

## COMMENT

# THE REMOTE SITE DOCTRINE IN ALASKA

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*Alaska's unique geography and abundance of valuable natural resources in remote locations has created a great deal of employment in remote sites, requiring substantial travel. In this Comment, the author examines the "remote site doctrine," a body of statutory and common law dealing with workers' compensation issues arising from employment at these remote locations.*

### I. INTRODUCTION

Ever since United States Secretary of State William Seward negotiated the state's purchase, Alaska has been known as the country's "last frontier."<sup>1</sup> Distinguished by its rugged landscape and extreme climate, Alaska is one-fifth the size of all other U.S. states combined and reaches so far to the west that it extends into the Eastern Hemisphere.<sup>2</sup> Much of this land remains wilderness, with various locations around the state remaining inaccessible except by air.

With an abundance of valuable resources located in largely unsettled areas, Alaska is unique in part because of the large number of employees who have historically worked away from home at various remote sites around the state. From the oil fields in Prudhoe Bay to the construction sites on the Aleutian Chain, individuals work hundreds of miles from home in harsh weather conditions. Employers in these re-

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1. *ENCYCLOPAEDIA BRITANNICA, INC., THE NEW ENCYCLOPAEDIA BRITANNICA* 409 (15th ed. 1982).

2. State of Alaska, Department of Commerce, *Geography of Alaska*, at [http://www.commerce.state.ak.us/oed/student\\_info/learn/aboutgeography.htm](http://www.commerce.state.ak.us/oed/student_info/learn/aboutgeography.htm).

mote locations provide housing and meals to their employees; by virtue of the location, these workers are required to work, live, and eat at the job site, often for weeks at a time.

The unique character of employment in remote locations around Alaska, including the extent to which employees rely on their employers and the loss of freedom that employees experience during their employment, raises a number of interesting legal questions. In particular, courts have shaped workers' compensation law to reflect working conditions in these locales.

In 1959, Alaska completely rewrote its workers' compensation laws at the end of the state's first legislative session.<sup>3</sup> After two years of hearings, the Alaska Legislature passed a comprehensive act, which was patterned after the 1964 version of the Federal Longshore and Harbor-workers' Compensation Act<sup>4</sup> and was intended to provide quick and immediate medical and compensation benefits for those employees injured on the job.<sup>5</sup> In exchange, the employees could not file negligence suits against their employers.<sup>6</sup> In essence, the Act provides mandatory insurance coverage for employees and is the exclusive remedy for work-related injuries.<sup>7</sup>

The extent and breadth of Alaska's workers' compensation coverage has often been litigated.<sup>8</sup> Coverage is generally activated when an employee begins the job each day and ends when he completes the job for that day.<sup>9</sup> Injuries incurred while traveling to and from work are not covered unless they fall under a recognized exception to the rule.<sup>10</sup> In addition, injuries that occur while the employee is involved in personal activities are not covered, but several exceptions exist.<sup>11</sup> One important exception that has evolved over time in Alaska involves injuries to workers employed in remote locations, who are subject to certain life-style restrictions because of their work.<sup>12</sup>

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3. ENCYCLOPAEDIA BRITANNICA, INC., *supra* note 1, at 412.

4. 33 U.S.C. § 922 (1964). *See* Fischback & Moore of Alaska, Inc. v. Lynn, 430 P.2d 909, 911 n.11 (Alaska 1967) (comparing the Alaska Workers' Compensation Act to the federal act).

5. Hewing v. Peter Kiewit & Sons, 586 P.2d 182, 187 (Alaska 1978).

6. M-K Rivers v. Schleifman, 599 P.2d 132, 135 (Alaska 1979).

7. *See id.*

8. *See, e.g., id.* *See also* Dep't of Highways v. Johns, 422 P.2d 855, 860-61 (Alaska 1967); Northern Corp. v. Seari, 409 P.2d 845 (Alaska 1966); R.C.A. Serv. Co. v. Liggett, 394 P.2d 675 (Alaska 1964).

9. *See R.C.A. Serv. Co.*, 394 P.2d at 677-78.

10. *Id.*

11. *Id.* at 678-80.

12. *E.g., Northern Corp.*, 409 P.2d at 847.

