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Workers' Compensation Reform in Oklahoma: Exclusion of Injuries Sustained at Recreational or Social Events

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I. INTRODUCTION

When injuries occur at employer-sponsored recreational or social activities, most employers and employees dispute who should pay resulting claims. Because the injured party is an employee, the question becomes whether workers' compensation, which is the "exclusive remedy" for injured employees, is the appropriate remedy. Effective September 1, 1990, the Oklahoma Legislature established an Advisory Council on Workers' Compensation to "recommend improvements and proper responses to developing trends." The compensability of injuries sustained at employer-sponsored recreational and social events should be one of the trends that the Advisory Council addresses. Oklahoma's workers' compensation laws should be reformed to exclude injuries sustained by employees at employer-sponsored recreational or social activities unless the employee was directly ordered to attend or was compensated for attendance or participation.

1. Oklahoma's workers' compensation statute defines an "injury" as:
accidental injuries arising out of and in the course of employment and such disease or infestation as may naturally result therefrom and occupational disease arising out of and in the course of employment as herein defined. Provided, only injuries having as their source a risk not purely personal but one that is reasonably connected with the conditions of employment shall be deemed to arise out of the employment.


2. OKLA. STAT. tit. 85, § 12 (Supp. 1990), in pertinent part, provides that:
The liability prescribed in . . . this title shall be exclusive and in place of all other liability of the employer and any of his employees, . . . at common law or otherwise, for such injury, loss of services, or death, to the employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person.

Id.

3. OKLA. STAT. tit. 85, § 112(H) (Supp. 1990). The statute requires the Advisory Council on Workers' Compensation to meet quarterly to analyze and review the workers' compensation system, as well as trends in the law of workers' compensation. Id. § 112(F), (H).
II. BACKGROUND AND DEVELOPMENT

Workers' compensation statutes provide a basis for compensating injured employees, without regard to fault, while limiting the liability of employers. 4 Oklahoma legislators enacted workers' compensation statutes to protect employees by compensating them for "lost earning power" due to work-related injuries and to shield employers from limitless liability in tort. 5 A compensation system premised on employment rather than fault became necessary with the rise in industrialization, and the corresponding increase in industrial accidents, coupled with the courts' restriction of common-law remedies available to injured workers. 6 Consequently, personal injury litigation flourished and claims unsuccessfully defended often resulted in large jury verdicts. 7 Compensating injuries arising from participation in employer-sponsored recreational or social activities diverges from both the no-fault and limited-liability policies because the underlying premise of both policies is that the employee acted in his capacity as an employee at the time of the injury. Neither policy is furthered by permitting claims to be absorbed by the workers' compensation system if the connection between the employment and the injury is unreasonably attenuated.

Initially, statutes limited recovery of workers' compensation benefits to those employees engaged in certain classes of "hazardous" employment, mainly in the manufacturing, transportation, and construction industries where machinery is used. 8 Under this narrow scope, claims based on injuries received at recreational or social events sponsored by

6. 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 4 (1990). Professor Larson explains that employers often successfully defended personal injury actions by asserting that the injury was caused by a "fellow servant," the employee assumed the risk inherent in employment, or that the employee was contributorily negligent. Id. § 4.30.
8. OKLA. STAT. tit. 85, § 2 (1981) (repealed by Laws 1986, c. 222 § 32, eff. Nov. 1, 1986). Prior to amendment, Section 2 of Title 85, afforded compensation to employees injured while working in specified jobs, including factories, mills, and plants where machinery was used; manufacturing connected with the oil industry; glass works; construction; logging and lumber; intrastate transportation industries and carriers; employees of state penitentiaries and mental institutions; and state municipalities. Id.
employers would not have been compensated by workers' compensation. However, workers' compensation claims became more prevalent in 1986 with the repeal of the "hazardous employment" classifications in Oklahoma's workers' compensation statutes. This repeal enables any employee to file for workers' compensation benefits if injured in a work-related accident. 9

Most jurisdictions employ a similar test for compensability for work-related injuries. When an employee is injured at an employer-sponsored recreational or social event, the employee must establish that the accidental injury arose "out of and in the course of employment."10 Naturally, this broad language has been the subject of much judicial interpretation.11 Generally, if the injury originates out of the employee's occupation, then the injury arose out of employment.12 An injury occurs in the course of employment if the time, place, and circumstances of the employee's occupation produced the injury.13

III. COMPENSABILITY IN OKLAHOMA

Statutory and case law guidelines direct Oklahoma courts regarding the compensability of injuries sustained by employees at recreational or social events sponsored by employers. In Oklahoma, as in most jurisdictions, an injury sustained by an employee at a recreational or social event is not compensable unless: (1) the event occurs on the employer's premises or participation is made a "regular incident" of employment; (2) the employer compels the employee to attend; or (3) the employer receives a benefit that extends beyond a mere improvement in employee morale or well-being.14 Further, case law requires a causal connection between the employment and the injury.15

9. Under the original version, workers' compensation benefits were payable only if an employee was engaged in "hazardous employments" under the statute, OKLA. STAT. ANN. Ch. 42-A, Art. 1, § 3782c1 (Bunns 1915), and was injured while performing "manual or mechanical work or labor." Id. at § 3782d1.
10. See supra note 1 and accompanying text.
Although the general rule rejects compensation of injuries sustained by employees at employer-sponsored recreational or social events, many employees sustaining injuries at such events receive compensation under workers' compensation statutes. Even though Oklahoma utilizes the general rule, Oklahoma courts recognize three exceptions. An employee may receive benefits if the injury occurs on the employer's premises, if the employer compels the employee to attend or participate, or if the employer receives a benefit from the activity beyond improved employee morale. These exceptions to the general rule have been so broadly construed that they have, in effect, become the rule. Thus, if an employee can fit a claim under one of these exceptions, benefits will likely be paid.

