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C A S E A L E R T

NEW JERSEY SUPREME COURT MODIFIES THE “GOING AND COMING RULE;” CLARIFIES AVAILABILITY OF WORKERS COMPENSATION COVREAGE FOR WORK-RELATED AUTO ACCIDENTS

Henry Keim v. Above All Termite & Pest Control (A-30-22) (087603) (November 21, 2023)

On November 21, 2023, the New Jersey Supreme Court clarified the “going and coming rule” applicable to workers compensation claims arising out of auto accidents while workers drive to and from work. When an employee uses a vehicle provided by his or her employer for business expressly authorized by the employer, an accident occurring during its use will trigger entitlement to workers compensation benefits.

In [Keim vs. Above All Termite & Pest Control](#), the employer’s policy limited the quantity of supplies that pest-control technicians could keep in their authorized vehicles overnight. When technicians needed to replenish supplies, Above All authorized them to drive to Above All’s shop to obtain supplies and then proceed to their scheduled sites.

On the morning of the accident, Keim clocked in remotely, received his schedule, and concluded that his vehicle lacked sufficient supplies. An accident occurred on his way to the shop.

Following Keim’s filing for worker’s compensation benefits, The Judge of Compensation dismissed Keim’s petition without prejudice, concluding that Keim was merely commuting to work when he sustained injuries. The Appellate Division reversed the dismissal order, finding that Keim acted in the course of his employment at the time of the accident.

The Supreme Court of New Jersey affirmed, finding that at the time of the accident, Keim was not merely commuting to work but was instead obtaining needed supplies at a non-worksites location as he was authorized to do by his employer. The Court reasoned that because Above All had provided Keim with an authorized vehicle for his operation, and Keim was operating that vehicle for business expressly authorized by Above All, Keim was acting in the course of his employment and therefore entitled to worker’s compensation benefits under the “authorized vehicle rule.”

Both workers compensation carriers and auto liability insurers should be mindful of this decision, as an auto-based workers compensation claim potentially affects the availability of Personal Injury Protection (PIP) coverage and raises the specter of a potential workers compensation lien on

any liability claim arising out of the accident.

Clients with questions on the potential impact of this decision to your claims should feel free to contact any of [our partners](#).

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