

although plaintiff's status, as a trespasser for example, may have some bearing on the question of liability, status would not be determinative:

[W]hatever may have been the historical justifications for the common law distinctions, it is clear that these distinctions are not justified in the light of our modern society. . . .⁵⁸

The basic theory of tort law is compensation, by one at legal fault, to the innocent plaintiff. Regardless of whether or not Daluiso was a wrongful possessor, he was a peaceful, innocent possessor and now our law more fully protects that possession, not only by statutory sanctions against forcible entry but by the availability of a civil remedy. A man's home may not be his castle, legally, but his peaceful possession of that home is protected by law. His right to be free from personal injury arising from a forcible entry is a right paramount to title.

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WORKMEN'S COMPENSATION—VICARIOUS LIABILITY BENEFIT TEST APPLIED IN RECOGNIZING EXCEPTION TO GOING AND COMING RULE. *Smith v. Workmen's Compensation Appeals Board* (Cal. 1968).

On December 27, 1965, social worker Charles Smith was fatally injured in a single car accident while driving from his home to the office. Smith's widow was denied workmen's compensation benefits on the ground that her husband's death did not occur while he was acting within the scope of his employment. The California Supreme Court reviewed the order of the Workmen's Compensation Appeals Board. *Held*, annulled: Because Smith was required by his employer to bring his car to work, the going and coming rule¹ did not bar him from receiving workmen's compensation benefits. *Smith v. Workmen's Compensation Appeals Board*, 69 Cal. 2d 814, 447 P.2d 365, 73 Cal. Rptr. 253 (1968).

Compaigne Generale, 358 U.S. 625, 630-31, 3 L.Ed.2d 550, 554-55, 79 S. Ct. 406, 410 (1959).

58. *Id.* at 117, 443 P.2d at 567, 70 Cal. Rptr. at 103.

1. The rule, as generally stated, is that an employee is not within the scope of his employment while he is going to or returning from his place of work. *See, e.g.*, 1 A. LARSON, LAW OF WORKMEN'S COMPENSATION § 15.00 (1968) [hereinafter cited as 1 A. LARSON].

In *Smith*, the California Supreme Court has recognized another exception to the already much eroded going and coming rule. The exception is not unique and has been applied by other state courts for almost 30 years.² However, the reasoning the court used in invoking this exception is a new approach to workmen's compensation in California and may be an indication of significant changes in the future. The purpose of this comment will be to analyze the court's reasoning in light of past and present applications of the going and coming rule and to discuss possible replacement of the rule by an employment relationship test.

Workmen's compensation was established by the various state legislatures³ as a means of caring for the many workers who are injured as a result of their employment.⁴ This program has two advantages over the state sponsored welfare programs. First, it lets the injured employee keep his dignity instead of being subjected to the stigma that goes with state welfare programs. The injured industrial worker, supported by insurance benefits through the Workmen's Compensation program is looked upon by society much the same as the wounded war veteran. Both, injured in the performance of their duties and by virtue of such injuries, have earned the support they are receiving. Secondly, workmen's compensation places the burden of caring for the injured employee on the consumer who uses the product, the manufacture of which caused the injury.⁵ By burdening this consumer rather than a non-

2. See, e.g., *Pittsburg Testing Laboratories v. Kiel*, 130 Ind. App. 598, 167 N.E.2d 604 (1960); *Davis v. Bjorenson*, 229 Iowa 7, 293 N.W. 829 (1940); *Borak v. H.E. Westerman Lumber Co.*, 239 Minn. 327, 58 N.W.2d 567 (1953); *Bailey v. Utah State Indus. Comm'n.*, 16 Utah 2d 208, 398 P.2d 545 (1965).

3. Workmen's compensation statutes were first held constitutional by the United States Supreme Court in: *New York Central R.R. Co. v. White*, 243 U.S. 188 (1917); *Hawkins v. Bleakley*, 243 U.S. 210 (1917); *Mountain Timber Co. v. Washington*, 243 U.S. 219 (1917). For a history of workmen's compensation see 1 A. LARSON §§ 5.20-5.30.

