IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARY SPELLMAN,	:	
	:	
Employee-Below,	:	C.A. No.: 315, 2012
Appellant,	:	On appeal from the Superior
	:	Court of the State of
v.	:	Delaware in and for Sussex
	:	County,
CHRISTIANA CARE HEALTH	:	C.A. S11A-08-001 RFS
SERVICES.,	:	
	:	
Employer-Below,		
Appellee.		

EMPLOYEE-BELOW, APPELLANT'S OPENING BRIEF

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

DOROSHOW, PASQUALE
KRAWITZ & BHAYA

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DATED: July 27, 2012

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NATURE AND STAGE OF PROCEEDINGS

On April 1, 2011, Appellant, Mary Spellman, filed with the Industrial Accident Board (hereinafter "the Board") a Petition to Determine Compensation Due against her employer, Christiana Care Health Services. Mary Spellman v. Christiana Care Health Services, Ind. Acc. Bd., IAB# 1364655. In her Petition, Appellant sought acknowledgment of the compensability of injuries suffered in a January 14, 2011 motor vehicle accident (hereinafter "the accident").

On July 19, 2011, an evidentiary hearing was conducted before the Board, and was limited solely to the issue of whether or not Appellant was in the course and scope of her employment at the time of the accident. Claimant argued first that, as Ms. Spellman is a traveling employee, she should be exempted from the "going and coming" rule that generally precludes the compensability of injuries suffered going to and coming from work. Claimant argued alternatively that the trip in which she was engaged at the time of her accident was one of mixed purpose, and that the resulting injuries should be compensable accordingly.

On July 22, 2011, the Board issued a written decision (hereinafter "the Opinion") denying Appellant's Petition to Determine Compensation Due based upon its finding that the accident took place outside the course and scope of Appellant's

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employment. On August 12, 2011, Appellant took a timely appeal of that decision to the Superior Court in and for Sussex County. By way of decision dated May 17, 2012, the Superior Court upheld the Industrial Accident Board's Ruling. The Superior Court noted the existence of the "traveling employee" exception, but did not apply it:

> Claimant argued to the Board and on appeal that this exception applies to her case. The Board disagreed, noting that payment of Claimant's travel expenses would have brought her within the scope of this rule, but she was not paid for her expenses. This is confirmed by the fact that Claimant was clocked out and was on a personal trip home before going to see her doctor at the time of the accident. Viewing a totality of the circumstances, the Court concludes that the Board's decision that Claimant was not acting within the course and scope of her employment when she was injured is supported by substantial evidence and is free from legal error.

Appellant timely filed her appeal of the Superior Court's decision with this Court on June 12, 2012. This is employee-below, appellant, Mary Spellman's Opening Brief.

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SUMMARY OF THE ARGUMENTS

I. Both the Industrial Accident Board and the Superior Court erred as a matter of law in finding that Appellant was not in the course and scope of her employment at the time of her accident. Though she was on the way home at the time of her motor vehicle accident, because of the nature of her position as a home health aide, Appellant should be afforded the protection of the "traveling employee" exception to the general "going and coming" rule of employer non-liability. This exception, established by Devine v. Advanced Power Control, states that it is legal error to apply the "going and coming" rule to an employee who has a semi-fixed place of employment and whose trips to and from work are a substantial part of his employment. By ruling that Appellant was not in the course and scope of her employment because she was "off the clock" and on the way home, the Industrial Accident Board and Superior Court applied the "going and coming" rule, constituting legal error.

II. Even if Claimant was somehow not entitled to the protection of the "traveling employee" exception to the general "going and coming" rule, Claimant was still in the course and scope of her employment at the time of her accident on the grounds that the trip on which she was injured is one of mixed purpose. The mixed purpose doctrine established in Children's Bureau v.

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Nissen states that when service to the employer creates the need for travel, exposing the employee to injury, the employee is in the course and scope of her employment. In addition, Professor Larson views mixed purpose trips in the context of when injuries occur in relation to the point at which an employee deviates from the business purpose to pursue a personal one. As Claimant was on a trip that served both purposes, the Board and Superior court erred as a matter of law by not finding her in the course and scope of her employment accordingly.

