WORKMEN'S COMPENSATION: RECOVERY UNDER THE POSITIONAL RISK DOCTRINE FOR PERSONALLY MOTIVATED ASSAULTS.

While performing duties for her employer, Lillian A. Schick was killed by her former husband. The employer manufactured table pads and decedent's job was to measure the tables of the retail outlet customers. Using an assumed name, Mrs. Schick's former husband formulated an elaborate ruse whereby Mrs. Schick was sent to measure his table. Upon her arrival at his apartment he killed her and committed suicide.

The referee of the Workmen's Compensation Appeals Board issued a take nothing award, finding that injury and death did not arise out of the employment. On petition for reconsideration, the Workmen's Compensation Appeals Board awarded compensation, finding that the employment did contribute to the death by placing decedent in an isolated location and thereby facilitating the assault. The Court of Appeal annulled the award, accepting petitioner's contention that the injury and death were caused by an assault originating in a personal dispute and thus could not arise out of the employment relationship. The Workmen's Compensation Appeals Board's petition for a hearing before the California Supreme Court was granted. *Held*, affirmed: Mrs. Schick's duties placed her in an isolated location, which facilitated and thus contributed to her death. *California Compensation and Fire Co. v. Workmen's Compensation Appeals Board* [hereinafter referred to as *California Comp.*].[1]

The California Labor Code[2] provides that for an injury or death to be compensable, it must occur in the course of employment and must arise out of the employment. "Course of the employment" refers to the time, place and circumstances under which an injury occurs,[3] while "arising out of the employment" relates to the cause of the injury, or the risks or hazards entailed by

1. 68 Adv. Cal. 155, 436 P.2d 67, 65 Cal. Rptr. 155 (1968).

2. CAL. LABOR CODE § 3600 (West 1955). "Liability . . . shall . . . 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 the death . . . ."

3. 2 W. HANNA, CALIFORNIA LAW OF EMPLOYEE INJURIES AND WORKMEN'S COMPENSATION § 9.01[1][b] (2d ed. 1967).

the employment.[4] California has construed "arising out of the employment" to mean the origin or source of the injury, requiring some connection between employment and injury.[5]

Understanding California's present construction of "arising out of employment" requires a brief survey of the three major interpretations of this phrase by American courts. These interpretations are: (1) The peculiar risk or increased risk doctrine; (2) the actual risk doctrine; and (3) the positional risk doctrine.[6] The peculiar or increased risk doctrine,[7] favored by most courts, finds an injury arising out of the employment only when it originates in a hazard peculiar to or increased by that employment and not common to people generally. A substantial number of other jurisdictions have adopted the actual risk doctrine[8] which requires only that there be an employment related risk; it is irrelevant that the risk is common to all persons. Under the positional risk doctrine,[9] followed by only a few jurisdictions, an injury can be found to arise out of the employment if it would not have happened "but for" the fact that the duties of employment required the claimant to be in the place or location where the injury occurred. Among the courts which utilize this test, most find it more convenient to apply it to selected situations, rather than adopt it outright.[10] California, however, appears to have fully adopted the positional risk doctrine.[11]

Cases such as *California Comp.* pose a unique question of application of the positional risk doctrine in that the derivation of the injury is solely personal. Traditionally, as stated by Arthur

4. *Id.* § 10.01[2].

5. *Id.* The Labor Code also requires the injury or death to be proximately caused by the employment. This is not synonomous with the proximate cause requirement in torts. It adds nothing to, and takes nothing from, the general coverage formula that injury must have been one arising out of and in the course of employment. Winter v. Industrial Acc. Comm'n., 129 Cal. App. 2d 174, 176, 276 P.2d 689, 691 (1954).

6. 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 6.00 (1966).

7. *Id.* § 6.20.

8. *Id.* § 6.30.

9. *Id.* § 6.40.

10. *Id.* Larson argues that:

> [t]his theory supports compensation, for example, in cases of stray bullets, roving lunatics, and other situations in which the only connection of the employment with the injury is that its obligations placed the employee in the particular place at the particular time when he was injured by some *neutral force*. . . . (emphasis added).

11. California Comp. & Fire Co. v. Workmen's Comp. Appeals Bd., 61 Cal. Rptr. 262, 266 (1967).

Larson[12] in *The Law of Workmen's Compensation*, awards have not been allowed for injuries attributable to personally motivated assaults:

> Assaults for private reasons do not arise out of the employment unless, by facilitating an assault *which would not otherwise be made*, the employment becomes a contributory factor.[13]

Professor Larson subsequently stipulates than when a dispute is "imported" into the employment from the claimant's domestic or personal life, the assault does not arise out of the employment under *any* test.