4. A typical workmen's compensation statute includes the following features: "(a) the basic operating principle is that an employee is automatically entitled to certain benefits whenever he suffers a 'personal injury by accident arising out of and in the course of employment'; (b) negligence and fault are largely immaterial . . . ; (c) coverage is limited to persons having the status of employee, as distinguished from independent contractor; (d) benefits to the employee include cash wage benefits, hospital and medical expenses; in death cases benefits for dependents are provided; arbitrary maximum and minimum limits are ordinarily imposed; . . . and (h) the employer is required to secure his liability through private insurance, state fund insurance in some states, or 'self-insurance'; thus the burden of compensation liability does not remain upon the employer but passes to the consumer, since compensation premiums will be reflected in the price of the product." 1 A. LARSON § 1.10.

5. *Id.* at § 2.20.

consumer taxpayer, workmen's compensation reaches a more equitable distribution of the burden. That is, the consumer who actually demands and uses the product ultimately pays for the injuries resulting from the hazards inherent in the manufacture of that product.

Determining when an employee's injury results from his employment is the most difficult aspect of workmen's compensation. To assist the courts, the legislatures set up a guideline: the injury must "arise out of and in the course of the employment."⁶ The courts separated the phrase into two distinct parts: "arising out of"⁷ and "in the course of,"⁸ and applied them as two separate tests. In trying to determine when an employee was "in the course of" his employment, the courts developed the going and coming rule⁹ which said that an employee was not "in the course of" his employment when traveling to and from work.¹⁰ The rule was first applied in England¹¹ and was later adopted by United States courts.¹²

As soon as the rule was formulated, the need for exceptions became apparent. The courts found that they must not only apply the rule, but also the exceptions. The more widely recognized exceptions include: (1) employees enroute to and from work in vehicles sanctioned by the employer, even though use of the transportation was not ordered;¹³ (2) employees subject to call at

6. Workmen's compensation eligibility requirements are stated in CAL. LABOR CODE § 3600 (West 1968):

Liability for the compensation . . . in lieu of any other liability whatsoever to any person except as provided in section 3706, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death

7. "Arising out of" refers to a causal connection between the employee, as distinct from the general public, and a peculiar risk to which the employee was subjected because of his employment. 1 A. LARSON § 6.00.

8. "In the course of" requires that the injury arise within the time and place of employment, and while engaged in an activity whose purpose is related to the employment. *Id.* at § 14.00.

9. The legislature does not mention the going and coming rule in establishing its requirements for compensation; the rule is strictly a product of judicial decision. *See* CAL. LABOR CODE § 3600 (West 1968).

10. W. WILLIS, WORKMEN'S COMPENSATION 24 (37th ed. 1945).

11. Benson v. L. & Y.R. [1904] 1 K.B. 242.

12. The "going and coming" rule was initially applied in California in *Ocean Acc. & Guarantee Co. v. Industrial Acc. Comm'n*, 173 Cal. 313, 322, 159 P. 1041, 1044 (1916).

13. *E.g.*, *Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469 (1947); *Puett v. Bahnson*,

the time of the injury;¹⁴ (3) traveling employees or employees on a special errand;¹⁵ (4) employees paid by their employer from the moment they leave home until they return home;¹⁶ and (5) employees going home to do further work, or after beginning work at home injured en route to the office to continue work.¹⁷ There are many more exceptions which are less widely recognized.¹⁸

In *Smith*, California has recognized the exception which pertains to an employer requiring an employee to bring his car to work. In so doing, the court overruled *Postal Telegraph Cable Co. v. Industrial Accident Commission*¹⁹ which involved a motorcycle messenger who was required to furnish his own motorcycle and was injured while riding it to work. This court held that since the messenger could have fulfilled his employment contract by leaving his motorcycle at work during off-duty hours, riding to or from work was for the postal employee's convenience and any risks encountered were those of a commuter, not an employee.

The *Smith* court did not address itself to the *risk* concept used in *Postal Telegraph* but was concerned with the *benefit* that accrued to an employer by an employee's activity.²⁰ Workmen's compensation has usually been predicated on a risk concept.²¹ If an employee is subjected to a risk as a result of his employment status, any injuries the employee suffers because of that risk are

231 N.C. 711, 58 S.E.2d 633 (1950). Nineteen states including California have recognized this exception; none have specifically rejected it. See 1 A. LARSON § 16.30 n.76.

