. Argus, 140 Ind. App. 695, 225 N.E.2d 841 (1967) (driver breached a common-law duty to render reasonable aid to passenger thereby preventing further harm).

9. Compensation payments paid to injured employees not injured by an accident arising out of and in the course of employment defeat the legislative intent of the North Carolina Workers' Compensation Act. The legislative intent of the Act does not encompass a general public insurance program for employees injured outside the scope of their employment. At times, North Carolina courts stretch the interpretation of the Act in order to compensate an injured employee. See generally Watkins v. City of Wilmington, 290 N.C. 276, 255 S.E.2d 577 (1976) (compensable injury to fireman injured during lunch while assisting a co-employee fixing his car); Brown v. Jim Brown's Serv. Station, 45 N.C. App. 255, 262 S.E.2d 700 (1980) (compensable injury to employee electrocuted while installing a CB radio antenna in his home at his mother's direction); Lewis v. Kentucky Central Life Insurance Co., 20 N.C. App. 247, 201 S.E.2d 228 (1973) (compensable injury to employee struck by automobile after aiding a policyholder).


13. *Id.* The North Carolina Court of Appeals rejected the full commission's findings of fact. By its reversing the full commission's decision, the court expanded the definition of compensable injuries to include those injuries which arise after an employee leaves work but returns to the employer's premises on a personal mission.

14. *Id.* at 254, 377 S.E.2d at 784.
a third party appreciably benefitted the employer where the em-
ployer instructed the employee "to offer any assistance that [she] could" to members and guests. Prior to the Culpepper decision, North Carolina courts upheld the application of the Good Samaritan Doctrine by denying compensation to an employee who ren-
dered assistance to a third party while acting outside the regular duties of his employment.

First, this Note examines the impact of the Culpepper decision on Workers' Compensation claims involving employees ren-
dering assistance to a third party. Second, the Note also serves as a caveat to employers who establish a general employee policy rel-
ating to dealing with the public. Application of Culpepper to the Good Samaritan Doctrine expands the definition of the elements which must be met in order for an employee to be compensated for an injury under the Workers' Compensation Act. This decision, if upheld on appeal, seriously undermines the legislative intent of the North Carolina Workers' Compensation Act. Employers attempt-
ing to evade potential liability for accidental injuries arising from an employee's good samaritan act will instruct their employees not to render aid to third parties under any circumstances.

THE CASE

Fairfield Sapphire Valley, a resort community located in the mountains of western North Carolina, employed Deborah Culpep-

15. Id. at 244, 377 S.E.2d at 779. Id. at 244, 377 S.E.2d at 779. In Defendants' brief to the North Carolina Supreme Court, Defendants argue that the North Carolina Court of Appeals erred when they summarily rejected the full commission's findings of fact no. 1 and no. 7. When asked how she was to supposed to "conduct [her]self with regard to those customers that [she] served." Ms. Culpepper testifed that, "[m]ost people coming up there were looking at buying property and we were to be very cordial and friendly and nice and offer any assistance that we could." North Carolina Industrial Commission No. 884560, Transcript of the Evidence 5 (1987). A logical inference, one drawn by the full commission, completes Ms. Culpepper's answer as "we were to be very cordial and friendly and nice and offer any assistance that we could" while on duty. Her duties included those of a waitress and bartender. Id. at 244, 377 S.E.2d at 779.


18. For purposes of this Note assume that the court of appeals decision will be affirmed by the North Carolina Supreme Court. However, reversal of the Culpepper decision will preserve the integrity of the North Carolina Workers' Comp-
ensation Act and supporting case law.
Her employer directed her "to be cordial at all times while on duty since guests were prospective home buyers." On the evening of August 17, 1981, Deborah Culpepper completed her duties as waitress at the country club at eleven p.m. She drove to the Fairfield Inn to turn in both her paperwork and her receipts. When Ms. Culpepper returned to her car to leave the Fairfield Inn, Mr. Henry, a nephew of a member, asked Ms. Culpepper for a date. She refused the invitation and waited for Mr. Henry to leave the parking lot in his car. Ms. Culpepper drove away from the Inn on U.S. Highway 64 towards her home. She changed her direction of travel and went back on the employer's premises for a personal mission.

While driving on the dark, unlit, private resort road, Ms. Culpepper "saw a car pulled over to the side of the road,Ms. Culpepper worked as both a waitress and a bartender. Her employer directed her "to be cordial at all times while on duty since guests were prospective home buyers." On the evening of August 17, 1981, Deborah Culpepper completed her duties as waitress at the country club at eleven p.m. She drove to the Fairfield Inn to turn in both her paperwork and her receipts. When Ms. Culpepper returned to her car to leave the Fairfield Inn, Mr. Henry, a nephew of a member, asked Ms. Culpepper for a date. She refused the invitation and waited for Mr. Henry to leave the parking lot in his car. Ms. Culpepper drove away from the Inn on U.S. Highway 64 towards her home. She changed her direction of travel and went back on the employer's premises for a personal mission.

While driving on the dark, unlit, private resort road, Ms. Culpepper "saw a car pulled over to the side of the road,
flashingers on and somebody in the middle of the road waving their arms." Ms. Culpepper decided to render assistance to the person in the road whom she later recognized as Mr. Henry. Tragically for Ms. Culpepper, she stopped. Mr. Henry kidnapped and raped her. While trying to escape, Ms. Culpepper sustained head injuries resulting in permanent partial loss of hearing, smell, and taste.