> Even the broadest of all, the but for or positional risk test, rules out compensability because [it] applies only when the risk is neutral.[14]

The neutral risks referred to by Professor Larson are potentially injurious conditions that are neither distinctly employment related nor distinctly personal in nature.[15] In annulling the award of the Workmen's Compensation Appeals Board, the Court of Appeal in *California Comp.* recognized this limitation on the positional risk doctrine as decisive.[16]

In the development of workmen's compensation law, California has applied each of the foregoing theories. A consideration of these previous decisions will demonstrate the changing attitude of California courts toward causation in workmen's compensation. The first theory applied in California was the peculiar risk doctrine. While this doctrine was strictly construed at first,[17] by 1924 the state had begun to move away from the rigid requirement that the injury be one not common to the general public.[18] Subsequently California's position became more liberal, moving toward adoption of the actual risk doctrine,[19] until in 1942 the Supreme Court specifically rejected the requirement that injuries be peculiar to employment.[20] The first decision in

12. Arthur Larson; Director, Rule of Law Research Center; Duke University Law School.

13. 1 A. LARSON, *supra* note 6, at § 11.00 (emphasis added).

14. *Id.* § 11.21.

15. *Id.* § 7.30.

16. California Comp. & Fire Co. v. Workmen's Comp. Appeals Bd., 61 Cal. Rptr. 262, 266 (1967).

17. Coronado Beach Co. v. Pillsubry, 172 Cal. 682, 158 P. 212 (1916).

18. 8 HASTINGS L.J. 49, 51 (1956-57).

19. *Id.* at 51, 52.

20. Pacific Emp. Ins. Co. v. Industrial Acc. Comm'n., 19 Cal. 2d 622, 629, 122 P.2d 570, 573 (1942).

which California applied the positional risk doctrine came in 1950. In *Industrial Indemnity Co. v. Industrial Accident Commission*,[21] the Supreme Court found an injury to be compensable if the employment brought the employee to a dangerous position where he was injured while acting within the scope of his employment.[22]

In *California Comp.*, the Supreme Court relied primarily on *Madin v. Industrial Accident Commission*[23] and *Wiseman v. Industrial Accident Commission*.[24] The *Madin* and *Wiseman* cases appear to be the most liberal decisions to date and are applications of the positional risk doctrine. In *Madin*, the employee, while at work, was injured when a building he was occupying was struck by a runaway bulldozer.[25] *Wiseman* involved an employee on a business trip, who was asphyxiated as the result of a fire in his hotel room.[26] The significance of these cases lies in the ruling, that to find injury or death arising out of employment, the employment need not be the sole cause of injury; it is sufficient if it is a contributory cause.[27] Both *Madin* and *Wiseman* imply that virtually any contribution by the employment will confirm that the injury "arises out of the employment".[28]

In *California Comp.*, it was held that although the origin of the assault was not connected with the employment, the employment did contribute by placing the deceased in an isolated location "that facilitated the assault."[29] In discussing this contribution rule, *Madin* bases its holding on *Colonial Insurance*

21. 95 Cal. App. 2d 804, 214 P.2d 41 (1950).

22. *Id.* at 813, 214 P.2d at 47.

23. 46 Cal. 2d 90, 292 P.2d 892 (1956).

24. 46 Cal. 2d 570, 297 P.2d 649 (1956).

25. After drinking intoxicants, three young men decided to go "riding" on the bulldozer. They were unable to stop the bulldozer, and consequently abandoned it over the side of a canyon.

26. The fire was started by the smoking of either the employee or a female companion, not his wife. The court rejected the contention that because there were indications that the employee was engaged in immoral conduct, his death could not arise out of the scope of employment.

27. Madin v. Industrial Acc. Comm'n., 46 Cal. 2d at 92, 292 P.2d at 894.

28. *See* 8 HASTINGS L.J. at 54, 55.

29. Logically a distinction between facilitating an assault and contributing to one would have been appropriate in this case. Whereas contributing connotes an affirmative participation in the assault by the employment, facilitating indicates a passive connection. With an active participation by employment (i.e. contribution) it logically follows that the injury could be found to arise out of the employment. It would seem, however, with no more than a passive facilitating effect that the injury should not be found to arise out of the employment.