In a series of cases in which the Alaska Supreme Court has confronted the issues arising from work at these remote locations, the court has adopted and defined what is known as the “remote site doctrine.”<sup>13</sup> This Comment will examine the shape this doctrine has taken in Alaska by first addressing the legislative background and cases that adopted the doctrine and defined its limits. It will then review the Alaska legislative reaction to the initial case law. Finally, this Comment will examine the current status of the doctrine in Alaska.

## II. THE ADOPTION AND DEFINITION OF THE LIMITS OF THE REMOTE SITE DOCTRINE

### A. Legislative Background: Basis for Recovery under the Alaska Workers’ Compensation Act

The remote site doctrine in Alaska common law traces its roots to jurisprudence from more general areas of workers’ compensation law developed under the Alaska Workers’ Compensation Act.<sup>14</sup> Understanding what has shaped the courts’ decision in this area requires an examination of the legal framework from which the doctrine springs.

Coverage under the Alaska Workers’ Compensation Act requires that an injury “arise out of and in the course of employment.”<sup>15</sup> Under this rule, injuries that occur on the job while an employee is performing his job duties are compensable. On the other hand, an injury caused by personal activity is not considered work-related even if that injury occurred on the employer’s premises.

While many cases are easy to identify as “aris[ing] out of the course of employment,” work-related travel and situations in which the employee is injured at his workplace outside of working hours present particularly vexing issues. Whether an injury arose out of or in the course of employment, such that it is compensable, requires that (1) the injury was “reasonably foreseeable” to the employer and (2) that the injury was “incidental” to the employment.<sup>16</sup> For instance, the Alaska Supreme Court adopted the position articulated by Justice Cardozo and applied this test when considering the compensability of injuries sustained while traveling for a dual purpose:

If the work of the employee creates the necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own. . . . If, however, the work has had no part in

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13. *Id.*; *M-K Rivers v. Schleifman*, 599 P.2d 132, 136 (Alaska 1979); *Anderson v. Employers Liab. Assurance Co.*, 498 P.2d 288, 290 (Alaska 1972).

14. ALASKA STAT. § 23.30.005–400 (Michie 2003).

15. *Id.* at § 23.30.395(17), 23.30.395(2).

16. *Anchorage Roofing Co. v. Gonzales*, 507 P.2d 501, 505 (Alaska 1973).

creating the necessity for travel, if the journey would have gone forward though the business errand had been dropped, and would have been canceled upon failure of the private purpose, though the business errand was undone, the travel is then personal, and personal the risk.<sup>17</sup>

Under this rule, if work creates the necessity for the employee's travels, the employee is protected by workers' compensation even when the injury-causing activity is not directly aimed at advancing the employer's interest.<sup>18</sup>

B. *R.C.A. Service Co. v. Liggett* and the Going and Coming Rule

Injuries occurring on an employer's premises are much more likely to be covered under the Alaska Workers' Compensation Act than injuries occurring off-site.<sup>19</sup> The rationale for this tendency is that the premises of the employer is a defined zone within which the employer arguably controls the actions of its employees; when the employee steps over the threshold, the employer takes possession of the employee and thus assumes responsibility for the employee's safety.<sup>20</sup> On the other hand, when off-site, an employee is generally considered to be responsible for his own actions.<sup>21</sup> Recognizing these circumstances, Alaska courts have adopted the "Going and Coming Rule," under which travel to and from work is considered a "personal activity."<sup>22</sup> Under this rule, injuries occurring outside the employer's premises while an employee is traveling to or from work are not considered to arise out of and in the course of employment.

In *R.C.A. Service Co. v. Liggett*,<sup>23</sup> the Alaska Supreme Court's first treatment of employee injuries in remote work locations, the court upheld the Going and Coming Rule.<sup>24</sup> There, Fred Liggett was killed in a plane crash during a journey from his job site in Clear, Alaska, to his home in Fairbanks after working on Christmas Day at his employer's request.<sup>25</sup> Prior to the accident, Liggett worked for R.C.A. for six months, during which time he lived at R.C.A.'s camp all but two nights a week.<sup>26</sup> On Saturday and Wednesday nights, Liggett habitually flew home to Fairbanks to spend time with his family.<sup>27</sup> On this Christmas, although

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17. *Id.* at 504 (quoting *Marks' Dependents v. Gray*, 167 N.E. 181, 183 (N.Y.1929)).