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STATEMENT OF FACTS

Claimant Mary Spellman has been an employee of Christiana Care Visiting Nurses Association (hereinafter "VNA" or "Employer") for approximately 17 years. As a traveling home health aide, Ms. Spellman drives to and from the homes of her patients, offering assistance with hygiene and light housekeeping. (Appendix B, Page 2). VNA has an office in Millsboro, but home health aides generally do not report there daily (Appendix A, Page 4). The office is used by home health aides for monthly meetings, and to replenish supplies (A12). Instead of stopping at an office, Ms. Spellman reports directly to her first patient of the day (A6). She is required to travel to these appointments in her own vehicle (B2), and pays for her own car, gas, and insurance (B2). Ms. Spellman is "on call," both throughout her work day, as well as after hours (A5, B3). She is available to her employer via personal cell phone in the event that a new appointment arises or her schedule otherwise changes. Employees of VNA use a telephone based computer system, or "Telephony," to obtain daily schedules, as well as to "clock in and out" of appointments. (B3). In her car, Ms. Spellman keeps supplies essential to her job, such as gloves, aprons, soap, and paper towels (A4). VNA employees are paid mileage to and from all patient visits, save for the trip to the first patient of the day, and home from the last. (A1-3)

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On January 14, 2011, at approximately 10:35 a.m., Ms. Spellman departed from 20795 Reynolds Pond Road, Ellendale, Delaware, the home of her patient, Mr. Lourdy. Ms. Spellman's testimony indicates that there was inclement weather at the time, with snow on the ground (A8) and patches of ice in the roads (A11). Ms. Spellman testified to having an open period from 10:30 a.m. until 12:00 p.m., (A7, 15) and intended to go home to freshen up prior to a previously scheduled personal doctor's appointment with Dr. Coveleski in Milford. (A9). Ms. Spellman testified that her next scheduled patient visit after the open period was with a Mr. Harris, who resides in Cedar Village (A13). Her supervisor at VNA, Keith Torbert, offered testimony indicating that Ms. Spellman's next patient visit was to be with a Mrs. Smith. He testified that Mrs. Smith lives in Milford, "a little further north" of Dr. Coveleski's office (A16). Approximately three minutes after departing from the home of Mr. Lourdy in her vehicle, Claimant was involved in a one car accident after hitting a patch of ice while traveling eastbound on Reynolds Pond Road, resulting in severe personal injuries. (A12). Ms. Spellman testified that she would have been traveling eastbound on Reynolds Pond Road whether she was driving home (A10), to Dr. Coveleski's office (A10), or to the home of her next patient, Mr. Harris (A13).

The Board found against Ms. Spellman, noting that "Claimant was not acting within the course and scope of her employment

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when she was injured on January 14, 2011, as she was not 'on the clock' for VNA and she was headed home for her own personal convenience during a time that she blocked off from her work schedule and when she was not available for work." (B11)

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ARGUMENTS

I. THE SUPERIOR COURT AND INDUSTRIAL ACCIDENT BOARD ERRED AS A MATTER OF LAW IN CONCLUDING THAT APPELLANT'S INJURIES DID NOT ARISE OUT OF THE COURSE AND SCOPE OF HER EMPLOYMENT. (Question preserved at IAB p. 7, question presented in Superior Court brief arguments I(B) and I(C)).

Question Presented

Did the Industrial Accident Board and Superior Court err as a matter of law by concluding Claimant's injuries did not take place in the course and scope of her employment?

Standard of Review

Whether Claimant's injuries occurred in the course and scope of her employment is a mixed question of law and fact. In an appeal from the Board, we examine the record for any errors of law in applying our worker's compensation act. Histed v. E.I. Dupont de Nemours, 621 A.2d 340 (Del. Supr. 1993).

When there is an appeal based on legal issues, the standard of review is de novo. Walden v. Georgia-Pacific Corporation, 738 A.2d 239, *2 (Del.Supr. 1999); see also Oceanport Industries, Inc. v. Wilmington Stevedores, Inc., 636 A.2d 892, 899 (Del.Supr. 1994).

Merits

Injuries sustained by employees on the way to work, and on the way home from work, are generally held to be non-compensable under Delaware law. An exception exists to this "going and coming rule" for individuals who are deemed to be traveling employees. Claimant contends that she is a traveling employee,

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rendering the going and coming rule inapplicable in the case at bar.

Delaware law recognizes compensability for "personal injury or death by accident arising out of and in the course and scope of employment." 19 Del. C. §2304. This general provision is limited, and Worker's Compensation benefits

> Shall not cover an employee except while the employee is engaged in, on or about the premises where the employee's services are being performed, which are occupied by, or under the control of, the employer (the employee's presence being required by the nature of the employee's employment), or while the employee is engaged elsewhere in or about the employer's business where the employee's services require the employee's presence as part of such service at the time of the injury."