Co. v. Industrial Accident Commission,[30] a case involving an employee who contracted silicosis. In *Colonial*, the court used the word "contribution" to indicate that while employment had been the sole cause of the disease, the employee had worked for several companies in this type of employment while progressively incurring the disease. In *Pacific Employers Insurance Co. v. Industrial Accident Commission*,[31] the employment contributed to a personal assault by requiring the employee to work with a man who proved to be insane. The victim associated with the assailant *only* during working hours and the animosity resulting in the assault grew out of the employment relationship alone. There appear to be no California cases setting forth what employment must "do" to contribute to an injury resulting from a personal assault.[32] Other states too, are divided on what effect the employment must have to find that, in spite of the personally motivated assault, the injury arises out of it.[33] The type of contribution present in *California*

30. 29 Cal. 2d 79, 172 P.2d 884 (1946).

31. 139 Cal. App. 2d 260, 293 P.2d 502 (1956). This is apparently the only California case dealing with personally motivated assaults since the adoption of the positional risk doctrine.

32. California Comp. & Fire Co. v. Workmen's Comp. Appeals Bd., 61 Cal. Rptr. 262, 265 (1967).

> We have found no case in this jurisdiction which considers or states . . . the rule of law which is applicable to a case of assault by a person whose relationship with the employee was established outside of the employment and whose reasons for the assault were personal.

33. California Comp. & Fire Co. v. Workmen's Comp. Appeals Bd., 68 Adv. Cal. 155, 436 P.2d 67, 65 Cal. Rptr. 155 (1968).

> Cases from other jurisdictions give us no guidance, for they are in conflict as to whether a privately motivated assault is compensable where its commission was facilitated by the employment.

Cases rejecting the argument that contribution by the employment will counteract the effect of the personally motivated assault are: Service Mut. Ins. Co. v. Vaughn, 130 S.W.2d 392 (Texas Civ. App. 1939); May v. Ozark Cent. Tel. Co., 272 S.W.2d 845 (Mo. 1954); January-Wood Co. v. Schumacher, 231 Ky. 705, 22 S.W.2d 117 (1929):

> Does the fact that his duty put him in such a place as gave his murderer an opportunity to carry out his nefarious design with less probability of apprehension than if he did so elsewhere constitute such casual relation as to bring the result within the term 'arising out of his employment'? We hardly think so. . . .,

Ramos v. Taxi Transit Co., 301 N.Y. 749, 95 N.E.2d 625 (1950); Harden v. Thomasville Furniture Co., 199 N.C. 733, 155 S.E. 728 (1930). Cases accepting the same argument are: Todd v. Easton Furniture Mfg. Co., 147 Md. 352, 128 A. 42 (1925).

> The conditions under which he was working when he lost his life were such as to place him at a special disadvantage . . . . The assault which caused his death might have been committed elsewhere, but the attack could be made with greater assurance of success, and of safety for the assassin, if planned

Comp. represents a far more tenuous basis for recovery than prior California cases have allowed.[34] The court's own terminology, "facilitating", would seem most descriptive of the role of the employment here, intimating a passive rather than contributory part in the assault.[35]

Madin and *Wiseman* are distinguisable from *California Comp.* in that not only does neither case include the same type of contribution, but they do not deal with injuries attributable to personally motivated assaults.[36] Likewise, no pre-*California Comp.* decision based on *Madin*[37] or *Wiseman*[38] has involved such an assault.[39]

If it is correct to conclude that a substantive basis for this decision is not to be found in previous California cases, perhaps the real explanation of this holding and its significance for the future

---

for a time when the intended victim was performing his lonely duty and was without opportunity to obtain assistance.

Id. at 353, 128 A. 43; Williams v. United States Casualty Co., 145 So. 2d 592 (La. App. 1962).

34. Colonial Ins. Co. v. Industrial Acc. Comm'n., 29 Cal. 2d 79, 172 P.2d 884 (1946). The employee contracted silicosis due to exposure to silica dust while working as a crusher operator for a brick manufacturer; Pacific Emp. Ins. Co. v. Industrial Acc. Comm'n., 139 Cal. App. 2d 260, 293 P.2d 502 (1956). The employee was required to work with a man who proved to be suffering from insane delusions, resulting in the assault.

35. *See* note 29 *supra.*

36. This poses the biggest problem in *California Comp.* The substantive law on which the decision is based involves acts of negligence, not intentional criminal acts. Although *Madin* involves criminal conduct, the injury-producing act was negligent. Yet, the Board and the supreme court in discussing the applicability of these cases to *California Comp.* do not make this distinction.