18. *See id.*

19. *Seville v. Holland Am. Line Westours*, 977 P.2d 103, 106 (Alaska 1999).

20. *Luth v. Rogers & Babler Constr. Co.*, 507 P.2d 761, 764 (Alaska 1973).

21. *Seville*, 977 P.2d at 106.

22. *Sokolowski v. Best W. Golden Lion Hotel*, 813 P.2d 286, 289 (Alaska 1991).

23. 394 P.2d 675 (Alaska 1964).

24. *Id.* at 676.

25. *Id.* at 676-77.

26. *Id.*

27. *Id.* at 676.

Liggett had spent the holiday at work at R.C.A.'s request, he paid for his own flight home on a private plane.<sup>28</sup>

The Alaska Workers' Compensation Board found that Liggett's death arose out of the course of his employment with R.C.A.<sup>29</sup> However, in reviewing the case, the Supreme Court of Alaska adopted the Going and Coming Rule and reversed the Board's decision:

Although Alaska has no case directly on point, it is well settled in most jurisdictions that injuries occurring off the employer's premises while the employee is going to or coming from work do not arise in the course of his employment. We believe that the rule is reasonable and logical and that it draws a practical line for determining where the employer's liability to pay compensation begins and ends.<sup>30</sup>

The court held that Liggett's trip to be with his family on Christmas Day was purely a personal choice.<sup>31</sup> The employer did not arrange or pay for the transportation or exercise any control over the private carrier.<sup>32</sup> Further, no express or implied contract of employment covered Liggett during his flight from Clear to Fairbanks.<sup>33</sup> Thus, the court held that because no evidence in the record demonstrated that the trip was a "part of the service [Liggett] was performing for his employer," his death was not compensable.<sup>34</sup>

### C. The Adoption of the Remote Site Doctrine Exception

Two years after the court's holding in *R.C.A. Service Co.*, in *Northern Corp. v. Saari*,<sup>35</sup> the Alaska Supreme Court reviewed another death at a remote site.<sup>36</sup> Northern had contracted to perform work at a U.S. Air Force installation located at Sparrevohn, a remote location 170 miles west of Anchorage.<sup>37</sup> The site was inaccessible except by air, and the flying schedule between Sparrevohn and Anchorage was uncertain due to weather conditions.<sup>38</sup>

Eino Saari lived and worked at Northern's camp in Sparrevohn.<sup>39</sup> He was employed as a carpenter and worked set hours of 7:00 a.m. to

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28. *Id.* at 677.

29. *Id.* at 676. The statute in force at the time defined "injury" as "an accidental injury or death arising out of and in the course of employment." ALASKA STAT. § 23.30.265(17) (Michie 1995).

30. *R.C.A. Serv. Co.*, 394 P.2d at 677-78.

31. *Id.* at 680.

32. *Id.*

33. *Id.*

34. *Id.*

35. 409 P.2d 845 (Alaska 1966).

36. *Id.* at 846.

37. *Id.*

38. *Id.*

39. *See id.* at 847.

5:30 p.m. six days a week.<sup>40</sup> No recreational facilities were furnished other than a mess hall.<sup>41</sup> However, Northern had made an arrangement with the Air Force that allowed Northern employees to use the facilities at the non-commissioned officers' club at the base after working hours.<sup>42</sup> The club was 700 yards away from the camp and was accessible by a road commonly used by the employees to make the trip.<sup>43</sup>

The accident that resulted in Saari's death occurred when Saari and a friend were returning to camp from the club in the evening along the road.<sup>44</sup> Saari died of a skull fracture after he slipped off of the edge of the road and fell ten feet into a creek.<sup>45</sup> The accident occurred while Saari was not on duty.<sup>46</sup>

The supreme court distinguished the facts of *Northern Corp.* from those in *R.C.A. Service Co.* and declined to apply the Going and Coming Rule.<sup>47</sup> The court emphasized that the recreational facilities were provided by Northern for the benefit and enjoyment of the employees:

By reason of the restricted conditions of employment at Sparrevohn, it is reasonable to conclude that Northern's arrangement for the use of recreational facilities at the air base was an important factor in personnel relations—that such an arrangement contributed to a higher degree of efficiency of Northern's work at Sparrevohn.<sup>48</sup>