A. Injuries Occurring On Employers' Premises

Under Oklahoma's workers' compensation statutes, courts have compensated injuries occurring during recreational activities on an employer's premises based on the idea that the employer must have promoted or allowed the activity to occur. In Oklahoma City v. Alvarado, a fireman sought workers' compensation benefits after suffering a back injury in a volleyball game played at the fire station during working hours. Because volleyball games were frequently played by both firemen and supervisors, it became a "recognized activity" at the fire station. The court held that the activity became an "incident of employment" enabling the claimant to recover benefits for the injury. However, there was no evidence presented that the employer compelled the employee to play during his shift at the station. The court did not consider whether the employee volunteered or chose to play that day, nor did it focus on the fact that the claimant had a recurring back problem.

1984) (construing the language "arising out of" employment to require a causal connection between the work and the injury for the injury to be compensable).

16. See supra note 6 and accompanying text.

17. See supra note 14 and accompanying text.


20. Id. at 538.

21. Id.

22. The court noted that any employee who desired to play volleyball was allowed to do so by supervisors. Although supervisors acquiesced in the activity, "no evidence was adduced in the present case as to the extent of compulsion." Id.
While some injuries occur during recreational or social activities on employers' premises, injuries are just as likely to occur off employers' premises or after working hours. If so, injured employees may receive workers' compensation benefits if they can establish that they involuntarily participated.

B. Employer Compulsion: Determining Volition

Perhaps the clearest form of employer compulsion occurs where the employer directly requires an employee to attend a recreational or social event. The fact that the employer required attendance tightens the causal connection between work and play.\(^{23}\) *Warthen v. Southeast Oklahoma State University*\(^{24}\) provides an example of a direct employer request. In *Warthen*, a college instructor suffered a fatal heart attack while refereeing an extra-curricular basketball game on the school's premises after regular working hours.\(^{25}\) The court held that the instructor's fatal heart attack arose “out of and in the course of employment” because the heart attack occurred on the employer's premises, the employee's supervisor specifically requested the instructor to referee the game, and the school emphasized extracurricular activities.\(^{26}\)

Injuries sustained by employees at employer-sponsored recreational or social events present greater problems where the employer urges the employee to attend in subtle, or not so subtle, terms. In *Oklahoma Natural Gas v. Williams*,\(^{27}\) the Oklahoma Supreme Court awarded the employee workers' compensation benefits for injuries received in an automobile accident which occurred en route home from the company Christmas party.\(^{28}\) The court held that the employee's injury occurred “in the course of employment.”\(^{29}\) Initially declining, the employee accepted the invitation after being told by management that attendance at company social or recreational events was important if he wanted “to get

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\(^{23}\) A “causal connection” must exist between the employment and the injury in order for an injury to be compensable under Oklahoma's workers' compensation law. See *supra* note 15.


\(^{25}\) *Id.* at 1126. The court held that the injury was compensable even though the decedent's heart attack did not occur during a “lunch or recreation period” on the employer's premises. *Id.* at 1129.

\(^{26}\) *Id.* The *Warthen* decision is consistent with the policy behind workers' compensation of attempting to allocate the burden of loss to the employer, as an expense of doing business, when employers create injury-producing conditions.

\(^{27}\) 639 P.2d 1222 (Okla. 1981).

\(^{28}\) *Id.* at 1227.

\(^{29}\) *Id.* at 1223.
ahead in the company." Further, management expressed to the claimant their view that this particular party was an opportunity for him to introduce his subordinates to employees from other districts, as well as to fraternize with "higher ups." The court found additional evidence of Oklahoma Natural Gas's (ONG) compulsion via its use of a "reservation list" circulated among employees at the office. While the court's analysis in Williams adheres to the exceptions espoused by Larson in his treatise on Workers' Compensation, the court looked subjectively at evidence of employer-induced participation to conclude that the party benefitted ONG.

A subsequent Oklahoma case extended the scope of the employer compulsion exception so that virtually any injury is compensable where the employer's suggestive comments or behavior may be viewed as "inferences" of compulsion. In Pepco, Inc. v. Ferguson, an employee was killed in an automobile accident while en route to business meetings. Ferguson left the office to meet his wife, attend a youth baseball game that evening, and then travel to business meetings in Oklahoma City and Tulsa the next morning. Ferguson died in an automobile accident shortly after leaving the office. While the employee's job required that he attend the meetings in Oklahoma City and Tulsa, there was no express requirement that he support or attend community programs such as youth baseball leagues. However, the court noted that Pepco, a real

30. Id. From ONG's perspective, employees were "encouraged," but not compelled to attend the company Christmas party. The claimant in Williams received subtle, and not so subtle, pressure from management even though management considered the activity "voluntary." Id.