Ms. Culpepper filed a Workers' Compensation claim with her employer, alleging an injury by accident, arising out of and in the course of employment. Deputy Commissioner McCrodden entered an interlocutory opinion and award finding that Ms. Culpepper's job put her "at an increased risk of being confronted by male customers." A separate opinion and award issued by Deputy Commissioner Burgwyn dealt with the issue of damages. Defendants appealed the opinion and award of the deputy commissioner to the full commission. The full commission reviewed the case de novo and denied compensation benefits to Ms. Culpepper.

The commission's findings of fact no. 1 differed from the deputy commissioner's findings of fact no. 1, in that the full commission found that the employer required Ms. Culpepper "to be cordial at all times while on duty since guests were prospective homebuyers." The deputy commissioner's findings of fact no. 1

28. Id. at 17.
29. Id.
30. Culpepper, 93 N.C. App. at 245, 377 S.E.2d at 779.
32. Culpepper, 93 N.C. App. at 246, 377 S.E.2d at 779.
33. Id. at 246, 377 S.E.2d at 780 (emphasis in text). After issuing the interlocutory opinion and award, Deputy Commissioner McCrodden left the Industrial Commission. Deputy Commissioner Burgwyn entered a separate Opinion and award setting the amount of compensation benefits to be paid by the employer to Ms. Culpepper. Id.
34. Id. Deputy Commissioner Burgwyn ordered the employer to pay Ms. Culpepper $17,500 for her permanent injuries, temporary total disability for a two month period at a rate of two thirds her average weekly wage, and all medical expenses incurred for treatment of her injuries. North Carolina Industrial Commission No. 884560, Opinion and Award by Henry Burgwyn, Deputy Commissioner 8-9 (1987).
35. Culpepper, 93 N.C. App. at 246, 377 S.E.2d at 780.
36. Id. The defendants appealed to the North Carolina Supreme Court on May 18, 1989. The court certified the appeal on May 24, 1989. The appeal will be heard later this year.
37. Culpepper, 93 N.C. App. at 246, 377 S.E.2d at 780 (emphasis added).
adduced that "[i]n her service to defendant-employer’s customers, plaintiff was directed to be cordial since guests were prospective homebuyers." In addition, the full commission found that Ms. Culpepper’s diversion off U.S. Highway 64 onto a private road owned by the resort was a personal mission not connected with the interests of her employer.

On appeal the North Carolina Court of Appeals addressed the issue of whether the employee’s injuries arose out of and in the course of employment. Ms. Culpepper contends that she would not have stopped but for her employer’s requirement that she be helpful and cordial to guests at all times. Fairfield Sapphire Valley contends that Ms. Culpepper’s personal mission after working hours brought her back onto the employer’s property. Furthermore, no duty to the employer motivated Ms. Culpepper’s actions, rather her own moral duty as a Good Samaritan motivated her to stop to render assistance. Reversing the decision of the full commission, the court of appeals overturned the findings of fact no. 1 and no. 7, and held Ms. Culpepper’s injuries compensable.

BACKGROUND

A. The Purpose of the North Carolina Workers’ Compensation Act

The North Carolina Legislature enacted the Workers’ Compensation Act in response to a need to provide compensation for employees who suffered disability due to an accident arising out of and in the course of employment. The Act displaces common-law

40. Culpepper, 93 N.C. App. at 244, 377 S.E.2d at 778.
41. Id. at 248, 377 S.E.2d at 781.
42. Id. at 250-51, 377 S.E.2d at 782-83.
43. Id.
44. Id. at 250-51, 377 S.E.2d at 781-84.
46. Henry v. A.C. Lawrence Leather Co., 234 N.C. 126, 128, 66 S.E.2d 693, 694 (1951) (interpreting the Act to find a compensable accident when an employee suffered from tenosynovitis caused from repetitive motion trauma to

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or statutory causes of action and other grounds of liability. The Act not only provides a swift remedy for an injured employee, it also limits the employer's liability for compensable injuries.

The sole basis of liability of the employer rests on the requirement that the injury must be by accident and arise out of and in the course of employment. The Workers' Compensation Act demands that the Act be liberally construed in order to provide compensation for injured employees. However, the courts may not expand liability of the employer under the guise of liberal construction.

B. Compensability Under the Act

When the employer employs the requisite number of employees, the Workers' Compensation Act applies to every employee. However, for an injury to be compensable it must be "... an injury by accident arising out of and in the course of the employment,


47. Branham v. Denny Roll & Panel Co., 223 N.C. 233, 25 S.E.2d 865 (1943). The general purpose of the Workers' Compensation Act, in respect to compensation for disability, is to substitute, for common-law or statutory rights of action and grounds of liability, a system of money payments by way of financial relief for loss of capacity to earn wages. There is no compensation provided for physical pain and discomfort. Id. at 236, 25 S.E.2d at 867.

48. Taylor v. J.P. Stevens & Co., 57 N.C. App. 643, 292 S.E.2d 277 (1982), modified and aff'd, 307 N.C. 392, 298 S.E.2d 681 (1983). "The purpose of the Act, however, is not only to provide a swift and certain remedy to an injured workman, but also to insure a limited and determinate liability for employers." Id. at 644-45, 292 S.E.2d at 279 (quoting Barnhardt v. Yellow Cab Co., 266 N.C. 419, 427, 146 S.E.2d 479, 484 (1966)).

49. Conrad v. Cook Lewis Foundry, Co., 198 N.C. 723, 725-26, 153 S.E. 266 (1930) (holding that absent willful intention to injure, the injury arose out of and in the course of employment where employee hit fellow employee with a shovel).