The court held that because of the lifestyle restrictions that employment at the camp entailed and the solitary outlet of employer-provided recreational facilities, the possibility of injury associated with going to and from the club at the base was a foreseeable risk of employment.<sup>49</sup> Thus, the injury was deemed to have arisen out of the course of Saari's employment and was compensable.<sup>50</sup>

In *State v. Johns*,<sup>51</sup> the Alaska Supreme Court considered whether an employer's compensation for transportation expenses brought an injury resulting during the employee's trip home from the work site within an exception to the Going and Coming Rule.<sup>52</sup> The Alaska Department of Highways was performing road construction at Ernestine Camp,

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40. *Id.* at 846.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 847.

49. *Id.*

50. *Id.*

51. 422 P.2d 855 (Alaska 1967).

52. *Id.* at 860.

which was located forty-seven miles from Valdez.<sup>53</sup> The State needed more workers but had no additional living facilities at the camp.<sup>54</sup> The road work needed to be completed before the ground froze solid.<sup>55</sup>

In order to lure more workers to the site, the State struck a deal with Harry Johns, who lived fifty-four miles from the camp.<sup>56</sup> Johns was furnished gasoline for the trip to and from his residence as compensation for his transportation expenses.<sup>57</sup> He was also paid an extra hour and a half per day to cover his travel time.<sup>58</sup>

Johns worked the first day and then proceeded to drive home.<sup>59</sup> He was provided 10 gallons of gas for the drive.<sup>60</sup> Three miles from the camp, his car incurred a flat tire.<sup>61</sup> Because Johns did not have a spare, he hitched a ride with a military vehicle back to the camp.<sup>62</sup> On the way, the vehicle strayed from the highway and crashed.<sup>63</sup> Johns suffered severe injuries from the accident.<sup>64</sup>

The supreme court held that the Going and Coming Rule adopted in *R.C.A. Service Co.* did not apply to Johns' case and instead, that the facts brought *Johns* within the remote site doctrine.<sup>65</sup> The court held that workers' compensation should be awarded to Johns because the State, by paying Johns for his travel time, had "impliedly agreed that the employment relationship was to continue during travel" and thus such travel time was an incident of Johns' employment.<sup>66</sup>

#### D. Personal Activity and the Remote Site Doctrine

Two subsequent cases expanded the remote site doctrine by considering the inclusion of personal activities within the exception. In *Ander-son v. Employers Liability Assurance Corp.*<sup>67</sup> and *M-K Rivers v. Schleifman*,<sup>68</sup> the court defined which factors a court should consider

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53. *Id.* at 857 n.7.

54. *Id.* at 859.

55. *Id.*

56. *Id.* at 857.

57. *Id.*

58. *Id.* at 860 n.21 (citing an unpublished Workmen's Compensation Board decision).

59. *Id.* at 857.

60. *Id.*

61. *Id.* at 857-58.

62. *Id.* at 858.

63. *Id.*

64. *See id.* at 857 n.3.

65. *Id.* at 860.

66. *Id.*

67. 498 P.2d 288 (Alaska 1972).

68. 599 P.2d 132 (Alaska 1979).

when addressing injuries resulting from personal activities in a remote work-site setting.<sup>69</sup>

Richard Anderson was employed by Universal Services, Inc., as an electrician-lineman on Amchitka Island in the Aleutians.<sup>70</sup> As did many other of the employees, Anderson lived on the employer's premises and was provided with food and lodging.<sup>71</sup> Anderson normally worked from 8:00 a.m. to 5:30 p.m.; however, he was on call twenty-four hours a day and was often called during off-duty hours to perform various jobs.<sup>72</sup>

In addition to food and lodging, Anderson's employer also provided a bartender and liquor license for the "Rat Roost" bar on the premises.<sup>73</sup> One evening at the "Rat Roost," Anderson entered into a contest with a fellow employee to determine which man could climb a transmission pole the quickest.<sup>74</sup> After the wager was made, the other employee climbed the pole with no problems.<sup>75</sup> Then Anderson tried, but slipped.<sup>76</sup> He tried a second time, but lost his grip and fell to the ground, landing on his seat.<sup>77</sup> He fractured his wrist and crushed two vertebrae in the fall.<sup>78</sup>