37. State Comp. Ins. Fund v. Industrial Acc. Comm'n., 176 Cal. App. 2d 10, 1 Cal. Rptr. 73 (1959) (carpenter driving a rusty nail which flew up when struck and hit him in the eye causing injury); Argonaut Ins. Co. v. Workmen's Comp. Appeals Bd., 247 Cal. App. 2d 669, 55 Cal. Rptr. 810 (1967) (employee injured while roughhousing with fellow employee in ranch bunkhouse); Grant v. Board of Retirement, Kern County Employees Retirement Assoc., 253 Cal. App. 2d 1020, 61 Cal. Rptr. 791 (1967) (employee suffered heart attack).

38. Leonard Van Stelle Inc. v. Industrial Acc. Comm'n., 59 Cal. 2d 836, 382 P.2d 587, 31 Cal. Rptr. 467 (1963) (automobile accident); Van Cleve v. Workmen's Comp. Appeals Bd., 261 Adv. Cal. App. 246, 67 Cal. Rptr. 757 (1968) (back injury suffered by reaching into rear seat of auto on the way to work).

39. The supreme court also relies on Western Greyhound Lines v. Ind. Acc. Comm'n., 225 Cal. App. 2d 517, 37 Cal. Rptr. 580 (1964) for the proposition that failure of the homicide to originate in the employment did not preclude the award. In *Western Greyhound* a woman busdriver was assaulted while on a coffee break. The issue to be determined was whether the busdriver was in the course of employment while on the coffee break, and the issue of whether the assault arose out of the employment was not discussed.

lies in the continuing direction of compensation awards.[40] While *California Comp.* is apparently not grounded on the original policy reasons underlying workmen's compensation, it is consistent with the existing trend of decisions. Prior to enactment of workmen's compensation legislation, with the tremendous growth of industry and corresponding growth of industrial accidents, the usual common law defenses often rendered futile any legal action by the employee against the employer.[41] Because of the distress and economic insecurity to which an inadequate legal system subjected victims of industrial accidents, the individual states took it upon themselves to devise remedies.[42] The resultant workmen's compensation acts were founded on the precept that industry should, in large measure, bear the burden of industrial accidents,[43] and that restitution should be made for disabilities "attributable" to employment.[44] These acts were designed to provide a more humanitarian and equitable remedy, based on the economic principle of "trade risk" in that injuries incident to industrial pursuits are like wages and breakage of machinery, a part of the cost of production.[45] As a result, the initial burden thus imposed on the employer will be distributed, as part of the cost of production, among consumers.[46] Since the inception of workmen's compensation legislation, California decisions have become increasingly liberal as to what constitutes "arising out of employment."[47] This is probably appropriate in light of the Labor Code itself which states that its provisions shall be liberally construed by the courts.[48] Furthermore, *Madin* held that reasonable

40. *See* text accompanying notes 17-22, *supra*.

41. 2 W. HANNA, *supra* note 3, at § 1.01.

42. 2 W. HANNA, *supra* note 2, at §§ 1.01[2], 1.05[1].

43. California Comp. Ins. Co. v. Industrial Acc. Comm'n., 128 Cal. App. 2d 797, 805, 276 P.2d 148, 151 (1954).

44. Associated Indem. Corp. v. Industrial Acc. Comm'n., 71 Cal. App. 2d 820, 824, 163 P.2d 771, 773 (1945).

45. 1 A. HONNOLD, A TREATISE ON THE AMERICAN AND ENGLISH WORKMEN'S COMPENSATION LAWS, § 2, note 7 (1917).

46. Western Indem. Co. v. Pillsbury, 170 Cal. 686, 694, 151 P. 398, 401 (1915).

47. 8 HASTINGS L.J. at 54. While the author of that comment felt that the terms in the course of and arising out of were at that time "virtually synonomous", they are not yet always considered so and logically never should be. The terms represent distinct aspects of an injury or death relative to workmen's compensation and both are not always present together.