50. Keller v. Electric Wiring Co., 259 N.C. 222, 130 S.E.2d 342 (1963) (employee ruptured disc when lifting rock out of ditch he was digging for his employer). The court held that the "Act requires that it be liberally construed to effectuate the objects for which it was passed — to provide compensation for workers injured in industrial accidents." Id. at 225, 130 S.E.2d at 344.


ment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident."\textsuperscript{63} The burden of proof rests with the injured employee.\textsuperscript{64} The employee must prove by a preponderance of the evidence that the injury arose by accident, that the injury arose out of and in the course of employment, and that the injury caused the incapacity for which the employee seeks compensation.\textsuperscript{65}

**C. The Accident Requirement**

The Workers' Compensation Act defines accident as "(1) an unlooked for and untoward event which is not expected or designed by the injured employee; (2) a result produced by a fortuitous cause."\textsuperscript{66} In addition, an accident must have its origin in a risk connected with the employment and be a risk to which the general public is not equally exposed.\textsuperscript{67}

An assault may be an accident.\textsuperscript{68} Specifically, assaults have been held to be compensable when they are "unexpected and without design on the part of the employee who suffers from it."\textsuperscript{69} In

\begin{itemize}
\item \textsuperscript{53} N.C. GEN. STAT. § 97-2(6) (1979).
\item \textsuperscript{54} Henry v. A.C. Lawrence Leather Co., 231 N.C. 477, 57 S.E.2d 760 (1950) (employee failed to prove that his injury brought him under the auspices of the act); O'Mary v. Land Clearing Corp., 261 N.C. 508, 135 S.E.2d 193 (1964) (employee bears the burden of proof that he sustained an injury arising out of and in the course of employment); Priddy v. Cone Mills Corp., 58 N.C. App. 720, 294 S.E.2d 743 (1982) (employee must prove that his injury caused his inability to work).
\item \textsuperscript{55} Hollman v. City of Raleigh, 273 N.C. 240, 159 S.E.2d 874 (1968). To obtain compensation under the Act, the employee must show that "his injury caused his disability, 'unless it is included in the schedule of injuries made compensable by G.S. § 97-31 without regard to loss of wage-earning power.'" Id. at 250, 159 S.E.2d at 881 (quoting Anderson v. Northwestern Motor Co., 233 N.C. 372, 374, 64 S.E.2d 265, 266 (1951)).
\item \textsuperscript{57} Pittman v. Twin City Laundry & Cleaners, 61 N.C. App. 468, 300 S.E.2d 899 (1983)(death held compensable where employee, who had been drinking while working, was shot to death by fellow employee on employer’s premises while working after employee’s normal hours).
\item \textsuperscript{58} Gallimore v. Marilyn’s Shoes, 292 N.C. 399, 233 S.E.2d 529 (1977) (claim held not compensable where employee completed her work day and went to her car parked in the mall parking lot where she was abducted and killed).
\item \textsuperscript{59} Robbins v. Nicholson, 281 N.C. 234, 238, 188 S.E.2d 350, 355 (1972). (deaths held not to have arisen out of and in the course of employment where

http://scholarship.law.campbell.edu/clr/vol12/iss1/5
Gallimore v. Marilyn's Shoes, the North Carolina Supreme Court held that "assault" meets the definitional requirement of accident under the Workers' Compensation Act.

D. Arising Out of Employment

1. Causal Relationship

For an injury to arise out of the employment, the injury must occur while the employee performs some activity or duty, calculated to directly or indirectly further the employer's business. In Hoyle v. Isenhour Brick & Tile Co., the North Carolina Supreme Court held the "employee's election to disobey a prior given order did not break the causal connection between his employment and his fatal injury if the disobedient act was reasonably related to the accomplishment of the task for which he was hired." On the night of Hoyle's accident, the forklift operator was busy helping another employee. Hoyle, faced with the choice of remaining idle in compliance with a rule or continuing to further his employer's business, chose to operate the forklift.

Chief Justice Branch explained that the employer would have benefitted from those acts had the deceased employee successfully completed operating the forklift. Furthermore, "engaging in an activity which is outside the narrow confines of the employee's job description, but which is reasonably related to the accomplishment of the task for which the employee was hired, does not ordinarily constitute a departure from the scope of employment."

2. Increased Risk

The test to determine if an accidental injury arises out of the employment asks whether the risk was incident to the employment

jealous husband shot wife and co-employee at work).

60. 292 N.C. 399, 233 S.E.2d 529 (1977)
61. Id. at 292, 233 S.E.2d at 530.
62. Hoyle v. Isenhour Brick & Tile Co., 306 N.C. 248, 293 S.E.2d 196 (1982) (claim held compensable where employer had rule against unauthorized personnel operating forklifts and employee died when the forklift he was not authorized to operate overturned and pinned him under it).
63. Id. at 259, 293 S.E.2d at 203.
64. Id.
65. Id. at 250, 293 S.E.2d at 197.
66. Id. at 259, 293 S.E.2d at 203.
67. Id.
68. Id.
and one to which the general public is not equally exposed.69 In 1977 the North Carolina Supreme Court held in *Gallimore* that the death of an employee, kidnapped, robbed and killed in a mall parking lot after work, did not arise out of her employment.70 Marilyn’s Shoes employed Miss Gallimore as a clerk.71 She sold merchandise, made sales reports and prepared deposits for the bank.72 On the evening of November 3, 1972 at 6 p.m., Miss Gallimore completed her day’s work and proceeded towards her car in the mall parking lot.73 In the mall parking lot, two men kidnapped, robbed and killed Miss Gallimore.74