The pivotal issue in *Anderson* was the application of the standard enunciated by the Alaska Supreme Court in *Northern Corp.* Under *Northern Corp.*, a court should examine whether the injured employee's activities had benefited the employer and whether the accident was foreseeable.<sup>79</sup> Applying this criteria in *Anderson*, the employer argued that the injury did not fall within the exception provided by the earlier cases.<sup>80</sup> Conceding that it had provided the bar to employees, the employer argued that Anderson's activity was neither a typical bar activity nor one that was actively encouraged by the employer and thus such an injury was not foreseeable.<sup>81</sup>

The court disagreed with the employer's argument, emphasizing that, as in *Northern Corp.*, Anderson worked at a remote site, where he was "required by the conditions of his employment to reside on the em-

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69. See *Anderson*, 498 P.2d at 292; *M-K Rivers*, 599 P.2d at 135–36.

70. *Anderson*, 498 P.2d at 289.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. See *Northern Corp. v. Saari*, 409 P.2d 845, 845–46 (Alaska 1966).

80. *Anderson*, 498 P.2d at 292–93.

81. *Id.* at 292.



ployer's premises."<sup>82</sup> Absent the range of other recreational diversions typically available in populated areas, recreation at the bar provided by the employer became an incident of employment with the company.<sup>83</sup> In addition, the court held that the injury-causing activity benefited the employer by providing a recreational outlet to the employees, which increased their efficiency back at work.<sup>84</sup> The court therefore expanded the remote site doctrine by articulating a basis for awarding compensation for injuries occurring during recreational pursuits, even when the specific activity is not provided for or actively encouraged by the employer, such as the officer's club in *Northern Corp.* The court stated:

The remote site worker is required as a condition of his employment to do all of his eating, sleeping and socializing on the work premises. Activities normally totally divorced from his work routine then become a part of the working conditions to which he is subjected. For these reasons many courts have concluded that when an employee is working in a remote area far from family and friends and the normal recreational outlets available to the working man, his recreational activities become an incident of his employment.<sup>85</sup>

The court concluded that when an employee at a remote site is injured while engaging in "reasonable" recreational activities, the injuries are work-related.<sup>86</sup> Despite Anderson's employer's protests, the court held that the application of the rule did not depend on whether the activities are directly provided for or sponsored by the employer or whether the activities are engaged in frequently enough by employees for such activity to be foreseeable by the employer.<sup>87</sup> In addition, the court refused to draw a bright line as to what recreational activities were "reasonable" and instead indicated that the answer depends on the conditions of the employment—i.e., reasonableness must be examined considering the totality of the circumstances and what a reasonable person might do under similar conditions.<sup>88</sup> Based on these considerations, the court found the pole-climbing activity in *Anderson* to be reasonable.<sup>89</sup>

In *M-K Rivers*, plaintiff Robert Schleifman was employed at the Sourdough pipeline camp, a remote site thirty miles from Glennallen, Alaska.<sup>90</sup> On the day at issue, he finished his work day at 4:30 p.m. on a Friday afternoon.<sup>91</sup> He was scheduled to go on a rest and relaxation

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82. *Id.* at 290 (citations omitted).

83. *Id.* at 292.

84. *Id.*

85. *Id.* at 290.

86. *Id.* at 292.

87. *Id.*

88. *Id.* at 293.

89. *Id.*

90. 599 P.2d 132, 133 (Alaska 1979).

91. *Id.*

leave on Monday and, in need of cash, left the camp on his motorcycle for Glennallen to cash his paycheck.<sup>92</sup> While en route, his motorcycle veered off the road, resulting in serious injuries to Schleifman.<sup>93</sup>