19 Del. C. § 2301(18)(a).

In Devine v. Advanced Power Control, 663 A.2d 1205 (Del. Super. 1995), the court created an exception to the going and coming rule in the case of traveling employees. This exception defines a traveling employee as one who has "a semi-fixed place of employment" Id. at 1213., and "whose trips to and from work are a substantial part of his employment." Id. When evaluating the applicability of exceptions to the going and coming rule, the courts have given guidance to the Industrial Accident Board. "The Board should narrowly interpret the coming and going rule and broadly interpret the exceptions so that coverage is not denied wherever the injuries can fairly be characterized as

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arising out of the employment." Collier v. State, 1994 WL 381000 at 2, (Del. Super. 1994). The Devine court approaches this analysis in two stages: the first inquiry is whether the Claimant fits into the class of "traveling employees." The second is an inquiry into the totality of the circumstances, with the Devine court providing a number of factors that should be considered when tackling this particular issue.

In light of the definition of "traveling employee" as set out by the court in Devine, the factual findings of the Board suggest that Mary Spellman falls into this class. As a visiting home health aide, her job was to travel to the homes of various patients and offer services on behalf of her employer. She had no fixed place of employment; there is no "home office" to which she reports at the beginning of her work day (A11-12); Ms. Spellman begins her work day by reporting directly to the home of the first patient on her schedule. Indeed, Ms. Spellman would only report to the home office for periodic staff meetings and to pick up supplies on an as needed basis(A12). Trips to and from work are a substantial part of Ms. Spellman's employment by the very nature of the position. CCHS/VNA is able to cater to the market of homebound individuals because of the willingness of visiting nurses to travel to the homes of such patients.

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Upon finding that a claimant is a traveling employee under the test adopted in Devine, the appropriate measure of whether

or not claimant's injury occurred in the course and scope of employment is an evaluation of the totality of the circumstances. Based upon the factors set forth in Devine, the totality of the circumstances demonstrates that Ms. Spellman's accident and subsequent injuries arose from the course and scope of her employment with CCHS/VNA.

In Devine, the court awarded Worker's Compensation benefits to a traveling employee whose injuries were the result of an accident that occurred on the Claimant's return trip home from a work site. He was not being paid for the mileage travelled on the journey, and there was no indication that he would be doing any additional work for the employer later that day. Still, the court identified Mr. Devine as a traveling employee, and looked to the totality of the circumstances in awarding him benefits. In evaluating the totality of the circumstances, the court noted that Claimant "was not required to check in at the office or warehouse"; that he "used his own motor vehicle to travel to the various work sites"; that "in his motor vehicle he carried materials, blueprints and other supplies necessary to fulfill his duties as an employee"; and that "during the working day, if required by his employer, claimant would travel from one work site to another in his own motor vehicle." These factors led the court to conclude that the claimant, "while traveling back and forth from his assigned work places, was furthering his employer's business interests." Devine 663 A.2d at 1213. Though

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Mr. Devine was engaged in an unpaid, off the clock trip to a non-business destination at the time of the accident, the Devine court still found that said trip was "a substantial part of his employment." Id. Thus, the court found that "the totality of the circumstances show that the injuries here arose out of and in the course of claimant's employment" and awarded benefits accordingly. Id.

All of the above factors are present in the case at hand. At the July 19, 2011 hearing, Ms. Spellman testified that she was not required to check in at a fixed place of employment, instead reporting directly to each individual job site. Ms. Spellman also offered undisputed testimony that she uses her own vehicle to travel to her patient's residences, and in her car she keeps gloves, gowns, and other medical supplies for use at patient visits. As for the last factor, that of travel back and forth from work sites constituting a furtherance of her employer's interests, the very nature of Ms. Spellman's job is predicated upon traveling in her own vehicle from one patient's home to the next. As was the case in Devine, the Board found that Ms. Spellman was on her way home at the time of the accident. Here, as in Devine, her trip home was a substantial part of her employment, and her travels back and forth from patient's homes advanced her employer's interest. The totality of the circumstances, particularly when viewed in the context of construing exceptions to the "going and coming" rule broadly,

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demonstrate that her injuries arose out of and in the course and scope of her employment.