The full commission, viewing the case as a premises case, held the death compensable since, in the commission’s view, it arose out of and in the course of employment.75 The court of appeals affirmed with one dissent.76 On appeal to the North Carolina Supreme Court, in the opinion written by Justice Moore, the court held that “the risk of the assault upon Miss Gallimore was essentially one common to the neighborhood, not peculiar to the employment, and one which could happen to anyone who patronizes a shopping mall.”77

3. Good Samaritan Acts

Good Samaritan Acts by employees may be categorized as (1) acts benefitting co-employees,78 (2) acts benefitting strangers,79 or (3) acts benefitting customers.80 According to Larson, compen-

69. Fortner v. J.K. Holding Co., 83 N.C. App. 101, 349 S.E.2d 296 (1986) (risk of injury held not different from one to which the general public is equally exposed where employee injured when she fell off chair at home while hanging plants her employer asked her to dispose).
70. *Gallimore*, 292 N.C. at 406, 233 S.E.2d at 533.
71. Id. at 400, 233 S.E.2d at 530.
72. Id.
73. Id. at 401, 233 S.E.2d at 530.
74. Id.
75. Id. at 401, 233 S.E.2d at 531 (commission held that the mall parking lot came under the auspices of the employer’s premises).
76. Id.
77. Id. at 405, 233 S.E.2d at 533.
78. Watkins v. City of Wilmington, 290 N.C. 276, 225 S.E.2d 577 (1976) (acts held compensable where fireman injured while assisting co-employee with minor car repairs because such repairs during lunch hour were reasonable for fireman on a 24 hour shift).
sability requires that the ultimate effect of the Good Samaritan's acts advance the employer's work. Larson groups acts benefitting customers and acts benefitting strangers together. North Carolina makes a distinction between acts benefitting strangers and acts benefitting customers.

In 1955 the North Carolina Supreme Court in Guest v. Brenner Iron & Metal Co. addressed the problem of an employee who during the course of employment, rendered aid to a stranger at a time when mutual aid was being exchanged. At the direction of his employer, Willie Guest drove to the airport to change two flat tires on the company truck. This task required Mr. Guest to inflate the tires at a service station. Mr. Guest asked the attendant "for permission to use his air hose to inflate the tires." As a reciprocal favor to the attendant, Mr. Guest assisted the attendant in pushing a customer's disabled car away from the gas pumps. While pushing the customer's car, another car crashed into the rear of the car being pushed, seriously injuring Mr. Guest.

The supreme court held the injury compensable. The court reasoned that the employee "had reasonable grounds to believe that what he was doing was incidental to his employment and beneficial to his employer and that, if his employer had been there, he would have instructed plaintiff to render such reciprocal assistance."

In 1973 the North Carolina Court of Appeals in Lewis v. Kentucky Central Life Insurance Co. held compensable injuries sus-

[hereinafter Larson]. For purposes of this Note, the acts benefitting strangers and the acts benefitting customers shall be explored.

81. Id. § 27.21 at 5-225.
82. Id. § 27.20 at 5-225.
85. Id.
86. Id. at 450, 85 S.E.2d at 598.
87. Id.
88. Id.
89. Id.
90. Id.
91. Id. at 455, 85 S.E.2d at 601.
92. Id. at 453, 85 S.E.2d at 600.
93. 20 N.C. App. 247, 201 S.E.2d 228 (1973).
tained by an insurance salesman as he returned to his car after rendering aid to policyholders. In Lewis, the court held that the employee acted not only "to an appreciable extent, but also to a substantial extent, for the benefit of his employer."

The premier case on good samaritan acts in North Carolina is Roberts v. Burlington Industries. In Roberts, an out-of-control car killed an employee, as he assisted an injured pedestrian. At the time of the accident the employee was returning from a business trip. The employee's acts and the name of his employer received some attention from the media. The full commission found that the employee rendered aid to an apparent stranger. Furthermore, the employee's benevolent acts had no rational relationship to his duties as a furniture designer for the employer. The full commission denied compensation.

The court of appeals applied the "positional risk" doctrine. The positional risk doctrine holds that "[a]n injury arises out of the employment if it would not have occurred but for the fact that the conditions and obligations of employment placed claimant in the position where he was injured." The court of appeals determined that the employee died in an accident while returning from a business trip. Therefore, the conditions of employment placed the employee in the dangerous position which resulted in death. The court of appeals held the injury compensable.

Recognizing the legislative intent of the Workers' Compensation Act, the North Carolina Supreme Court held the claim not

94. Id.
95. Id. at 250, 201 S.E.2d at 230. The court reasoned that an insurance salesman's responsibilities include continual communications with the policyholders. Therefore, by the very nature of his employment any "action on his part which built good will for him at the same time fostered goodwill for his employer." Id.
97. Id. at 350, 364 S.E.2d at 418.
98. Id.
99. Id. at 351, 364 S.E.2d at 419.
100. Id.
101. Id.
102. Id.
103. Id. at 358, 364 S.E.2d at 423.
104. Larson, supra note 80, § 6.50 at 3-6.
107. Id. at 353, 364 S.E.2d at 420.
compensable. The court declined to adopt the lower court's use of the positional risk doctrine. Under the court's rationale, the employee stopped to render aid as a Good Samaritan, not as an employee. Furthermore, the court reasoned that to "grant compensation here would effectively remove the 'arising out of the employment' requirement from the Act."111

E. In the Course of Employment

In *Guest*, the court held that "in the course of employment" refers to the time, place and circumstances under which the injury occurs. Each of these requirements depend upon the other. Each requirement must be satisfied.