14. *E.g.*, *Employers' Liab. Assur. Corp. v. Industrial Acc. Comm'n*, 37 Cal. App. 2d 567, 99 P.2d 1089 (1940); *Souza's Case*, 316 Mass. 332, 55 N.E.2d 611 (1944). 1 A. LARSON § 16.12 lists other state decisions recognizing this exception.

15. *E.g.*, *Harvey v. D. & L. Const. Co.*, 251 Cal. App. 2d 48, 59 Cal. Rptr. 255 (1967); *Olson Drilling Co. v. Industrial Comm'n*, 386 Ill. 402, 54 N.E.2d 452 (1944). Eighteen states have recognized this exception; only Missouri has specifically rejected it. See 1 A. LARSON § 16.10 n.44.

16. *E.g.*, *Western Pipe & Steel Co. v. Industrial Acc. Comm'n*, 49 Cal. App. 2d 108, 121 P.2d 35 (1942). Eleven states recognize this exception; none reject it. See 1 A. LARSON § 16.20 n.69.

17. *E.g.*, *Proctor v. Hoage*, 81 F.2d 555 (D.C. Cir. 1935); *Lang v. Board of Educ.*, 70 S.D. 343, 17 N.W.2d 695 (1945). Eight states recognize this exception; nine, including California, reject it. See 1 A. LARSON § 18.31 n.84.

18. Additional exceptions to the going and coming rule are in 1 A. LARSON §§ 16.00-18.40.

19. 1 Cal. 2d 730, 37 P.2d 441 (1934).

20. *Smith v. Workmen's Comp. App. Bd.*, 69 Cal. 2d 814, 820, 447 P.2d 365, 369, 73 Cal. Rptr. 253, 257 (1968).

21. Liability is predicated upon "actual employer-controlled risks of employment." See 1 A. LARSON § 17.30.

compensable. In contrast, the benefit theory used in *Smith* is based on the premise that: "An employer cannot request or accept the benefit of an employee's services and concomitantly contend that he is not performing service growing out of and incidental to this employment."²²

Other state courts, applying only the risk concept, have recognized the *Smith* exception and the California court could have adopted this rationale. For instance, the Iowa Supreme Court was confronted with the same situation as *Smith* in *Davis v. Bjorenson*.²³ A service station employee, required to have his car present at work, was injured in an accident while driving his car to work in the morning. The court held that this case was an exception to the going and coming rule because the "claimant had no selection of his mode of travel to work"²⁴ and thus did not have the option to avoid the risks inherent in travel by motor vehicle. By being able to select a mode of travel, one has control over the risks to which he is subjected. As an example, walking may be less hazardous than driving a car, which is less hazardous than riding a motorcycle. When an employer restricts the mode of travel to work, he is in effect selecting the risks to which the employee will be subjected. The Louisiana Appellate Court decided a similar case on the theory of risk. In *Willis v. Cloud*,²⁵ the court pointed out the hazards of motor travel and held that since the employee had lost his option to avoid these hazards, injuries sustained in such travel are compensable.²⁶

However, the California Supreme Court in *Smith* discards the risk theory in favor of the benefit theory without explanation. Insight into the court's unexplained reasoning may be found by examining the benefit theory as applied in a similar tort concept, vicarious liability.²⁷ Vicarious liability has a going and coming rule which excludes an employer from liability for the torts of an employee committed while going to or from work.²⁸ It is based on one of two theories: (1) The employment relationship is

22. 69 Cal. 2d at 820, 447 P.2d at 369, 73 Cal. Rptr. at 257.

23. 229 Iowa 7, 293 N.W. 829 (1940).

24. *Id.* at 8, 293 N.W. at 830.

25. 151 So. 2d 379 (La. App. 1963).

26. *Id.*; accord, *Davis v. Bjorenson*, 229 Iowa 7, 293 N.W. 829 (1940).

27. Vicarious liability is defined as the liability of a master (employer) for the torts of his servant (employee). See W. PROSSER, LAW OF TORTS § 68 (3d ed. 1964).

28. *Harris v. Oro-Dam Constructors*, 269 Adv. Cal. App. 2d 1027, 75 Cal. Rptr. 544 (1969).