31. Id.

32. Id. According to Williams, the use of subtle pressures to attend an employer-sponsored recreational or social activity, such as "R.S.V.P. lists," likely will bring an activity into the scope of employment. Id. at 1224. Thus, any resulting injuries would be compensable by workers' compensation.

33. Id. at 1225-26. The court addressed in detail the suggestions of ONG management to the claimant that he attend the party, as well as the use of a reservation list. Id. at 1226. The court noted that objectively viewed, any benefit to ONG "may be sadly lacking in probative strength." Id. at 1225. Nonetheless, it found that subjectively viewed, proof of employer benefit and compulsion was sufficient. Id. at 1226. Thus, Larson's employer-benefit requirement may be satisfied by a benefit obvious to a reasonable person, or by a benefit deduced from employer conduct. The court's analysis promotes flexibility in applying the Larson test, but produces uncertainty by obfuscating the boundaries of the exceptions.


35. Id. at 1322.

36. Id.

37. Id. at 1324. Decedent served as an officer and director of Pepco, Inc. and completed real estate transactions for Pepco, Inc. Id. at 1322.
estate management and investment firm, had a company policy of fostering community service. Finding that the decedent’s participation in a youth baseball program after traditional working hours and off company premises was “‘consistent’ with [Pepco’s] policy supporting community service and interest in community activities,” the court inferred employer compulsion and affirmed an award of death benefits to the decedent’s spouse and children. Inferences of compulsory attendance or participation should be inadequate to render an injury compensable by workers’ compensation. Arguably, any claimant could assert that his participation or attendance at a similar event enhances the company’s reputation or shows the company’s commitment to community service.

C. Will Any “Employer Benefit” Suffice?

The third exception to the general rule provides that recreational or social injuries may be compensable if the employer stands to benefit from sponsoring the activity. The benefit, however, must extend beyond improved employee morale or cooperation. In Oklahoma, this well-intended exception has been stretched to the point where any benefit, no matter how tenuous, will suffice, as long as it manifests itself in some way other than improved employee attitude toward work.

Workers’ compensation benefits should not be based upon an intangible notion that recreational or social activities, in and of themselves,

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38. Id.
39. Id. at 1324.
40. Id. at 1324-25. Since the decedent was en route to a youth baseball game at the time of his fatal accident, and his participation in the program reflected well on the company, the court held that his death “arose out of and in the course of employment.” Id. at 1324.
41. Pepco had established a policy of providing service to the community and sought to project an image as supportive of community activities. Id. at 1322. Using a “consistency” approach extends the employer compulsion test to new extremes, where virtually any claim might be paid if the claimant can show that his recreational or social activity was somehow consistent with the policies of his employer. Moreover, it completely overlooks whether there are any objective grounds for determining the claimant’s volition. Courts should also consider whether the claimant was aware of the policy and whether he viewed his attendance at recreational or social events as part of an overall company effort, or an effort to comply with the company policy. Arguably, the claimant in Pepco sought to attend the game on his own free time even though he was required to work the next morning. Such liberal construction has ameliorated the general rule of non-compensability for these injuries rendering virtually any claim based on a recreational or social injury compensable by workers’ compensation.
42. See supra note 14 and accompanying text.
43. See supra note 14 and accompanying text. See also Oklahoma Natural Gas Co. v. Williams, 639 P.2d 1222, 1224 (Okla. 1981) (noting that “the intangible value of employees’ health or moral[e] improvement . . . is common to every kind of recreational and social event.”) (dicta).
44. See supra notes 27-33 and accompanying text.
benefit employers. For example, the court in *Williams* upheld a claimant's award, finding that ONG benfitted from hosting an annual Christmas party because it presented management with an opportunity to evaluate how well ONG employees interfaced with "superiors, peers, and subordinates." Nonetheless, the court sustained the finding of the appellate panel of the Workers' Compensation Court that ONG received a benefit from hosting this party, even if the benefit had to be viewed as part of a "cumulative benefit" to ONG because this particular event produced little or no benefit in and of itself. ONG put forth no evidence that new client relationships were formed as a result of this party, that the party produced new sales, nor that ONG actually used the Christmas party to observe and evaluate employees, particularly the claimant. Rather, the court based its benefit analysis on the theory that today's businesses sponsor social functions for utilitarian purposes, such as personnel evaluation, instead of pleasure. *Williams* illustrates just how insubstantial the employer benefit may be to support an award of workers' compensation benefits.

Many claims for injuries occurring at recreational or social events may be compensated by workers' compensation even though the injury occurs off the employer's premises and after hours at an activity not traditionally considered part of the job. However benevolent the purpose, we cannot justify taxing the workers' compensation system for injuries which are, at best, only connected with employment because the claimant happens to be an employee. Compensability of injuries sustained at employer-sponsored recreational or social events is an issue that is not unique to Oklahoma. Accordingly, many states have revised their workers' compensation laws in an effort to remove these claims from workers' compensation.

45. *Williams*, 639 P.2d at 1225. The court even admitted that the benefit to ONG, as measured by objective criteria, "may be sadly lacking in probative strength." *Id.*

46. *Id.*

47. *Id.* ONG argued that it sponsored the party only for the pleasure of its employees. *Id.*

48. *Pepco* demonstrates further that Oklahoma courts' liberal application of the employer benefit test renders all but wholly unrelated injuries compensable by workers' compensation. Injuries sustained by employees at recreational or social events sponsored by employers should not be compensated by the system solely because of a vague notion that the employee's attendance enhanced the company image and nothing more.