48. CAL. LABOR CODE § 3202 (West 1955).

> The provisions of Division 4 [Workmen's Compensation and Insurance] . . . shall be liberally construed by the courts with the purpose of extending their

doubts as to whether an injury is compensable are to be resolved in favor of the employee.[49] It seems doubtful, however, that those responsible for workmen's compensation legislation in California contemplated that occurrences such as this would lead to compensation. Domestic and other personal disputes that could result in assault existed then as now. It cannot be said that, under such circumstances, the employment relationship gives rise to common law defenses that bar recovery for an injury inflicted by a third party. Nor is it valid to argue that assaults growing out of disputes in the employee's personal life are part of the "trade risks" assumed by the employer in the course of doing business. There appears to be an inconsistency in finding that an injury originating in a domestic dispute should be remedied by virtue of laws enacted because of a concern over the rise in industry-oriented accidents. As declared by the Court of Appeal in *California Comp.*:

> [T]he Workmen's Compensation Law does not charge industry for injury or death which comes to an employee through personal contacts unrelated to his employment. Where there is positive evidence showing that that is the case, there is no justification for assuming, contrary to the facts, that industry is responsible.[50]

The *California Comp.* decision virtually abolishes the traditional stand in this state against compensating injuries or death caused by a personally motivated assault originating outside the employment relationship.[51] By predicating their decision on *Madin* and *Wiseman*, the Workmen's Compensation Appeals Board has not expressly recognized what appears to be the basic

---

benefits for the protection of persons injured *in the course of their employment* (emphasis added).

The code's call for liberal construction of provisions when a person is injured in the course of employment, provides the most substantial basis for the *California Comp.* decision, even though not alluded to by the supreme court or the Workmen's Compensation Appeals Board.

49. 46 Cal. 2d at 93, 292 P.2d at 894.

50. 61 Cal. Rptr. at 266.

51. 58 AM. JUR. *Workmen's Compensation* § 265 (1948). The traditional approach to this problem is stated:

> When the assault . . . is for reasons personal to the assailant, and is not because the relation of employer and employee exists, and the employment is not the cause, *though it may be the occasion of the wrongful act, and may give a convenient opportunity for its execution*, it is ordinarily held that the injury does not arise out of the employment (emphasis added).

See Royal Indem. Co. v. Industrial Acc. Comm'n., 192 Cal. 675, 221 P. 371 (1923); Lykins v. Industrial Acc. Comm'n., 25 C.C.C. 194 (1960).

problem in the case.[52] Decisions in other jurisdictions, as well as the Court of Appeal in *California Comp.*, have distinguished personally motivated assaults originating within, from those outside the employment relationship, finding the latter not to be neutral risks and thus not resolvable under the positional risk doctrine.[53]

The precedent established by the facts and decision in *California Comp.* would seem to require compensation in nearly every case of assault occurring during the course of employment.[54] In cases such as this, where there is an absence of tangible contribution by the employment, probably the most precise means of establishing this factor is by examining the intent or state of mind of the assailant.[55] If his state of mind is such that he is unconcerned with the possibility of detection, then it appears

---

52. 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 11.21 (Supp. 1968). In criticizing a similar case, *Rogers v. Aetna Cas. & Sur. Co.*, 173 So. 2d 231 (La. App. 1965), Larson states:

> The precise question involved is: should the positional risk theory be applied not only to neutral risks but also to purely personal risks?

The above statement related to an injury resulting from personal assault originating outside the employment relationship.

53. 1 A. LARSON, *supra* note 6, at 11.21.

> This [distinction is based on] the justification [for] the positional risk doctrine, which is that this very slight employment contribution (bringing decedent to the place where he was killed) is enough to swing the balance *only* if it is not offset by a positive showing of the personal cause of the harm (emphasis added).

1 A. LARSON, *supra* note 6, at 11.21, note 34.

> In eight states there is a separate *statutory* defense applicable to injury inflicted by third persons for personal reasons. . . . The states having this type of defense are Alabama, Georgia, Delaware, Iowa . . . Minnesota, Pennsylvania, Texas and Wyoming . . . (emphasis added).

54. *See* discussion note 51 *supra*. In *California Comp.* the contribution by employment is so slight and the assailant's intent to commit the assault so great that it seems that the majority of future assaults occurring in the course of employment would involve an equal or greater employment participation and accordingly would of necessity be found to arise out of the employment.

55. 1 A. LARSON, *supra* note 6, at § 11.23.

> Admittedly, it is a difficult question of fact whether, but for the favorable opportunity created by the employment environment, the murderer would have dared commit the murder. If his desperation and character are such that [the] probability of detection would make no difference to him then it is a fair conclusion that he would have gone through with the deed in any case; for example, if he is bent on committing suicide immediately after the murder.

