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Workmen's Compensation - Hazardous and Nonhazardous Businesses

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negligent driving, and the solvency of defendants through insurance are some of the factors contributing to this trend.

Where the plaintiff is a rescuer, as in the principal case, additional policy considerations favor his recovery. The rescuer is regarded by society as a hero, and he is usually treated accordingly by the courts in awarding damages.[19]

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WORKMEN'S COMPENSATION—HAZARDOUS AND NON-HAZARDOUS BUSINESSES—LaFleur was employed in the defendant's nightclub as a special police officer, commissioned a deputy sheriff, authorized to make arrests for infractions of the law, and was required to wear a gun. He was shot and killed when he attempted to apprehend a disorderly patron. Plaintiff, LaFleur's widow, contended that the business was hazardous because the decedent's duties required that he be in close proximity to a dangerous explosive. *Held*, plaintiff's demand for compensation rejected on the basis that it is the occupation of the employer and not the duties of the employee which controls. *LaFleur v. Johnson*, 37 So.(2d) 869 (La. App. 1948).

According to the Workmen's Compensation Act,[1] the legislature has designated certain businesses as hazardous.[2] Also, it has enumerated certain hazardous features which have the effect of injecting hazardous elements into businesses which otherwise would be considered non-hazardous.[3] Conceding that a nightclub is not specifically designated as a hazardous business, it may nevertheless become hazardous by the adoption of some hazardous feature in its operation. In such cases, the only inquiry should be whether or not the work of the employee requires

19. "Sentiments of humanity applaud the act, the law commends it, and, if not extremely rash and reckless, awards the rescuer redress for injuries received. . . ." Perpich v. Leetonia Mining Co., 118 Minn. 508, 512, 137 N.W. 12, 14 (1912); Peyton v. Texas and Pac. Ry., 41 La. Ann. 861, 6 So. 690 (1889); Whitworth v. Shreveport Belt Ry., 112 La. 363, 36 So. 414, 65 L.R.A. 129, 16 Am. Neg. Rep. 58 (1904). Cf. De Mahy v. Morgan La. & T. R.R. & S.S. Co., 45 La. Ann. 1329, 14 So. 61 (1893); Henshaw v. Belyea, 220 Cal. 458, 31 P.(2d) 348 (1934). Rescue doctrine discussed in (1937) 16 Fordham L. Rev. 139, (1946) 11 Mo. L. Rev. 317, annotation: Liability for death of, or injury to, one seeking to rescue another in 19 A.L.R. 4. Combination of risk of second collision and element of rescue: Petersen v. Lang Transp. Co., 32 Cal. App.(2d) 462, 90 P.(2d) 94 (1939) (defendant's car negligently collided with another car; plaintiff, passerby, waved flashlight to warn oncoming traffic; struck by car; recovery). Accord: Lashley v. Dawson, 162 Md. 549, 160 Atl. 738 (1932); Duff v. Bemidji Motor Service Co., 210 Minn. 456, 299 N.W. 196 (1941).

1. La. Act 20 of 1914 [Dart's Stats. (1939) §§ 4391-4432].

2. Id. at § 1(1) [Dart's Stats. (1939) § 4391].

3. Ibid.

him to perform duties of a hazardous nature incidental to his employment and directly associated with his employer's business.[4] There is no requirement that the hazardous feature adopted be indispensable to the operation of the business.[5]

This observation has been particularly true in businesses involving the operation of engines.[6] Similarly, it has been held that the operation of telegraphic communications is hazardous because it requires the use of an apparatus charged with electrical current;[7] a retail store may become hazardous if it undertakes to install electric refrigerators involving the alteration of electrical wiring;[8] a hotel has been regarded as hazardous because of the use of elevators;[9] a drugstore is considered hazardous because of the employment of a motorcycle for delivery;[10] and the operation of a filling station is hazardous because it involves regular proximity to gasoline, which has been classified by the court as a "dangerous explosive."[11]

It is true that the application of the compensation law is frequently determined by the nature of the employer's business[12]

4. Foret v. Ziblich Co., 18 La. App. 363, 137 So. 366 (1931); Allen v. Yantis, 196 So. 530 (La. App. 1940); Horton v. Western Union Telegraph Co., 200 So. 44 (La. App. 1941); Claiborne v. Smith, 2 So.(2d) 714 (La. App. 1941); Goodman v. National Casualty Co., 15 So.(2d) 173, 174 (La. App. 1943).

5. Moritz v. K.C.S. Drug Store Co., 149 So. 244 (La. App. 1933); Holland v. Continental Casualty Co., 155 So. 63 (La. App. 1934).