Both the Industrial Accident Board and the Superior Court failed to engage in an analysis of Devine. In its Opinion, the Board held as follows:

> The Board finds that Claimant's motor vehicle accident did not arise out of or in the course and scope of her employment, as it occurred while she was "off the clock" and on her way home and then to a personal doctor's appointment. She was not on a special errand related to her work, on a mixed purpose trip since there was no benefit for VNA, on a short personal comfort stop, nor was she traveling between client appointments. The fact that she was not paid for mileage and her time at the time of the motor vehicle accident are additional factors leading to the Board's decision that Claimant was not in the course and scope of her employment at the time of the accident.
>
> Spellman v. Christiana Care Health Services, Del.IAB Hearing No. 1364655 (July 21, 2011).

In the Superior Court's decision, Judge Stokes, on the subject of the traveling employee exception, stated:

> Claimant argued to the Board and on appeal that this exception applies to her case. The Board disagreed, noting that payment of Claimant's travel expenses would have brought her with in the scope of this rule, but she was not paid for her expenses. This is confirmed by the fact that Claimant was clocked out and was on a personal trip home before going to see her doctor at the time of the accident. Viewing a totality of the circumstances, the Court concludes that the Board's decision that claimant was not acting within the course and scope of her employment when she was injured is supported by substantial evidence and is free from legal error.
>
> Spellman v. Christiana Care Health Services, C.A. No. S11A-08-001, Stokes, J. (Del. Super. May 17, 2012)

The Superior Court decision amounts to what is essentially

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a rubber stamping of the Board's holding, including the Board's erroneous statement of the law with respect to the requirements of the traveling employee exception. In its Opinion, the Board indicated that "payment of travel expenses would bring Claimant within the course and scope of her employment pursuant to the 'traveling employee' exception of the general 'going and coming' rule as held in Histed." (B10), a sentiment echoed in the above cited passage of the Superior Court decision. This wording is both an incorrect statement of the holding of Histed v. E.I. Dupont de Nemours, 621 A.2d 340 (Del. Supr. 1993), as well as misstatement of the recognized "traveling employee" exception to the "going and coming" rule.

In Histed, the court does not address the issue of whether or not traveling employees are exempt from the going and coming rule. In the very first paragraph of the Histed opinion, the court notes that "this case raises an issue we have not previously addressed under our workers' compensation law - when, if ever, can an employee's commute to the work site qualify under the "special errand" exception to the general going and coming rule of employer non-liability?" Id. at 341.

In evaluating Ms. Histed's claim, the court acknowledged that "questions relating to the course and scope of employment are highly factual. Necessarily, they must be resolved under a totality of the circumstances test." Id. at 345. In doing so, the court examined the urgency of Ms. Histed's trip, the time

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and trouble of making the journey, the special inconvenience, and the hazards of making the trip under the circumstances. Id. at 346. The court makes special note of the fact that Ms. Histed was paid for her travel, creating the "compensation exception" to the going and coming rule.

The case before this Honorable Court is distinguishable from Histed. Ms. Histed was an employee whose job did not entail extensive travel. By all indications, the only travel required by her position was the commute to and from the office that served as her fixed place of employment. Her injuries were sustained on an extraordinary trip to the office, made in the middle of the night in response to an emergency. Perhaps most importantly, Ms. Histed was paid for her time that evening, including the time spent driving to the plant. Ms. Histed did not argue, nor did the court find, that she was a "traveling employee." The exception to the "going and coming" rule used by the Court to award benefits to Ms. Histed is distinct from the exception sought here.

In the case at hand, Claimant concedes that she would not have been paid for mileage traveled or time spent on the trip in which her accident occurred. Had she been paid for this trip, Histed would have controlled and there would have been no need to seek compensability under the "traveling employee" exception, which exists specifically *because* there are trips for which traveling employees are *not* paid, but are justly

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considered to be in the course and scope of their employment.

In their respective opinions, the Board and the Superior Court also placed a great deal of emphasis on the fact that Ms. Spellman was "clocked out" at the time her accident occurred. The Board cited Dietel v. Chartwell Law Offices, Del.IAB Hearing No. 1362880 (June 27, 2011), alleging that "compensation was denied because Ms. Dietel had 'clocked out' when she ran a personal errand and was injured on the way back to the office." (B9). This represents a misstatement of the holding of Dietel.