IV. COMPENSABILITY IN OTHER JURISDICTIONS

The law of other jurisdictions mirrors that of Oklahoma in that most courts seem to have difficulty determining whether or not injuries which occurred at employer-sponsored recreational or social events should be compensated by the system. Most jurisdictions apply the test formulated by Professor Arthur Larson to analyze these claims. However, the results are inconsistent. Consequently, either side to a lawsuit can find ample authority to support its argument and there is little or no certainty as to the outcome. Thus, statutory reform expressly excluding voluntary participation in recreational or social activities, as determined by objective criteria, could greatly reduce the uncertainty. Furthermore, as illustrated by states adopting such reforms, it produces fairer results by compensating employees only for injuries resulting from activities that were expressly required, where employees were compensated for attendance, or where a direct and tangible benefit flowed to the employer. Colorado, Missouri, and California have particularly comprehensive statutes which prevent meritless claims and provide greater certainty to employers and employees as to the compensability of injuries sustained at employer-sponsored recreational or social activities.

A. Colorado

The prevalence of sports and recreation in Colorado likely brought recreational injuries of employees into the foreground of that state’s workers’ compensation law. In 1985, the Colorado legislature changed the definition of employee under the workers’ compensation system so as to exclude persons who participate in recreational activities. Thus, an employee who engages in sporting or other types of recreational activities after working hours, or whenever he “is relieved of and is not performing . . . duties,” is not within the definition of “employee” under Colorado’s workers’ compensation statutes.

51. See supra notes 18-40 and accompanying text.
52. COLO. REV. STAT. § 8-1106(2) (1986) provides that the term “employee,” as used in workers’ compensation law:
   excludes any person employed by a passenger tramway operator . . . or other employer,
   while participating in recreational activity on his own initiative, who at such time is relieved of and is not performing any prescribed duties, regardless of whether he is utilizing, by discount or otherwise, a pass, ticket, license, permit, or other device as an emolument of his employment.

Id.
53. Conceivably he may also fall outside this definition during lunchtime activities if he is
In spite of Colorado's narrow definition of "employee," Colorado courts continue to recognize that an employer's compulsion or benefit may bring an activity within the scope of employment, rendering related injuries compensable by workers' compensation. In *AGS Machine Co. v. Industrial Commission of Colorado,* a claimant received benefits for an ankle injury sustained while playing basketball with fellow employees during a work break. The court affirmed the claimant's award of temporary total disability benefits finding that the claimant was not playing basketball "on his own initiative" and that AGS enjoyed prestige in a basketball league by virtue of having a successful team. Similarly, in *Wilson v. Scientific Software-Intercomp* the court rejected a claim for injury sustained by an employee while on a weekend ski trip sponsored by his employer. Rejecting the claim, the court reasoned that the ski trip, held on a non-work day, was voluntary because the employees were not compensated for participation. The court affirmed the Commission's ruling that the ski trip did not benefit the employer beyond improved employee morale, even though Scientific took a tax deduction, because the court viewed the tax deduction as a benefit not substantial enough to bring the trip within the scope of employment.

Under *AGS* and *Scientific,* Colorado courts have considered the compensability of recreational injuries sustained by employees both on and off employer premises and analyzed them according to Larson's employer compulsion or benefit tests even though these claimants were not "employees" within the statutory definition.

B. Missouri

Missouri is the most recent addition to the throng of states denying deemed not performing his job and is relieved of his duties. COL. REV. STAT. § 8-41-106(2) (1986). The statute makes no distinction between voluntary or involuntary participation, unless the language "relieved of...duties" can be construed as voluntary.

55. Id. at 817. AGS maintained the basketball court on its premises for the benefit of its employees who enjoyed the sport, as well as to encourage its league team members to practice. The claimant, although he did not play on the company team, testified that he felt "encouraged strongly" to play and "felt it mandatory." Id.
56. Id.
58. Id. at 402.
59. Id. at 402. Furthermore, claimant's conversations about business while traveling to the slopes were insufficient to bring the ski trip within the scope of his employment. Id.
60. Id. The claimant received no workers' compensation benefits even though the event was planned on company time and his employer paid part of the expenses of the ski trip. Id. at 401.
61. Colorado courts have yet to address a claim stemming from an injury at a company party or picnic, but would likely apply the compulsion or benefit tests to these claims as well.
workers' compensation benefits to claimants for injuries sustained at recreational or social events. Effective September 1, 1990, Missouri employees who are injured while participating in recreational activities "or programs" shall not receive benefits unless: (1) their employer directly ordered participation; (2) their employer paid wages or travel expenses while the employee participated; or (3) the injury occurred on the employer's premises due to an unsafe condition known to the employer but not repaired. Missouri employers in the private sector sought this revision to avoid liability for injuries resulting from voluntary participation in employer-sponsored recreational or sporting events. The Missouri statute's forerunner, which tracks Oklahoma's statute, allowed employee compensation only when an accident arose "out of and in the course of his employment" and provided that workers' compensation exclusively remedies bodily injury or death, regardless of the employer's negligence.