“suspended” from the time he leaves his job to go home until he returns to it;²⁹ or (2) At the time of the tort, the employee was not rendering a service to the employer.³⁰

Many courts have tried to superimpose the tort going and coming rule upon the workmen’s compensation going and coming rule,³¹ but the two are not the same.³² Compensation in a tort action is predicated on fault,³³ either that of the employer or employee. Workmen’s compensation is concerned with the proper placement of the burden of an employee’s injury, regardless of fault, so long as support is provided and destitution is prevented.³⁴ Fault, either by the employer or the employee, is not a consideration. There are many circumstances which are within the scope of employment of workmen’s compensation, but not of vicarious liability.³⁵ Therefore, the courts should be extremely careful in applying a tort principle to workmen’s compensation cases.³⁶

In tort, the determination of when an activity is within the “course of employment,” is made by applying a twofold test: (1) Does the activity benefit the employer’s enterprise and, (2) Does

29. See *Harvey v. D. & L. Constr. Co.*, 251 Cal. App. 2d 48, 51, 59 Cal. Rptr. 255, 257 (1967).

30. See *Robinson v. George*, 16 Cal. 2d 238, 244, 105 P.2d 914, 917 (1940).

31. See, e.g., *Richards v. Metropolitan Life Ins. Co.*, 19 Cal. 2d 236, 120 P.2d 650 (1941); *Breland v. Taylor Engineering etc. Co.*, 52 Cal. App. 2d 415, 126 P.2d 455 (1942).

32. 1 A. LARSON § 14.00.

33. 2 F. HARPER & F. JAMES, *THE LAW OF TORTS* 1361 (1956) [hereinafter cited as F. HARPER & F. JAMES].

34. 1 A. LARSON § 1.20.

35. E.g., *Pacific Emp. Ins. Co. v. Industrial Acc. Comm’n*, 26 Cal. 2d 286, 158 P.2d 9 (1945).

36. S. RIESENFELD & R. MAXWELL, *MODERN SOCIAL LEGISLATION* 139 (1950):

[W]orkmen’s compensation is a *type of social insurance* designed to protect the workers against *occupational* hazards of a particular class It would be wholly erroneous to think that the techniques used for the proper allocation of certain industrial hazards would be correctly transposed for the distribution of hazards of a totally different kind and involving a separate class of persons subjected to such exposure.

Larson also comments on this problem:

Almost every major error that can be observed in the development of compensation law, whether judicial or legislative, can be traced either to the importation of tort ideas, or, less frequently, to the assumption that the right to compensation resembles the right to the proceeds of a personal insurance policy.

1 A. LARSON § 1.20. *But cf.* *Shell Oil Co. v. Industrial Acc. Comm’n*, 199 Cal. App. 2d 426, 18 Cal. Rptr. 540 (1962), for an example of the tort concept of “foreseeability” applied to the “special errand” exception to the going and coming rule.

the employer have a right to control this activity?³⁷ The benefit test in California is met when the employee, at the time of the tort, was pursuing those activities which he was employed to perform or which incidentally or indirectly contributed to the employer's business objectives.³⁸ It appears that this is the test applied in *Smith*. By bringing his automobile to work, Smith was performing a beneficial service for his employer. The furnishing of the automobile by Smith enabled his employer to send Smith into the field in furtherance of the employer's business.

The court, however, summarily dismisses the control test by simply saying that it "raises no material issue."³⁹ The court addresses itself to the physical control of the driver and concludes that control has nothing to do with establishing an employment relationship between employer and employee. But, the control factor appears to be broader than this. In tort, "control really goes to the concept of accident prevention;"⁴⁰ the test relates to an overall control of the employee. The employer has the discretion of whether or not to subject a certain employee to a particular hazardous situation. For instance, in *Smith*, the employer exerted control to the extent that Smith had to drive his own motor vehicle to work. The options of walking, riding a bus or train, or riding in a car pool were closed. By reducing Smith's modes of travel to work to just one, the employer is in effect controlling this activity.

If the court intends to apply the benefit test in all workmen's compensation cases involving the going and coming rule, the decisions will be inconsistent with recognized exceptions to the rule. These exceptions are based on a risk concept and all of them may not be adaptable to the benefit theory. An application of the benefit test in a recent case involving an exception to the rule will illustrate this point.