In Dietel, the Claimant was an employee with a fixed place of employment. Ms. Dietel was injured when in the process of returning to her employer's premises, having left them to pay a windshield repairman. Ms. Dietel acknowledged that she "clocked out" before leaving the office to undertake this personal errand. The Board ponders the effect that "clocking out" would have on the analysis of compensability, but ultimately declines to make a determination on the issue, because the "personal comfort" alleged by Ms. Dietel "applies only when the employee is on the employer's premises at the time of injury." Dietel, citing Stevens v. State, 802 A.2d 939, 949 (Del. Super. 2002). Instead, the issue of "clocking out" serves as but one consideration the board made in rendering its decision, and certainly not the dispositive factor, as suggested by the Board's decision in Spellman. The Board ultimately held that "Claimant was not on Employer's premises at the time of the

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incident and thus her injury is not compensable." Dietel at 16.

Even if the Board's interpretation of Dietel was correct, its application to the case at hand would be inappropriate. In footnote 19 of Dietel, the Board notes that the analysis is "only true if the employee has a 'fixed' place of employment. A different (albeit related) set of rules has developed for an employee who has a 'semi-fixed' place of employment and who can be characterized as a 'traveling employee.'" The footnote ends with a reference to Devine, the controlling case disregarded by the Board in Spellman.

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II. THE SUPERIOR COURT AND INDUSTRIAL ACCIDENT BOARD ERRED AS A MATTER OF LAW BY FAILING TO FIND THAT CLAIMANT'S ACCIDENT TOOK PLACE DURING A MIXED PURPOSE TRIP. (Question preserved at IAB p. 9, question presented in Superior Court brief arguments II(B) and II(C)).

Question Presented

Did the Industrial Accident Board err as a matter of law by concluding that Claimant was not engaged in a dual purpose trip at the time of her January 14, 2011 accident?

Standard of Review

Whether Claimant's injuries occurred in the course and scope of her employment is a mixed question of law and fact. In an appeal from the Board, we examine the record for any errors of law in applying our worker's compensation act. Histed v. E.I. Dupont de Nemours, 621 A.2d 340 (Del. Supr. 1993).

When there is an appeal based on legal issues, the standard of review is de novo. Walden v. Georgia-Pacific Corporation, 738 A.2d 239, *2 (Del.Supr. 1999); see also Oceanport Industries, Inc. v. Wilmington Stevedores, Inc., 636 A.2d 892, 899 (Del.Supr. 1994).

Merits

Should this Honorable Court find that Claimant's injury did not fall into the "traveling employee" exception to the general "going and coming" rule, Claimant asks that she be found to be in the course and scope of her employment on the grounds that,

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at the time of the accident, Ms. Spellman's path of travel had not deviated from a path serving a business purpose.

The travel in which Ms. Spellman was engaged at the time of the accident should be considered a "mixed-purpose trip," a trip ministering to both business and personal errands. The court first addressed the issue of injuries that occur during travel that suits both business and personal purposes in Children's Bureau v. Nissen, 29 A.2d 603 (Del. Super. 1942). The issue facing the court in Nissen was whether a claimant was in the course and scope of her employment when she was injured returning home from a trip to a conference that served both a business and personal purpose. The "dual purpose test" was summarized as follows:

> The question is whether the employer exposed the employee to the risk. Service to the employer must, at least, be a concurrent cause of the injury. Where a private purpose and service to the employer coexist, the facts of the case must permit the inference that the journey would have been made even though the private purpose had been abandoned. The test is whether it is the employment or something else that impels the journey and exposes the traveler to its risks. If the service creates the necessity for the travel, the employee is in the course of his employment, even though, at the same time, he is serving some purpose of his own.

Nissen 29 A.2d at 607.

As stated above, Ms. Nissen's injuries were sustained on the return trip home from an alleged employment related function. In its analysis, the court focused not on the fact

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that she was going home. Instead the discussion was centered on what brought Ms. Nissen to the convention, her original destination. The court determined that Ms. Nissen had primarily gone to the convention for a non-employment related purpose. Ms. Nissen was "in no atmosphere of necessity or compulsion. She had not been directed, or even requested to go to the convention." Id. Instead, the court found that Ms. Nissen's primary reason for attending was to serve as her school's delegate to the convention, a primarily personal purpose. Accordingly, the court denied compensability, finding that it was "the private purpose, not the service, that induced and compelled the journey. The travel was hers, and so the risk." Id.