First, the accident must occur during the hours of employment. The time requirement includes a reasonable time before work begins and a reasonable time after work ends. Furthermore, time contemplates intervals during the work day for rest and refreshment. Second, the accident must occur at the place of employment.

"[A]s a general rule, employment may be said to begin when the employee reaches the entrance to the employer's premises where the work is to be done; but it is clear that in some cases the rule extends to include adjacent premises used by the employee as a means of ingress and egress with the express or implied consent of the employer."

Third, the accident must occur during the employee's perform-

109. *Id.* at 358, 364 S.E.2d at 423.
110. *Id.* at 357, 364 S.E.2d at 422.
111. *Id.* at 360, 364 S.E.2d at 424.
112. *Guest*, 241 N.C. at 451, 85 S.E.2d at 600.
113. Harless v. Flynn, 1 N.C. App. 448, 162 S.E.2d 47, (1968) (employee did not suffer compensable injury when her car collided with another employee's car in employer's parking lot during lunch).
114. *Id.*
115. *Id.* at 455, 162 S.E.2d at 52.
116. *Id.* at 456, 162 S.E.2d at 52.
118. *Harless*, 1 N.C. App. at 456, 162 S.E.2d at 53.
ance of the duties of employment. The circumstances requirement includes a reasonable time for coming and going from work, as well as a reasonable time for activities authorized by the employer. All three factors, time, place and circumstance, must be met in order to find that an injury arose in the course of employment.

**ANALYSIS**

In *Culpepper*, the North Carolina Court of Appeals determined that Ms. Culpepper’s injuries arose out of and in the course of her employment. The court reasoned: first, the injuries were causally connected to her employment; second, the nature of her job increased the risk of sexual assault; third, Ms. Culpepper’s act of stopping to assist a guest was of appreciable benefit to her employer.

In its decision, the *Culpepper* Court ignored two critical areas of Workers’ Compensation law. First, the court sua sponte dismissed the findings of fact. Second, the court effectively eliminated the application of *Roberts* to situations involving an employee who renders assistance to a third party.

**A. Causal Connection to Employment**

According to the court of appeals, the only reason Ms. Culpepper stopped to render assistance on the resort road “was to offer a guest assistance, as her employer instructed her to do.” The court reasoned, incredibly, that Ms. Culpepper’s employer would have wanted her to stop on a dark, deserted resort road at midnight to assist potential homebuyers.
The court's premise disregards a common sense approach to the facts. First, potential homebuyers do not tour the premises on the resort's private roads at midnight. Second, no employer expects a lone woman to aid a stranger at midnight on a deserted road. Third, the employer directed, and Ms. Culpepper testified, that she should conduct herself in a cordial and friendly manner while performing her duties as waitress or bartender. At no time did the employer direct Ms. Culpepper to assist stranded motorists or guests on the premises, especially at midnight. Furthermore, stopping at midnight on a dark, deserted resort road bears no rational relationship to the duties of a waitress or bartender contemplated by the employment contract.

The court relied on *Lewis v. Kentucky Central Life Ins. Co.* in its determination of causal relationship. Clearly, *Lewis* may be distinguished from *Culpepper* in two ways. First, in *Lewis* the duties of employment included extensive traveling. As a salesman and debit insurance collector, the employee drove his own car. The insurance company maintained no office in the employee's county of residence. Therefore, the car and highways of the sales area represented Mr. Lewis' workplace. On the other hand, Ms. Culpepper's duties of employment did not require the use of her car as a prerequisite to her duties as a waitress and bartender. She only drove her car to and from work. Therefore, driving her car on the evening of the assault did not represent any rational relationship to her employment duties, only to her employment destination.

Second, Mr. Lewis served as a roving ambassador for the insurance company. Any goodwill he created with customers or po-

131. Id. at 244, 377 S.E.2d at 779.
132. North Carolina Industrial Commission No. 884560, Transcript of the Evidence Before the Full Commission (1987). No evidence exists in the transcript of evidence which indicates Ms. Culpepper's duties included anything other than those duties as waitress or bartender. At no time did she perform any duties outside those of waitress and bartender. Id.
133. 20 N.C. App. 247, 201 S.E.2d 228 (1973). See supra notes 93-95.
134. Culpepper, 93 N.C. App. at 251, 377 S.E.2d at 782.
135. Lewis, 20 N.C. App. at 248, 201 S.E.2d at 229.
136. Id.
137. Id.
139. Lewis, 20 N.C App. at 251, 201 S.E.2d at 231.
tential customers created goodwill for his employer. Therefore, a benefit inured to the insurance company when Mr. Lewis stopped to aid a policyholder stranded on the highway. Ms. Culpepper, however, did not travel about the resort serving food and drinks. The employer benefitted from her cordiality while she served food and liquor at the country club. Once Ms. Culpepper completed her duties each day her responsibility as a goodwill ambassador for the resort ended.

B. Increased Risk

The employer contends that a personal motive prompted Mr. Henry's assault and that the employee "faced no greater risk of sexual assault than any other citizen." However, the Culpepper Court held that employment as a waitress and bartender placed one at an increased risk of sexual assault not shared by the general public. According to the court, Ms. Culpepper fit into this category. The court reasoned that the nature of the job (1) subjected the employee to unwelcome male advances, (2) required the employee to work late at night, and (3) caused the employee to "serve alcoholic beverages to a variety of people, some of whom might be intoxicated."