In 1967, the California Supreme Court decided the case of *Zenith National Insurance Co. v. Workmen's Compensation Appeals Board*.⁴¹ *Zenith* involved a plaintiff who suffered injuries

37. *Gossett v. Simonson*, 243 Ore. 16, 411 P.2d 277 (1966); see 2 F. HARPER & F. JAMES at 1366-70; W. PROSSER, TORTS § 68 (3d ed. 1964).

38. *Harris v. Oro-Dam Constructors*, 269 Adv. Cal. App. 1027, 1031, 75 Cal.Rptr. 544, 547 (1969).

39. 69 Cal. 2d at 821, 447 P.2d at 370, 73 Cal. Rptr. at 258.

40. 2 F. HARPER & F. JAMES at 1368.

41. 66 Cal. 2d 944, 428 P.2d 606, 59 Cal. Rptr. 622 (1967).

in an auto crash while en route to a remote construction site. The plaintiff was not furnished transportation to the job site, nor required to have his automobile present at the site. However, as an inducement to obtain employees, because of the remoteness of the construction site, the employer paid the plaintiff \$10.00 per day to cover transportation, food and housing expenses. The transportation expense provision in the contract was interpreted as the employer's implied agreement to continue the employment relationship during the period the employee was traveling to and from work. Since an employment relationship existed at the time of the injury, the court held the injury compensable as an exception to the going and coming rule.

If the benefit test as applied in *Smith* were applied to *Zenith*, a different holding would result. The going and coming rule postulates that benefit from travel between work and home primarily accrues to the employee. When the trip also produces a benefit for the employer, such as running an errand or hauling equipment, the *Smith* court held that an employment relationship existed. Nevertheless by merely theorizing that because the employer paid a transportation stipend an employment relationship exists, it does not necessarily follow that a benefit to the employer is produced.⁴² The concept of an employment relationship encompasses the benefit theory: Benefit always results from an employment relationship, but an employment relationship can exist without a benefit accruing. In *Zenith*, travel to and from home by the employee does not benefit the employer. The employee is providing no service to the employer and the employer has no interest in the travel. The employee would get his \$10.00 per day whether he went home once a month, twenty times a month, or not at all. The trip between home and the place of work is primarily for the employee's benefit and the fixed stipend does not alter that fact.⁴³ Thus, application of the benefit test to *Zenith* would result in denial of compensation to the employee.

The California Supreme Court is not the first court to consider the benefit test in a workmen's compensation case.⁴⁴ As

42. *Harris v. Oro-Dam Constructors*, 269 Adv. Cal. App. at 1033, 75 Cal. Rptr. at 548. This case involves a fact situation similar to *Zenith*, but is an action based on vicarious liability.

43. *Id.* at 1033, 75 Cal. Rptr. at 548.

44. The court upon awarding compensation in *State Comp. Ins. Fund v. Industrial Comm'n*, 89 Colo. 426, 3 P.2d 414 (1931) noted that the employee "was performing an

other courts have discovered, and as can be seen from the application of the benefit test to *Zenith*, the results are not always satisfactory.⁴⁵ Consequently, the court could not have intended that the benefit test be applied to all going and coming situations; rather, a broader test, of which the benefit test is a part, should be used. *Smith* speaks of the "employment relationship"⁴⁶ in discussing the different exceptions to the going and coming rule. In finding that the employee is undergoing risks because of his employment, or that there is a contractual relationship between the employer and the employee,⁴⁷ or that the employee's act benefits the employer,⁴⁸ the court is really saying that an employment relationship existed at the time the injury occurred and, therefore, the employee's injuries are compensable. Larson, a leading authority on workmen's compensation, states: The "[r]ight to compensation benefits depends on one simple test: Was there a work-connected injury?"⁴⁹ The test involves relating an event to an employment. Thus, the employment relationship test is the finding of a causal relationship between the employment and the activity the employee was engaged in when injured.

The application of an employment relationship test in workmen's compensation is not new.⁵⁰ In an Alaska case,⁵¹ an employee was injured while returning home from a remote job site where the only means of transportation was by one's personal conveyance. In awarding compensation, the court, quoting from a previous opinion, said, "if the accidental injury or death is

act requested by his employer, for the direct *benefit* of his employer, and in the furtherance of the employer's business."