Prior to this reform, Missouri courts, like those in other states, reached divergent results when determining the compensability of injuries sustained by employees at employer-sponsored recreational or social events. Missouri courts denied benefits for injuries suffered while playing on a company softball team, or attending a social event, but awarded benefits for injuries received while playing sports during an uncompensated lunch hour.

62. See supra note 49.
63. Mo. Rev. Stat. § 287.120(7) (Supp. 1990) provides that:

Where the employee's participation in a voluntary recreational activity or program is the proximate cause of the injury, benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited regardless that the employer may have promoted, sponsored or supported the recreational activity or program, expressly or impliedly, in whole or in part. The forfeiture of benefits or compensation shall not apply when: (a) The employee was directly ordered by the employer to participate in such recreational activity or program; (b) The employee was paid wages or travel expenses while participating in such recreational activity or program; or (c) The injury from such recreational activity or program occurs on the employer's premises due to an unsafe condition and the employer had actual knowledge of the employee's participation in the recreational activity or program and of the unsafe condition of the premises and failed to either curtail the recreational activity or program or cure the unsafe condition.

Missouri courts, prior to statutory reform, denied workers’ compensation benefits for injuries sustained in recreational or social activities off the employers’ premises or after working hours. In McFarland v. St. Louis Car Co., the court held that an injury sustained by an employee while voluntarily playing on his company softball team after working hours and off company premises was not compensable by workers' compensation because the team’s presence in the league provided no advertising or other benefit for the employer. Similarly, Missouri courts have denied claims for workers’ compensation benefits for employee injuries incurred en route to employer-sponsored social events. In Riggen v. Paris Printing Co., the Missouri Court of Appeals denied benefits to an hourly-paid employee who injured her ankle at an off premises pancake breakfast sponsored by her employer because the court found no evidence that her employer directly or indirectly compelled her to attend. Recently, the Missouri courts addressed the compensability of injuries sustained during sporting events on employers’ premises. In Seiber v. Moog Automotive, Inc., the court granted workers' compensation benefits to a claimant injured while playing basketball on the employer’s premises during an uncompensated lunch hour, even though the claimant played on her own free time and of her own volition. The court found that the employer’s acquiescence in allowing games to be played

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69. 262 S.W.2d 344 (Mo. Ct. App. 1953).
70. Id. at 347-48. The court denied compensation even though the employer provided some equipment and paid the league entry fees for the team. More importantly, the court noted that employee recreation does contribute to the “social, moral and physical welfare of the individual employee” but “compensation law was never intended to operate as accident insurance covering all accidental injuries wherever and whenever received by an employee.” Id. at 348. The court acknowledged the “chilling effect” that granting benefits could have on employer-sponsored recreational or social events and denied compensation to the claimant because it considered such a construction of the language “arising out of and in the course of employment” to be “legislation by judicial construction.” Id. (quoting Stout v. Sterling Aluminum Products, Co., 210 Mo. App. 725, 213 S.W.2d 244 (Mo. Ct. App. 1948)).
71. 559 S.W.2d 625 (Mo. Ct. App. 1977).
72. Id. at 630. While there was no evidence that Riggen’s boss directly compelled her to attend, the court took a narrow view of what constitutes indirect compulsion as Riggen testified that she “had the impression” that she should go, that “everybody else was going, and they stood and waited” on her to go, and that she “would have been the only one left in the plant.” Id. at 627. See also Stout v. Sterling Aluminum Products Co., 210 Mo. App. 725, 213 S.W.2d 244 (Mo. Ct. App. 1948) (court denied claimant’s request for benefits for injury sustained at a company picnic).
73. 773 S.W.2d 161 (Mo. Ct. App. 1989).
74. Id. at 164. Claimant testified that “playing basketball was not required for promotion at the company” and that “management was indifferent to use of the court as long as it was not used on company time.” Id. at 162. Clearly the decision to play basketball during non-working hours was a voluntary one.
during the lunch hour on a regular basis rendered the activity an “incident of employment” under the Larson test.\textsuperscript{75} \textit{Seiber} illustrates that workers’ compensation benefits may be paid to a claimant injured at a recreational event even when participation is completely voluntary. The court acknowledged that such awards “will eventually increase the cost to the worker’s compensation system.”\textsuperscript{76} One plausible alternative, the court noted, is that the “legislature could restrict coverage in this area.”\textsuperscript{77}

\section*{C. California}

California takes a unique approach to determine whether an employee's injury at an employer-sponsored recreational or social event is compensable by workers’ compensation. Under California’s reformed workers’ compensation statutes, an injury occurring at a recreational, social or athletic event in which an off-duty employee voluntarily participates will not be compensated by the workers’ compensation system, \textit{unless} participation was “a reasonable expectancy of, or ... expressly or impliedly required by, the employment.”\textsuperscript{78} Thus, the issue becomes whether the activity was a “reasonable expectation” of employment or whether the activity was an “implied requirement” of employment.\textsuperscript{79}

California courts have awarded workers’ compensation benefits to

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  \item \textsuperscript{75} Id. at 164. \textit{See supra} note 14 and accompanying text. \textit{See generally} Davis, \textit{The Effect of Employer Approval on Workmen’s Compensation Decisions—Letting Affected Parties Communicate Standards}, 54 \textit{Cornell L. Rev.} 97, 107 (1968).
  \item \textsuperscript{76} \textit{Seiber}, 773 S.W.2d at 164.
  \item \textsuperscript{77} Id.
  \item \textsuperscript{78} \textit{Cal. Lab. Code} § 3600(a)(9) (West 1988). Section 3600(a)(9) is California’s exclusive remedy provision. \textit{Id}. Section 3600 sets forth a list of exceptions to the exclusive remedy doctrine, including, \textit{inter alia}, injuries sustained by an employee at a recreational, social or athletic event. Section 3600(a) of the California Labor Code provides that:

\begin{quote}
  Liability for the compensation provided by this division, in lieu of any other liability whatsoever ... shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:

  ...  