Support for the majority's opinion came from cases outside North Carolina. When examined closely, these cases are clearly distinguishable from the Culpepper case. On the other hand, in

140. Id.
141. Id.
143. Culpepper, 93 N.C. App. at 249, 377 S.E.2d at 781.
144. Id. at 249-50, 377 S.E.2d at 782.
145. Id.
146. Id.
1977 the North Carolina Supreme Court denied compensation to an employee assaulted on the employer's premises while leaving work.\footnote{148} Review of the case reveals facts similar to the facts in \textit{Culpepper}. Two men assaulted, robbed and killed Ms. Gallimore as she approached her car after work.\footnote{149} Her employer rented space in a shopping mall.\footnote{150} While working, Ms. Gallimore parked in the mall parking lot.\footnote{151} Had the court of appeals correctly analyzed North Carolina case law, it would have found the precedential value of \textit{Gallimore}.

North Carolina requires that the risk must be incident to the employment and not a risk common to the general public.\footnote{152} The court expressed male bias when it took judicial notice that the nature of Ms. Culpepper's employment increased the risk of sexual assault. The court fails to present empirical data to support its opinion. In our society some males subject females to unwelcome advances.\footnote{153} Those who work in the service industries, and thus deal with the public, do not subject themselves to any greater risk of unwelcome male advances than do women who frequent bars, walk down streets, or visit shopping malls. The court's argument on the increased risk of exposure to unwelcome advances fails since it is a risk common to the general public.

Assuming Mr. Henry's intoxication created a motive for the assault on Ms. Culpepper, the court's argument would fail since intoxication is a risk common to the general public. However, no evidence exists on the record establishing Mr. Henry's intoxication.

\footnote{769} (Mo. App. 1983) (Missouri Court of Appeals affirmed the circuit court's dismissal for lack of subject matter jurisdiction. The court indicated that an employee, who went shopping for twenty minutes after work and was later assaulted and raped in the parking garage adjacent to the employer's premises, suffered a compensable injury under the Missouri Workers' Compensation Act.); \textit{Bunny Bread v. Shipman}, 267 Ark. 926, 591 S.W.2d 692 (1979) (bread deliveryman injured while on his route when he stopped to aid stranded motorist suffered compensable injury).

\footnote{148} \textit{Gallimore}, 292 N.C. 399, 233 S.E.2d 529 (employer's premises included mall parking lots).

\footnote{149} \textit{Id}.

\footnote{150} \textit{Id}.

\footnote{151} \textit{Id.} at 401, 233 S.E.2d at 531.

\footnote{152} \textit{Robbins}, 281 N.C. 234, 188 S.E.2d 350.

\footnote{153} Women are whistled at while walking down the street, honked at while driving or walking, approached in various situations when a man wants to get the woman's attention. Increasingly, with the continued evolution of women's assertiveness, men are subjected to whistles, honks and pickups by women.
as a motivation for the assault. Therefore, intoxication reflects a moot issue as to the assault on Ms. Culpepper.

The court determined that employees who work late at night may be at a greater risk of assault than those who don't work late at night.\(^\text{154}\) Ms. Culpepper safely reached her car.\(^\text{155}\) While heading homewards, she diverted back onto the employer's property on a personal mission.\(^\text{156}\) In the course of her midnight personal mission, she stopped to render aid to a stranger on a dark, deserted resort road.\(^\text{157}\) Ms. Culpepper's attacker did not pull her car over to the side of the road. On the contrary, her assault resulted from her good samaritan act, not as a result of working late.\(^\text{158}\) The fact that Ms. Culpepper drove to a party after she finished work created no special risk incident to her employment. Ms. Culpepper would have driven down that same resort road to attend the party regardless of whether she had worked that night.

C. Good Samaritan Acts — The Appreciable Benefits Test

The North Carolina Court of Appeals held that Ms. Culpepper's acts appreciably benefitted the employer.\(^\text{159}\) The court cursorily applied Guest and Lewis to determine that stopping to assist a guest bore a clear relation to her employer's interests.\(^\text{160}\) The court gave credence to the fact that Ms. Culpepper recognized Mr. Henry prior to deciding to stop to render assistance.\(^\text{161}\) However, the evidence supports a contrary conclusion. Ms. Culpepper did not know whose vehicle obstructed the road.\(^\text{162}\) Not until Ms. Culpepper had decided to stop did she recognize the alleged stranded motorist as Mr. Henry.\(^\text{163}\)

As discussed above, Lewis is clearly distinguishable from the

\(^{154}\) Culpepper, 93 N.C. App. at 249-50, 377 S.E.2d at 782.

\(^{155}\) Id. at 244-45, 377 S.E.2d at 779.

\(^{156}\) Id. at 245, 377 S.E.2d at 779.

\(^{157}\) Id.

\(^{158}\) If Ms. Culpepper had continued on her route home, Mr. Henry would have remained on the dark, deserted resort road. No contact with Ms. Culpepper would have occurred that evening.

\(^{159}\) Culpepper, 93 N.C. App. at 251, 377 S.E.2d at 783.

\(^{160}\) Id.

\(^{161}\) Id.

\(^{162}\) North Carolina Industrial Commission No. 884560, Transcript of the Evidence 17 (1987). Ms. Culpepper testified "I saw a car pulled over to the side of the road with the flashers on and somebody in the middle of the road waving their arms." When asked who the person was, she responded, "I wasn't sure." Id.