The Workers' Compensation Board denied and dismissed the case, holding that because the employment did not create the risk that resulted in the injury, the injury did not arise out of the course and scope of Schleifman's employment.<sup>94</sup> Schleifman appealed.<sup>95</sup> The Alaska Supreme Court affirmed the superior court's reversal of the Board's decision.<sup>96</sup> The supreme court defined the primary inquiry as "whether [Schleifman's] injury was substantially caused by, or the result of, the employment relation."<sup>97</sup> Relying on *Anderson*, the court held that the act of an employee driving from the remote site to Glennallen to cash a paycheck was "reasonably contemplated and foreseeable by the employment situation," even though the activity was not provided for by Schleifman's employer.<sup>98</sup> Specifically, because Schleifman needed cash to travel to Anchorage on the following Monday, his trip was reasonable and foreseeable under the circumstances.<sup>99</sup> Additionally, the court determined that the employer benefited from writing paychecks rather than paying employees in cash, and thus derived an indirect benefit from its employees' ability to cash such checks elsewhere.<sup>100</sup>

In a footnote to the case, the court quoted the following passage from *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*,<sup>101</sup> to define the limits of their ruling. The court noted that when an injury is sustained during the performance of a personal activity at a remote site, "[t]he line is drawn only at those cases where an employee has become 'so thoroughly disconnected from the service of his employer that it would be entirely unreasonable to say that injuries suffered by him arose out of and in the course of his employment.'"<sup>102</sup>

Should *R.C.A. Service Co.* have governed this case, or was Schleifman's ability to cash his own paycheck so beneficial to the employer that the personal activity became incident to his employment? Was the nature of this personal activity any different from that engaged in by Liggett? Justice Mathews' dissent argued that the two activities

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92. *Id.*

93. *Id.*

94. *Id.* at 134.

95. *Id.* at 133.

96. *Id.* at 134.

97. *Id.* at 135.

98. *Id.* at 136.

99. *Id.*

100. *Id.*

101. 380 U.S. 359, 362 (1965).

102. *M-K Rivers*, 599 P.2d at 135 n.4 (quoting *O'Keefe*, 380 U.S. at 362).

were indistinguishable.<sup>103</sup> The justice concluded that the necessity of traveling to cash an employee paycheck was not a unique incident of Schleifman's employment, as most employees must cash their paychecks and must travel to a bank to do so as well.<sup>104</sup> The justice argued that to make such an activity compensable "stretches the course of employment standard beyond the breaking point."<sup>105</sup>

### III. LEGISLATIVE REACTION TO THE DOCTRINE

In 1982, the Alaska Legislature amended its earlier definition of "arising out of and in the course of employment":

"[A]rising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities.<sup>106</sup>

The amendment constituted a specific attempt to narrow the scope of coverage under Alaska's Workers' Compensation Act for injuries incurred on remote work sites. Each section of the new language was intended to either alter the outcome of future cases resembling the ones discussed earlier in this Comment that invoked the remote site exception, or to solidify the outcomes of earlier cases in which such an exception was denied. The first clause, for example, discussing "employer-required or supplied travel to and from a remote job site" upholds the rule applied in *R.C.A. Service Co. v. Liggett* and excludes injuries incurred in travel to and from work that is not reimbursed or provided by the employer. The remaining sections of the amended definition were aimed at curbing the extension of coverage to injuries incurred during the performance of personal activities, like those engaged in by the employees in *Northern Corp., Anderson*, and *M-K Rivers*, which were neither specifically sanctioned nor performed under the direction of the employer, or were undertaken outside of an employer facility.

The new statutory definition was first examined by the court in *LeSuer-Johnson v. Rollins-Burdick Hunter*,<sup>107</sup> a case having nothing to do with remote work sites.<sup>108</sup> In that case, Judi J. LeSuer-Johnson was injured at a softball game while playing on a team sponsored by her em-

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103. *Id.* at 136.

104. *Id.* at 136-37.

105. *Id.*

106. ALASKA STAT. § 23.30.265(2) (Michie 1990) (current version at ALASKA STAT. § 23.30.395(2) (Michie 2002)).

107. 808 P.2d 266 (Alaska 1991).