  (9) Where the injury does not arise out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment.
\end{quote}

\item \textsuperscript{79} The California Legislature sought a return to the original purpose behind workers’ compensation, i.e., to compensate injured employees for their work-related injuries, by eliminating “from the workers’ compensation scheme only those injuries which were remotely work-connected.” \textit{Ezzy v. Workers’ Compensation Appeals Bd.}, 146 Cal. App. 3d 252, 263, 194 Cal. Rptr. 90, 95 (Cal. Ct. App. 1983) (emphasis in original).
\end{itemize}
employees injured in recreational or social activities off the employer's premises where participation was impliedly required. In *Smith v. Workers' Compensation Appeals Board*, the court granted benefits to the estate of a math instructor killed while wind surfing at an off-campus math club picnic. The court, acknowledging the closeness of the question, noted that the university encouraged faculty to participate in extracurricular activities with students to foster good relations. Supervision of such extracurricular activities, the court held, was an implied requirement of decedent's employment.

*Smith* demonstrates that California courts tend to rule in favor of compensability when employers suggest or encourage, but do not expressly require, participation in recreational or social activities.

On the other hand, California courts have denied workers' compensation benefits for injuries sustained in on-premises recreational activities. The claimant in *Taylor v. Workers' Compensation Appeals Board* sought benefits for a knee injury suffered in a basketball game played on the employer's premises during an uncompensated lunch hour. Denying compensation, the court found that claimant's employer did not require him to participate in the game even though his job as a police officer required him to attend the game.

Factors important to the court's decision were: (1) decedent, as a temporary teacher, was more likely to succumb to pressure or suggestion to participate to improve his chances of permanent employment; (2) participation in extracurricular activities was a criteria for professional evaluation; and (3) the school's active part in the picnic. On the other hand, several factors tended to show that decedent attended of his own volition. He drove his own car to the picnic, brought his family, and paid his own entry fee to the picnic grounds. The court noted that the "picnic was a purely social event." The court in *Smith* noted that the legislature sought to reduce indirect pressure to attend recreational or social activities. Consequently, injuries occurring during such events should be compensated by workers' compensation if indirect coercion is found.

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83. *Id.* at 141-42, 236 Cal. Rptr. at 257-58. Faculty were required at the beginning of each school year to commit themselves to the extra-curricular activities which they would supervise to satisfy their contractually-required "adjunct" hours. *Id.* at 150-31, 236 Cal. Rptr. at 250-51. The decedent coached a basketball team and was not required to fulfill "adjunct" hours. Thus, the court found that it was not "objectively reasonable for decedent to believe that the math club picnic was used to satisfy his contractual . . . adjunct duty requirement." *Id.* at 137, 236 Cal. Rptr. at 255. Factors important to the court's decision were: (1) decedent, as a temporary teacher, was more likely to succumb to pressure or suggestion to participate to improve his chances of permanent employment; (2) participation in extra-curricular activities was a criteria for professional evaluation; and (3) the school's active part in the picnic. *Id.* at 141, 236 Cal. Rptr. at 257. On the other hand, several factors tended to show that decedent attended of his own volition. He drove his own car to the picnic, brought his family, and paid his own entry fee to the picnic grounds. The court noted that the "picnic was a purely social event." *Id.* at 141, 236 Cal. Rptr. at 258.
84. The court in *Smith* noted that the legislature sought to reduce indirect pressure to attend recreational or social activities. Consequently, injuries occurring during such events should be compensated by workers' compensation if indirect coercion is found. *Id.* at 135-36, 236 Cal. Rptr. at 253-54.
86. *Id.* at 213, 244 Cal. Rptr. at 643. See also Todd v. Workers' Compensation Appeals Bd., 198 Cal. App. 3d 757, 243 Cal. Rptr. 925 (Cal. Ct. App. 1988). The claimant in *Todd* was denied
officer required a certain level of physical fitness.\textsuperscript{87} Based on \textit{Taylor}, California's statute excepting off-duty recreational, social or athletic activities absent implied compulsion, removes claims from the workers' compensation system that are likely incompatible with workers' compensation's underlying purposes.\textsuperscript{88}

\section*{V. Analysis}

Oklahoma's workers' compensation statute requires that an injured employee show that an injury "arose out of and in the course of employment" and that the purpose of the activity was not "purely personal."\textsuperscript{89} Unlike the comparable statutes from Missouri, Colorado and California, the Oklahoma statute fails to define whether recreational, social or athletic activities are considered "purely personal."\textsuperscript{90} Although the language "arising out of and in the course of employment" provides for flexibility in application, without further definition of "purely personal," the language is so broad that even potentially meritless claims that are only remotely work-related may be compensated. Furthermore, this flexibility creates little or no certainty as to the compensability of various types of injuries. If an employer sponsors a recreational, social or athletic event for its employees, it may never be considered "purely personal" under Oklahoma's statute. The Oklahoma Supreme Court has provided little certainty as to when injuries sustained at these events will not be compensated by the workers' compensation system, thus leaving employers exposed to liability in tort for any negligence.\textsuperscript{91}