\(^{163}\) Id.
facts in *Culpepper*. In *Lewis* the employee assisted a known customer.\(^{164}\) The employer was clearly benefitted.\(^{165}\) *Guest* presented a similar fact pattern.\(^{166}\) In *Guest*, the employee, while executing his duties of employment, exchanged reciprocal favors which clearly benefitted the employer.\(^{167}\) The employee's acts in *Guest*, while not benefitting a customer, did benefit the employer's interests.\(^{168}\)

The *Culpepper* Court erred by failing to apply *Roberts*.\(^{169}\) The *Roberts* Court found that the employee acted solely as a Good Samaritan.\(^{170}\) While driving home from a business trip, the employee stopped to render aid.\(^{171}\) The court stated that no benefit accrued to the employer as a result of the employee's good samaritan act.\(^{172}\) Ms. Culpepper, too, acted solely as a Good Samaritan. While driving home from work, she stopped to render aid.\(^{173}\) No benefit would accrue to her employer as a result of her good deed at midnight. The likelihood that a prospective homebuyer traversed the darkened roads at midnight was remote. Compensability should be denied because the worker was off work, on her way home and her rendering aid was done because she was a Good Samaritan, not because she worked for Fairfield Sapphire Valley. She would have stopped regardless for whom she worked.

The court's decision in *Culpepper* sounds the death knell for good samaritans in North Carolina. Employers, attempting to limit their potential liability under the Workers' Compensation Act, will instruct employees *not* to render aid to those in need while coming and going to work or during their hours of employment.\(^{174}\) Public policy will be thwarted, through the employer's discouragement of good samaritan acts by its employees.

The court failed to closely examine the evidence. In its effort to compensate a victim, the court failed to maintain the integrity

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164. *Lewis*, 20 N.C. App. at 249, 201 S.E.2d at 229.
165. *Id.* at 250, 201 S.E.2d at 230.
166. *Guest*, 241 N.C. 448, 85 S.E.2d 596.
167. *Id.* at 453, 85 S.E.2d at 600.
168. *Id.* at 454, 85 S.E.2d at 600.
170. *Id.* at 355, 364 S.E.2d at 421.
171. *Id.* at 351, 364 S.E.2d at 419.
172. *Id.* at 356-57, 364 S.E.2d at 422.
174. This would be a natural consequence of the *Culpepper* decision. Pressure from the insurance companies would require the employers to impose strict guidelines to limit liability in order to maintain Workers' Compensation coverage.
of the Workers' Compensation Act. The court erred in holding Ms. Culpepper's injuries compensable. Her injuries stemmed from her good samaritan acts, not from her employment.

D. Dismissal of the Full Commission's Findings of Fact

Findings of fact by the full commission are conclusive if supported by competent evidence. This requirement demands that the reviewing court uphold the findings of fact when they are supported by competent evidence. Furthermore, if the inferences from the evidence "appear equally plausible," affording an alternative interpretation, the reviewing court may not reweigh the evidence and set aside the findings of fact.

The Culpepper Court defied a basic premise of the Workers' Compensation Act by setting aside two important findings of fact. The full commission, on de novo review, found in findings of fact no. 1 that "Ms. Culpepper was told to be helpful and cordial to guests only while on duty." The transcript of the evidence supports the permissible inferences drawn by the full commission, the trier of fact.

During direct examination, Mr. Justice, attorney for Ms. Culpepper, asked her if she had "occasion during the course of that employment [at Fairfield Sapphire Valley] to receive any instructions from [her] employer as to how [she was] to conduct [her]self with regard to those customers that [she] served?" Ms. Culpepper testified that "[m]ost of the people coming up there were looking at buying property and we were to be very cordial and friendly and nice and offer any assistance that we could." The full com-

176. Id.
178. Under the North Carolina Workers' Compensation Act, the full commission's findings of fact, when supported by competent evidence in the record are conclusive, even if the record also supports a contrary finding. Blalock, 12 N.C. App. at 504, 183 S.E.2d at 830.
179. Culpepper, 93 N.C. App. at 249, 377 S.E.2d at 781 (emphasis in text).
180. The transcript of the evidence clearly supports the full commission's inferences that Ms. Culpepper's cordiality extended only to her duties as waitress and bartender. The court of appeals is barred from asserting otherwise under the Act. Blalock, 12 N.C. App. at 504, 183 S.E.2d at 830.
182. Id. at 5.
mission inferred from that testimony that Ms. Culpepper's duties required her to conduct herself in a cordial and helpful manner while performing her duties as waitress and bartender. This requirement of cordiality of her employment ceased when she was not on duty.

The court concluded upon review of findings of fact no. 7 that Ms. Culpepper "was engaged in a work-related activity reasonably calculated to benefit her employer." However, the full commission, based upon competent evidence in the record, found that Ms. Culpepper's "diversion off of [U.S. Highway 64] into the private road owned by the resort community was for a mission and purpose which was personal to her and not connected with the interests of her employer."

On cross examination Mr. Russell asked Ms. Culpepper, "[W]hen you turned in your paperwork and the Xerox copy at the front desk having already turned in the money, you had then completed your work responsibilities for that evening at Fairfield?" Ms. Culpepper responded "Yes, sir." Mr. Russell inquired, "[W]hen you then departed the Fairfield Inn and started back out to your car, you were going to your car for the purpose of getting in it and then going wherever it was that you elected to go?" Ms. Culpepper responded, "Yes, sir."

Based upon Ms. Culpepper's own testimony, the full commission found that Ms. Culpepper "was acting on a personal mission in going to the farewell party for a fellow employee and was not under any employment duty to travel upon that road or to stop to assist anyone being located on that road. Consequently her injury by accident did not arise out of her employment with defendant employer."