This is arguably the most logical analysis of the facts presented in *California Comp.* Surprisingly it was ignored by the supreme court even though it is found in a passage to which the majority opinion referred.

probable that he would commit the assault whether or not the employment afforded a convenient opportunity. In *California Comp.* the assailant had at least twice threatened to murder his wife and commit suicide, and had been despondent for a substantial period of time prior to the assault.[56] Despite this, the Workmen's Compensation Appeals Board held that the murder would not have occurred had Mrs. Schick's employment not required her to go to this isolated apartment. It would appear that most assaults occurring in the course of employment would fall within the factual boundaries of the *California Comp.* decision and thus result in compensation. A recent criticism of a similar case states:

> The court here would have done better to leave itself some leeway for the future in this class of cases .... This would avoid leaving matters in such a posture that absolutely any personal assault under any circumstances becomes compensable if it occurs within the time and space limits of the employment.[57]

The Workmen's Compensation Appeals Board has opened the door to compensation in an area where compensation in the past has been virtually unheard of, and yet has done so without making what would appear to be necessary distinctions between neutral risks and purely personal risks.[58] The supreme court has added the force of its approval to this interpretation.[59] Review by the supreme

---

56. California Comp. & Fire Co. v. Workmen's Comp. Appeals Bd., 61 Cal. Rptr. 262, 263 (1967).

> The evidence including a letter written by him, indicated that the murder and suicide were premeditated and carried out because of his frustration and bitterness at his failure after numerous attempts to effect a reconciliation with decedent, and the fact known to him that she was planning to marry another man.

At another time, Schick threatened suicide in a conversation with his wife telling her that he would take her with him if he ever did it. Petitioner's Petition for Writ of Review at 25, California Comp. & Fire Co. v. Workmen's Comp. Appeals Bd., 68 Adv. Cal. 155, 436 P.2d 67, 65 Cal. Rptr. 155 (1968).

57. 1 A. LARSON, *supra* note 52, § 11.21 n.34 (Supp. 1968). The supplement here cited covered cases through December 31, 1967 and it is interesting that the district court of appeal decision in *California Comp.* was noted with approval. With the supreme court's optimistic reference to a "possible" rescuer it might well be asked if they would have sustained an award had a rescuer intervened and Mrs. Schick received only non-fatal injuries. Can it be that the existence of "contribution" by employment is to some degree dependent on the actions of an unkown third party?

58. *See* note 52 *supra*.

59. "There is no sound reason to deny compensation to an employee whose duties expose her to a peculiar risk of assault merely because the assailant was motivated by personal animus." California Comp. & Fire Co. v. Workmen's Comp. Appeals Bd., 68 Adv. Cal. 155, 160, 436 P.2d 67, 70, 65 Cal. Rptr. 155, 158 (1968).

court and the courts of appeal in California workmen's compensation is limited by the Labor Code.[60] The ruling of the supreme court has affirmed that it is reasonable and within the powers of the Workmen's Compensation Appeals Board to award compensation for injury or death caused by a personally motivated assault, making no apparent distinctions as to those assaults originating in disputes unrelated to the employment.[61] Their decision strengthens past holdings that the "substantial evidence"[62] required by the Labor Code to sustain the findings and conclusions of the Board is in fact *any* evidence.[63] This expansion of benefits under California workmen's compensation goes further in allowing compensation than all but apparently two other American jurisdictions have been willing to go.[64]

STEVEN E. BRIGGS

60. CAL. LABOR CODE § 5952 (West 1955).

> The [scope of] review by the court shall not be extended further than to determine . . . whether:
>
> (a) The commission acted without or in excess of its powers. (b) The order, decision or award was procured by fraud. (c) The order, decision, or award was unreasonable. (d) The order, decision, or award was not supported by substantial evidence. (e) If findings of fact are made, such findings of fact support the order, decision, or award under review. . . .

61. It could be argued the supreme court has impliedly made a distinction by holding that this assault does arise out of the scope of employment. If that is their intended result it could be reached only by choosing to disregard the *source* of the dispute out of which the assault grew. It is this "origin" that should be considered to determine whether the assault arises out of the employment relationship.

62. "The order, decision, or award [must be] supported by substantial evidence." CAL. LABOR CODE § 5952(d) (West 1955).

63. Argonaut Ins. Co. v. Industrial Acc. Comm'n., 221 Cal. App. 2d 140, 149, 34 Cal. Rptr. 206, 211 (1963).

64. *See generally* 1 A. LARSON, *supra* note 52, at § 11.23; Todd v. Easton Furn. Manufacturing Co., 147 Md. 352, 128 A. 42 (1925); Rogers v. Aetna Cas. & Sur. Co., 173 So. 2d 231 (La. App. 1965).