108. *Id.*

ployer.<sup>109</sup> The injury occurred at an Anchorage ballpark, where LeSuer-Johnson's team was playing against an opponent in the insurance league.<sup>110</sup> The employer provided bats, balls, T-shirts, and caps for the team members and paid \$250 to the league's organizers, who rented the ball field and purchased bases.<sup>111</sup> LeSeur-Johnson later stated that she felt pressured by her co-workers to participate.<sup>112</sup>

The Alaska Workers' Compensation Board found that LeSuer-Johnson's claim was compensable, reasoning that participation on the team was an employer-sanctioned activity and that the activity occurred at an employer-provided facility.<sup>113</sup> The Alaska Supreme Court agreed with the Board:

In our view, the first decision of the board was correct. That portion of AS 23.30.265(2) which pertains to employer-sanctioned activities at employer-provided facilities is not limited to remote job sites as the statute is written. If the legislature had intended such a limitation it could have easily been expressed.<sup>114</sup>

However, as a result of this decision, in 1994 the Alaska State Legislature amended the law to narrow the definition of "arising out of and in the course of employment" even further by providing that the definition "excludes recreational league activities sponsored by the employer, unless participation is required as a condition of employment."<sup>115</sup>

#### IV. CURRENT STATUS OF THE REMOTE SITE DOCTRINE

Two recent cases have again examined the extent to which an employee's injuries resulting from personal activity at a remote site must be compensated by workers' compensation: *Norcon v. Alaska Workers' Compensation Board*<sup>116</sup> and *Doyon Universal Services v. Allen*.<sup>117</sup> Together, these cases demonstrate that despite legislative action, the Alaska Supreme Court continues to follow the same approach in analyzing remote site cases, thus sustaining the existence of the remote site doctrine.

In *Norcon*, Kenneth Siebert was employed by Norcon, Inc. as a crane operator on the Exxon Valdez oil spill cleanup and worked seven days a week, twelve hours a day, without any vacations for eight weeks

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109. *Id.* at 266.

110. *Id.*

111. *Id.* at 267.

112. *Id.*

113. *Id.*

114. *Id.*

115. ALASKA STAT. § 23.30.395(2) (Michie 2002).

116. 880 P.2d 1051 (Alaska 1994).

117. 999 P.2d 764 (Alaska 2000).

at a time.<sup>118</sup> During this time he resided at a “man camp” located four and a half miles from Valdez, Alaska.<sup>119</sup>

On the morning of his death, Siebert got out of bed, showered, shaved, and exchanged pleasantries with his roommate, who remained in bed.<sup>120</sup> A short time later, the roommate heard a thud and then saw Siebert lying on the floor.<sup>121</sup> Later examination revealed that Siebert had suffered ventricular fibrillation, which resulted in sudden cardiac death.<sup>122</sup>

The Alaska Supreme Court examined whether the remote site doctrine applied to the facts of the case and thus whether Siebert’s employer would be liable under the Workers’ Compensation Act.<sup>123</sup> In a footnote, the court concluded that the remote site doctrine did not apply:

We conclude the “remote site” theory is inapplicable in this case. The principle behind the “remote site” theory is that because a worker at a remote site is required, as a condition of employment to eat, sleep and socialize on the work premises, activities normally divorced from his work become part of the working conditions to which the worker is subjected.

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Getting ready for work is not an activity choice made as a result of limited activities offered at a remote site. It is an activity that most employees engage in before they go to work regardless of their location. Therefore, it does not fall within the parameters of the “remote site” theory.<sup>124</sup>

*Norcon* thus marked the first case wherein, even though the employee worked at a remote site, his injury-causing activity did not trigger the doctrine. The court focused on whether such activity would have been undertaken regardless of the work location,<sup>125</sup> and thereby created a new class of activities that, although performed at a remote work site, may not be covered under the remote site doctrine. Intuitively, readying for work is not so different an activity from traveling to a bank to cash a paycheck, as Schleifman did in *M-K Rivers*. What then might be the distinction between the two activities? This exact question was answered by the court six years later.

In *Doyon Universal Services*, the Alaska Supreme Court revisited the question of which personal activities actually trigger the remote site

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118. *Norcon*, 880 P.2d at 1052.

119. *Id.*

120. *Id.* at 1052–53.

121. *Id.* at 1053.

122. *Id.*

123. *Id.*

124. *Id.* at 1053 n.1.