6. Haddad v. Commercial Truck Co., 146 La. 897, 84 So. 197 (1920); Beebe v. McKeithen Const. Co., 5 La. App. 179 (1926); Powell v. Spencer Bros., 5 La. App. 218 (1926); Labostrie v. Weber, 130 So. 885 (Orl. App. 1930); Plick v. Toye Bros. Auto and Taxicab Co., 127 So. 59 (Orl. App. 1930); Richardson v. Crescent Fwding. and Transp. Co., 135 So. 688 (Orl. App. 1931); Lemmler v. Fabacher, 139 So. 683 (La. App. 1932); Adams v. Hicks Co., 149 So. 242 (La. App. 1933); Moritz v. K.C.S. Drug Co., 149 So. 244 (La. App. 1933); Williams v. O.K. Const. Co., 151 So. 784 (La. App. 1934); Hecker v. Betz, 172 So. 816 (La. App. 1937); Hayes v. Barras, 6 So.(2d) 66 (La. App. 1941); Franz v. Sun Indemnity Co., 7 So.(2d) 636 (La. App. 1942); Goodman v. National Casualty Co., 15 So.(2d) 173 (La. App. 1943); Ridgell v. Tangipahoa Parish School Board, 17 So.(2d) 55 (La. App. 1944); Gallien v. Judge, 28 So.(2d) 101 (La. App. 1946); Reagor v. First Nat. Life Ins. Co., 28 So.(2d) 527 (La. App. 1946); Richardson v. American Employers' Ins. Co., 31 So.(2d) 527 (La. App. 1947).

7. Horton v. Western Union Telegraph Co., 200 So. 44, 47 (La. App. 1941).

8. Stockstill v. Sears-Roebuck Co., 151 So. 822 (La. App. 1934).

9. Byas v. Bently, 157 La. 1030, 103 So. 303 (1924).

10. Mortiz v. K.C.S. Drug Co., 149 So. 244 (La. App. 1933).

11. Conaway and Clark v. Marine Oil Co., 5 La. App. 134 (1926); Smith v. Marine Oil Co., 121 So. 782 (La. App. 1929); Youngblood v. Colfax Motor Co., 125 So. 882 (La. App. 1930).

12. Malone, Hazardous Businesses and Employments under the Louisiana Workmen's Compensation Law (1948) 22 Tulane L. Rev. 412, 426-429; Durrett v. Woods, 155 La. 533, 99 So. 430 (1923); Jones v. Louisiana Oil Refining Corp., 3 La. App. 85 (1925); Mackey v. Fullerton Naval Stores Co., 4 La. App. 43 (1925); Gilyard v. O'Reilly, 4 La. App. 498 (Orl. App. 1926); Powell v. Spencer Bros., 5 La. App. 218 (1926); Brown v. McKeithen Const. Co., 5 La. App. 179 (1926); Jackson v. Young, 6 La. App. 854 (1927); Wright v.

rather than by the duties of the employee. Resort to this determination is made in an effort to extend recovery to all employees (even those engaged in non-hazardous duties) whose work constitutes a part of the physical productive operation of a business specifically designated as hazardous.[13]

It is submitted that the instant case is indistinguishable from those cases in which compensation was allowed because of the operation of engines. In those businesses which are classified as hazardous because of some hazardous feature, the duties of the employee should be the determining factor. In order to adopt what he considered to be the most effective means of preventing disorder, defendant required the decedent to carry a firearm. Therefore, the plaintiff's contention that the defendant's business is hazardous should have been upheld because the decedent was required to be in regular proximity to a firearm which, like gasoline, should be considered a "dangerous explosive."[14]

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Louisiana Ice & Utilities Co., 129 So. 436 (La. App. 1930); Youman v. Railways Express Agency, 190 So. 858 (La. App. 1939).

13. Durrett v. Woods, 155 La. 533, 99 So. 430 (1923); Jones v. Louisiana Oil Refining Corp., 3 La. App. 85 (La. App. 1925); Gilyard v. O'Reilly, 4 La. App. 498 (Orl. App. 1926); Brown v. Trachina, 3 La. App. 761 (Orl. App. 1926); Jackson v. Young, 6 La. App. 854 (La. App. 1927); Wright v. Louisiana Ice & Utilities Co., 129 So. 436 (La. App. 1930); Youman v. Railways Express Agency, 190 So. 858 (La. App. 1939); Hogan v. T. J. Moss Tie Co., 210 La. 362, 27 So.(2d) 131 (1946).

14. The court avoids classifying a firearm as a dangerous explosive by drawing an analogy to the case of Hall v. City of Shreveport, 157 La. 589, 102 So. 680 (1925), wherein a city policeman was denied compensation. This analogy is apparently erroneous. The decision in the *Hall* case was based entirely upon the determination of whether or not a policeman is an *official* within paragraph 1 of Section 1 of the Workmen's Compensation Act. The employee in the principal case was an employee of the defendant nightclub owner, and the deciding factor should have been whether or not the defendant's occupation was hazardous because of some hazardous feature, or non-hazardous under the provisions of paragraph 2 of Section 1. This could have been more appropriately disposed of by drawing an analogy to the cases cited supra note 11.