45. *DeSautel v. North Dakota Workmen's Comp. Bur.*, 72 N.D. 35, 4 N.W.2d 581 (1942). This decision has been criticized by Larson. The benefit theory was rejected by the court in *Davis v. Newsweek Mag.*, 305 N.Y. 20, 110 N.E.2d 406 (1953).

46. 69 Cal. 2d at 820, 447 P.2d at 369, 73 Cal. Rptr. at 257. "The employment relationship can hardly be severed during the performance of an act required by the employer for his own purposes and advantage."

47. *See, Zenith Nat. Ins. Co. v. Workmen's Comp. App. Bd.*, 66 Cal. 2d 944, 428 P.2d 606, 59 Cal. Rptr. 622 (1967).

48. *Smith v. Workmen's Comp. App. Bd.*, 69 Cal. 2d 814, 447 P.2d 365, 73 Cal. Rptr. 253 (1968).

49. I A. LARSON § 2.10.

50. Page, *Comments on Recent Important Workmen's Compensation Cases*, 30 NACCA L.J. 225, 230 (1964): "[T]he ambit of employee protection and the area of employee responsibility should be coextensive. Employer liability and employee responsibility should be correlative terms. If the employee's duties to his employer are continuous, the employer's obligation to his employee must be of equal duration."

51. *State Dep't of Highways v. Johns*, 422 P.2d 855 (Alas. 1967).

connected with any of the incidents of one's employment, then the injury or death would arise out of and be in the course of such employment."⁵²

As already stated, workmen's compensation is designed to shift the burden of employee injury from the injured to his employer and eventually to the consumer.⁵³ The going and coming rule limits the employer's, and in effect the consumer's, liability. The rule was designed to facilitate deciding workmen's compensation cases, yet it has developed so many exceptions that the court must still analyze each case according to its facts.⁵⁴

For a number of years, scholars have recognized the need for abolition of the going and coming rule.⁵⁵ Many courts have commented on how burdensome it is to apply the rule.⁵⁶ It places upon the courts a rebuttable presumption that any employee injured while en route to or from work is not to be compensated under workmen's compensation. The employee must show that he falls within one of the exceptions before he can receive any benefit.

Workmen's compensation is a social policy program, tailored to need not fault, and should be treated as such.⁵⁷ The going and coming rule was implemented as a substitute for ad hoc analysis and is a rule of form rather than substance. It mattered not whether the injury was really incurred because of employment so long as the injury occurred after working hours and off the employer's premises. With the gradual recognition of exceptions

52. *Id.* at 859 n.16.

53. See text accompanying note 5, *supra*.

54. Page, *Comments on Recent Important Workmen's Compensation Cases*, 25 NACCA L.J. 210, 211-12 (1960):

A slavish adherence to the rule calls for a recitation of the general proposition that injuries suffered by an employee travelling to or from work are not compensable; an enumeration of certain exceptions to the rule; and an attempt to fit the fact situation at hand into one of the accepted categories.

55. One scholar declares that: "The 'going and coming' rule is not a blot upon the liberal and beneficent bent of workmen's compensation legislation." *Id.* at 211.

56. The "going and coming" rule and its numerous exceptions reflect a continuing attempt to establish a rule applicable to each of the many factual situations which appear in the cases. This, of course, is an impossible task and the going and coming rule and the established exceptions are by no means a comprehensive statement of the law, nor can they be mechanically applied. It does not follow that the general rule applies in every situation where an established exception to the rule is inapplicable. The question is whether evidence shows an agreement that the employment relationship continue during the journey. *Joyner v. Workmen's Comp. App. Bd.*, 266 Adv. Cal. App. 498, 502, 72 Cal. Rptr. 132, 135 (1968).

57. 1 A. LARSON § 2.20.

to this rule, the substantive issue of whether or not the employee was engaged in an employment related activity has come to the forefront. The courts are now deciding each case in light of existing exceptions, but they should not be bound by these. No longer should a court be concerned with the superficialities of form, but rather should look to the facts of each case and decide whether or not the employee's injury was employment related.

The going and coming rule is not a legislative command; it is a judicial fiat and the courts alone must determine whether or not to abolish it. The California Supreme Court in *Smith* has liberalized the criteria for workmen's compensation by applying a new test to determine when a case falls within the going and coming rule, or within one of its exceptions. But, the court needs to go farther. Why not do away with the going and coming rule altogether?

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