In the present case, that it was a business purpose which brought Ms. Spellman to the home of Mr. Lourdy is not in dispute; Ms. Spellman was clearly at the home of Mr. Lourdy to provide the services offered by her employer. Both the Claimant and her supervisor offered testimony that acknowledges that Ms. Spellman was visiting Mr. Lourdy's home in service of VNA. It was her service as a home health aide for VNA that led her to drive in dangerous, wintery conditions to the home of Mr. Lourdy. Her employment with VNA is what exposed her to the risk of travel at that place and time. When, like the Claimant in Nissen, Ms. Spellman was injured on her return trip home,

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Professor Larson, in his treatise *The Law of Workmen's Compensation*, offers another approach to determining compensability for injuries that occur during a trip that administers to both personal and employment related functions. He analyzes trips that serve multiple purposes by breaking the trip into its successive parts and labeling them as "business" or "personal." 1-17 Larson's Workers' Compensation Law § 17.02. Compensability should then be determined based upon the nature of the part of the trip on which the injury occurred. Id.

The analysis offered by Professor Larson can be seen in Williams v. American Employers' Ins. Co., 107 F.2d 953 (D.C. Cir. 1939). The opinion in Williams, written by then-future Chief Justice of the United States Supreme Court Fred M. Vinson, deals with injuries sustained by an employee while traveling with the expectation of making a personal detour, but before the detour took place. Mr. Williams was traveling with a co-worker in the direction of a business objective, but was to turn off some future point to engage in a personal errand. Before arriving at the turn off, the accident at the subject of the matter occurred. The court found that, because the deviation from the business purpose had not yet taken place, the injuries were suffered in the course and scope of employment. Id. At 955.

Like the claimant in Williams, Ms. Spellman's planned trip on January 14, 2011 is of the type that Larson would

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characterize as "Point of Personal Deviation Not Yet Reached." Such a case "is not altered by the fact that the personal errand, if it had been reached, would have necessitated a detour from the main business route, so long as, at the time of the accident, the claimant was on the direct route which he had to take to reach his business destination." Larson's 17.02 at 2. In a situation such as this, "the prospect of a future deviation [is] of no consequence as long as the accident occurred on the direct route which the claimant had to travel." Id.

In the matter at hand, Ms. Spellman's trip was one of mixed purpose; the Board found that Ms. Spellman was headed to her home at the time of the accident (B11). While the Board did not make specific note of it in its Opinion, testimony given at the hearing established that the trip brought her in the direction of her next business appointment, Mr. Harris' home at 326 Cedar Drive, Lincoln, Delaware (A13-14). Ms. Spellman was traveling eastbound on Reynolds Pond Road at the time of the accident(A12); She would have been traveling on this road whether she was going to Dr. Coveleski's office, Mr. Harris' house, or her own home.(A10-12, 14) Ms. Spellman would not have deviated from her business route, the trip to Mr. Harris' house, until after she turned off of Reynolds Pond Road onto State Route 30. From Route 30, Ms. Spellman would then have either a) turned onto Route 1, heading towards her home, or b) stayed on Route 30, turning onto Cedar Creek Road to get to Mr. Harris'

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home. Ultimately, Ms. Spellman was never confronted with this scenario, as the accident happened on Reynolds Pond Road, approximately 1.2 miles west of Route 30. As a result, Ms. Spellman never deviated from her business route, rendering the prospect of a future deviation inconsequential. Accordingly, the Court should hold that the accident took place in the course and scope of her employment.

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CONCLUSION

Both the Superior Court and the Industrial Accident Board committed legal error in denying Claimant's Petition to Determine Compensation Due on the grounds that the accident did not take place in the course and scope of her employment. If the Board's holding in the case at hand is affirmed, it would effectively abolish the "traveling employee" exception to the "going and coming" rule of employer non-liability. Worse still, it would allow the employers of traveling employees to eliminate exposure in otherwise rightly compensable injuries by refusing to pay mileage for travel and requiring traveling employees to "clock out" before beginning travel. In light of the holding of Devine, as well as the factual findings of the Industrial Accident Board at the July 19, 2011 hearing, Claimant asks this Honorable Court to REVERSE the July 21, 2011 decision and find Ms. Spellman to have been in the course and scope of her employment pursuant to the "traveling employee" exception at the time of her January 14, 2011 motor vehicle accident.

Alternatively, in light of the holding of Nissen, Claimant asks that this Honorable Court find that the Board committed reversible legal error in failing to identify Ms. Spellman's trip as one of mixed purpose, and REVERSE the Board's July 21,2011 decision.

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Respectfully submitted,

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