In his dissent, Judge Greene correctly targets a flaw in the ma-

183. Culpepper, 93 N.C. App. at 246, 377 S.E.2d at 780.
184. Id. at 254, 377 S.E.2d at 784.
187. Id.
188. Id.
189. Id.
According to Judge Greene, the full commission's findings of fact no. 1 clearly characterized the scope of employment. Furthermore, the majority of the court made an incorrect determination that findings of fact no. 1 was not supported by the evidence. Judge Greene stated that "there is sufficient evidence in the record from which the Commission could have drawn reasonable inferences to support Finding No. 1."

Under the North Carolina Workers' Compensation Act § 97-1, the findings of fact of the industrial commission are conclusive on appeal if supported by competent evidence, even though the evidence may support a different conclusion. In Blalock the court held that the commission had "the duty and authority to resolve conflicts in the testimony." However, the Culpepper Court summarily dismissed the full commission's findings of fact. Clearly, Judge Greene's dissent points towards a more consistent holding under the requirements of the Act.

E. Time, Place, Circumstance

Reviewing the time, place, and circumstance requirements, the court held first, that "the time elapse did not exceed a reasonable time in which to leave work;" second, that U.S. Highway 64 for purposes of the "going and coming rule" constituted the employer's premises; third, that the reason Ms. Culpepper stopped on the private road was incidental to her employment, even though she drove on the private road for a personal mission; and fourth, that stopping to assist a guest placed Ms. Culpepper in a work-related activity "reasonably calculated to benefit her employer" even though Ms. Culpepper had completed her work for the day.

The court held that the "time elapse did not exceed a reasona-
ble time in which to leave work." Ms. Culpepper left work. She proceeded homeward. What is a reasonable time? Courts have responded with numerous results. However, a reasonable time appears to be that time it takes an employee to leave the work area, get into his car, and drive off the employer's premises. Ms. Culpepper finished work for the night. She drove off the resort towards home. Ms. Culpepper returned to the resort property for a personal mission. She re-entered the employer's premises not as an employee but rather as a visitor. No contractual duties of employment governed her actions at the time she re-entered the employer's premises.

It would be more likely, at the midnight hour, that the motorist in the road was a stranger rather than a guest or potential homebuyer. The sole motivation of Ms. Culpepper's stopping arose out of her moral duty to render aid to that motorist. To hold otherwise demonstrates an imaginative interpretation of the employer's instructions to its employee regarding cordiality to potential homebuyers. Furthermore, the court belittles or ignores altogether Ms. Culpepper's moral imperative to render aid to another.

CONCLUSION

The North Carolina Court of Appeals held Ms. Culpepper's injuries compensable. The decision in Culpepper creates precedent contrary to the established case law for assault cases in the area of Workers' Compensation. Holding that Ms. Culpepper's injuries arose out of and in the course of employment defies the holdings in Roberts and Gallimore. Roberts, traveling home from a business trip, encountered a risk common to all who stop and render aid. Gallimore's assault, a risk common to all, occurred while in a mall parking lot after work.

Assault is a risk common to all. This common risk, not her employment duties, placed Ms. Culpepper in jeopardy. Assaults

202. Id. at 252, 377 S.E.2d at 783.
203. Id. at 244, 377 S.E.2d at 779.
204. Id. at 245, 377 S.E.2d at 779.
205. See generally Bass v. Mecklenburg County, 258 N.C. 226, 128 S.E.2d 570 (1962); Hardy v. Small, 246 N.C. 581, 99 S.E.2d 862 (1957) (employee injured on only ingress and egress to and from the work he was to perform, therefore the hazards of the route became the hazards of the employment).
206. Culpepper, 93 N.C. App. at 244, 377 S.E.2d at 779.
207. Id at 245, 377 S.E.2d at 779.
should be, without more, accorded the benefit of injury by accident. However, when an employee departs work and travels homeward or deviates from her homeward journey on a personal mission, any good samaritan assistance to a third party should not incur potential liability for the employer absent some special relationship with that third party.

Ms. Culpepper completed her employment duties. She left work for the day. The assault, although on her employer's property, fell outside the scope of her employment. Ms. Culpepper had no legal duty to render aid to the motorist. Moral duty motivated her to stop. The legislative intent of the Act does not encompass injuries incurred outside the scope of employment. Furthermore, the assault upon Ms. Culpepper, after she completed her work for the day, was not a risk incident to the employment.

The court ignored the full commission's findings of fact. These findings were supported by competent evidence in the record. Even if the inferences support an alternative interpretation, the court cannot reweigh the evidence in order to compensate a victim.

In effect, the North Carolina Court of Appeals expanded the definition of injury to cover those injuries not contemplated under the Workers' Compensation Act. Therefore, employees motivated by the intentions of the Good Samaritan expose the employer to uncontemplated potential liability when the employee decides to render assistance to a third party. Awarding Ms. Culpepper compensation under the Act thwarts public policy by encouraging employers to order employees not to render assistance to third parties at any time.

The North Carolina Supreme Court will hear Culpepper v. Fairfield Sapphire Valley in late 1989 or early 1990. The briefs have been filed by the parties. Hopefully, the court will affirm its previous position established in Roberts and Gallimore. A decision by the supreme court allowing compensation to employees when their acts do not arise out of and in the course of employment would, in effect, remove those requirements from the Act.

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http://scholarship.law.campbell.edu/clr/vol12/iss1/5