This uncertainty is created in large part due to Oklahoma's liberal construction of workers' compensation law in general, and the Larson

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\item benefits for injuries sustained in a basketball game during an uncompensated lunch hour, because the court found that the claimant was not compensated for the lunch period and the employer provided no equipment. Noting that the employer "apparently condoned" the lunch-hour basketball games, the employer nonetheless did not "require[ ], encourage[ ], or sponsor[ ]" the games. \textit{Id.} at 760, 243 Cal. Rptr. at 927.
\item The claimant's employer had posted a notice to employees that stated "[a]pproved athletics shall include only those . . . approved in advance . . . [and] [m]ere use of Departmental facilities for athletics or exercise is not considered a basis for claiming a service-connected injury." \textit{Taylor}, 199 Cal. App. 3d at 214, 244 Cal. Rptr. at 644. The claimant admitted that the game in which he was injured had not been pre-approved by the police department. The court condoned the employer's attempt to limit its potential liability for workers' compensation claims for injuries received in pre-approved athletic activities since the employer required certain fitness levels of employees. \textit{Id.} at 215-16, 244 Cal. Rptr. at 645.
\item See \textit{supra} notes 4-7 and accompanying text.
\item See \textit{supra} notes 13-45 and accompanying text.
\end{itemize}
employer benefit or compulsion tests in particular. As a result, the workers' compensation system pays claims that should not be paid. If an employee's own negligence caused an injury at a recreational or social event, then clearly the employee, and not the workers' compensation system, should be required to pay. However, workers' compensation benefits have been paid in Oklahoma for an employee's fatal car accident that occurred after work on the employee's way to a youth baseball game, for a back injury sustained during a volleyball game at work, and for injuries received in automobile accidents on the way home from company parties even though none of these activities were expressly required components of the claimant's jobs.

Upon careful consideration of the statutory reforms enacted in other states limiting the circumstances under which the workers' compensation system will pay employees for injuries occurring at recreational, social or athletic events (as well as the emphasis today's employers place on fitness and wellness), it is obvious that Oklahoma's workers' compensation system cannot continue to pay these claims. Not all states dealing with this issue leave it to the courts to decide whether an injury "arose out of and in the course of employment." There are various alternatives that should be considered by Oklahoma legislators.

Oklahoma legislators should consider Colorado's statute when examining workers' compensation reform. Colorado narrowed the definition of "employee." This approach makes it clear that a person is not to be considered an "employee" while engaging in recreational activities. However, the Colorado statute does not specify whether social activities fall within "recreation," subjecting that term to possible judicial interpretation. Nonetheless, Colorado's statute is more specific than Oklahoma's because it focuses on the activity of the employee at the time of the injury, whereas the Oklahoma statute looks at the overall scenario in which the accident occurs. For example, in Wilson v. Scientific

92. See supra notes 11, 23-47 and accompanying text.
93. See supra notes 34-41 and accompanying text.
94. See supra notes 19-22 and accompanying text.
95. See supra notes 27-33 and accompanying text.
96. Colo. Rev. Stat. § 8-41-106(2) (1986). The Colorado statute excludes from its definition of "employee" persons who are voluntarily participating in recreational activities, if relieved of and not performing duties. Id.
98. Colo. Rev. Stat. § 8-41-106(2) (1986). Colorado's statute centers around what the employee was doing at the time of his injury, such as "while participating in recreational activity." Id. However, Oklahoma's test for compensability by its very language ("arising out of and in the course
Software-Intercomp,99 the Colorado Court of Appeals considered whether a person injured on a ski trip sponsored by his employer could recover workers’ compensation benefits.100 The court found that, because the claimant was acting on his own initiative at the time of the skiing accident, he was not an “employee” at that time.101 Critics of the Colorado statute may claim that it could produce potentially harsh results because it does not distinguish between voluntary and involuntary participation.102 Colorado cases have not addressed this point squarely, but Scientific shows that volition is still very much considered by Colorado courts.103 Any harsh result is therefore unlikely.

A second alternative for Oklahoma lawmakers would be reformation of the exclusive remedy provision to follow that of Missouri. The Missouri statute provides that workers’ compensation is the exclusive remedy against an employer for personal injury or death unless the employee participated in a “voluntary recreational activity or program [that was] the proximate cause of the injury.”104 Oklahoma’s workers’ compensation law currently contains an exclusive remedy provision which precludes injured employees from suing their employers in tort, or based on any other theory, unless the employer neglects paying workers’ compensation insurance premiums.105

While Oklahoma’s exclusive remedy provision fosters easier recovery for claimants, who consequently are not required to establish negligence, it also casts a wide net, resulting in payment of claims that clearly should not be paid out of the workers’ compensation system. On the other hand, Missouri recently repealed its workers’ compensation statute that provided for employer liability “irrespective of negligence” in favor of a listing of injuries for which compensation will not be paid, including

100. Id. at 401.
101. Id. at 402.
102. COLO. REV. STAT. 8-41-106(2) (1986). The statute provides that only persons who are “relieved of and [are] not performing any prescribed duties” while participating in “recreational activity” are not “employees.” Id. The phrase “relieved of and is not performing prescribed duties” could be construed as “voluntary.”
103. See supra notes 52-60 and accompanying text.
104. MO. REV. STAT. § 287.120.7 (Supp. 1990).
105. OKLA. STAT. tit. 85 § 12 (Supp. 1989). This section provides that “[t]he liability prescribed in . . . this title shall be exclusive and in place of all other liability of the employer and any of his employees.” Id.
injuries proximately resulting from voluntary participation in a recreational activity or program.\textsuperscript{106} The most desirable and the most flexible feature of Missouri's reformed statute is its exception clause, which allows compensation if an employer directly ordered participation in the recreational activity or program, if the employer paid the employee to participate or paid travel expenses associated with participation, or if the employer knew the employee was participating on the employer's premises where uncured dangerous conditions existed.\textsuperscript{107} Not only is the Missouri statute much clearer than Oklahoma's "arising out of and in the course of employment" test for compensability, it still allows on-premises injuries to be compensated by the system where the employer was at fault.\textsuperscript{108}

More importantly, Missouri's new statute alleviates much of the problem courts have experienced in determining employer compulsion or benefit issues. Under the new law, benefit to an employer is not even a factor, while volition and location of the injury are to be considered. The section sets forth three specific means to determine volition: whether the employee received a direct order to participate; was compensated for participation; or received travel expenses associated with participation.\textsuperscript{109} This test is much easier for courts to apply and produces results that are more consistent with workers' compensation policy. Missouri's new law, like the Colorado statute, contains no express exclusion for injuries sustained by an employee while voluntarily attending an employer-sponsored social event.\textsuperscript{110} Thus, the same argument may be raised that social events may somehow be more closely connected with work and accordingly, merit separate treatment. However, social events may be viewed as a subset of "recreational activities or programs" and should therefore be subject to the same compulsion or on-premises requirements of the statute.

Oklahoma's reform, like the Missouri reform statute, should enumerate certain objective means to determine whether or not an employee's participation was voluntary. Such criteria could include not

\textsuperscript{106} Mo. Rev. Stat. § 287.120 (1978).
\textsuperscript{108} Mo. Rev. Stat. § 287.120(7) (Supp. 1990). The knowledge requirement as to on-premises injuries is an oblique reference to the fault of the employer and may serve as a bellwether for movement away from no-fault compensation where injuries are sustained by employees at employer-sponsored recreational, social, or athletic events.
only direct orders or compensation like the Missouri statute, but also express provisions in employment contracts that participation in recreational, social or athletic activities is outside the scope of employment. The effect of such criteria in determining volition is threefold: (1) to simplify compensation proceedings by subjecting claims to these criteria; (2) to enable employers to assess with greater accuracy the extent of their liability exposure; and (3) to enable claimants to more easily determine whether to seek workers' compensation benefits or pursue a tort claim.

Unlike its Colorado and Missouri corollaries, which exclude recreational events from compensability and leave room for interpretation as to whether social events fall within "recreation," the California statute clearly excludes social activities from coverage by workers' compensation.111 By including the word "voluntary" as well as the broad exception language, the California Legislature provided flexibility in the application of its statute and discouraged subtle forms of compulsion by allowing workers' compensation benefits where injuries occur at events "impliedly required by" employment.112

The inadequacies of Oklahoma's statutes in resolving the compensability of recreational, social, or athletic injuries becomes apparent when comparing Oklahoma's "arising out of and in the course of employment" test for compensability and its exclusive remedy provision with similar provisions from Colorado, Missouri and California. Oklahoma's exclusion for "purely personal" activities is inadequate to resolve the gray areas that exist today between work and play. Thus, liberal construction has rendered the compulsion and benefit exceptions to the general rule of non-compensability more the rule than the exception. Oklahoma should reform its exclusive remedy provision to except recreational, social, or athletic activities from its coverage. Since these activities would not be compensable by the workers' compensation system, injured employees would be free to pursue other remedies and the system would be relieved of paying these claims.

111. See supra notes 78-79 and accompanying text.
VI. CONCLUSION

Oklahoma courts continue to adhere to the Larson exceptions and to construe them so broadly as to produce results inconsistent with the policy behind workers' compensation systems. By examining injuries in the wide context of "arising out of and in the course of employment," claims for recreational or social injuries will continue to be paid by the system without analyzing employees' conduct when injuries occur. For the most part, even a lay person would concede that these injuries are not really related to the claimants' jobs. The law must be reformed to conform with a realistic assessment of these injuries.

Based on the foregoing, Oklahoma should reform its workers' compensation statutes to exclude claims for injuries occurring at employer-sponsored recreational, social or athletic activities. Like the California statute, Oklahoma's reformed statutes should exclude not only recreational and athletic activities, but social ones as well. Further, Oklahoma's statute, like that of Missouri, should contain exceptions where employers directly require, or compensate for, participation. By conditioning compensability on either express requirement of participation, or compensation for employees' participation, both the bench and bar will have objective means for determining the compensability of these injuries. Using a combination of the California and Missouri statutes, Oklahoma's new law would remove claims from the system which are inconsistent with the purposes of workers' compensation.

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