125. *Id.*

doctrine.<sup>126</sup> Lawrence Allen worked as a cook at a remote site on the Trans-Alaska Pipeline.<sup>127</sup> While at work, Allen habitually ate at the employee cafeteria.<sup>128</sup> Employer-provided facilities, such as the cafeteria, were the only room-and-board options available to the employees at the remote site.<sup>129</sup>

On August 21, 1997, Allen traveled to the remote site for work.<sup>130</sup> He ate dinner in the cafeteria, which included “pork chops, mashed potatoes, gravy, and three or four Brussels sprouts.”<sup>131</sup> Two hours later he felt pain in his stomach, which continued to intensify.<sup>132</sup> By the next day he was vomiting and discovered blood in his stool.<sup>133</sup> Allen was flown to Anchorage, where he was admitted to the Alaska Native Medical Center.<sup>134</sup>

The doctors determined that Allen’s small intestine was obstructed by two bezoars, which were surgically removed.<sup>135</sup> The medical report revealed that the bezoars contained dense necrotic vegetable matter containing traces of undigested Brussels sprouts.<sup>136</sup>

The Workers’ Compensation Board, analyzing the case under the 1982 amendment to the Alaska Workers’ Compensation Act, found that Allen’s injury occurred during an “employer sanctioned activity” in an “employer provided facility.”<sup>137</sup> The Board concluded that the injury was thus within the course and scope of Allen’s employment.<sup>138</sup> The supreme court also held Allen’s employer liable for the injury, but expressly relied on the remote site doctrine in making its decision.<sup>139</sup> The court explained that in remote locations, “everyday” employee activities that do not appear work-related and thus would not generally be compensable under workers’ compensation are covered under the remote site doctrine “because the requirement of living at the remote site limits the employee’s activities choices.”<sup>140</sup> The court determined that Allen’s choices of what he could eat at the camp were limited:

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126. *Doyon Universal Serv. v. Allen*, 999 P.2d 764, 768–70 (Alaska 2000).

127. *Id.* at 766.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* at 767.

135. *Id.*

136. *Id.*

137. *Id.* at 768.

138. *Id.*

139. *Id.* at 769.

140. *Id.* (citations omitted).

Allen had little or no choice as to what he could eat, how it would be prepared, who would prepare it, or the quality of the ingredients. The limits placed on Allen's choices are further evident in the fact that he does not cook or eat Brussels sprouts at home.<sup>141</sup>

Based on the fact that Allen's meal was "an activity choice made as a result of limited activities offered at a remote site," the court held that the injury was compensable under the remote site doctrine.<sup>142</sup>

In a footnote, the court distinguished *Norcon* from this holding, indicating that an employee's activity choices must be limited by the remote site and that the limitation must play a causal role in the injury for it to be covered by the Alaska Workers' Compensation Act.<sup>143</sup> The court indicated that if in a situation similar to *Norcon*, an employee's heart failure was caused by a sudden burst of cold water during his shower, the restriction of the choice of showers presented by the remote site might have brought the injury within the remote site doctrine.<sup>144</sup>

## V. CONCLUSION

When an employee works and resides at a remote site, his personal activities are governed by the limitations of that site. Because the employee is required to eat, sleep, and socialize on the work premises, activities that are not normally related to employment become an integral part of the working conditions of the job. Recreational activities, travel to and from the work site, and personal activities performed on-site that are not normally encompassed by workers' compensation are covered in these instances under the remote site doctrine. The only requirement for such coverage is that the personal activity engaged in must be a result of limited choices offered at the site, and the choice dictated by the site must play a causal role in the injury.

Legislative attempts to narrow the application of Alaska's remote site doctrine do not appear to have altered the courts' approach to the issue. Instead, the doctrine is alive and well in Alaska. Rather than diminishing the reach of the doctrine, courts have instead applied the remote site analysis within the framework of the statutory amendment, by

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141. *Id.*

142. *See id.* at 770 (citing *Norcon v. Alaska Workers' Compensation Board*, 880 P.2d 1051, 1053 n.1 (Alaska 1994)). The supreme court does not explicitly state this conclusion. The employer premised its appeal on whether Allen's activity was an "employer sanctioned activity." *Id.* at 768. Reacting to the statutory amendment, the supreme court analyzed the remote site doctrine in terms of this section of the statute: "[A]rising out of and in the course of employment' includes . . . employer-sanctioned activities at employer-provided facilities . . . ." *Id.* (quoting ALASKA STAT. § 23.30.395(2) (Michie 2002)).

143. *Id.* at 769–70 n.22.

144. *Id.*

absorbing this analysis into the inquiry of whether an employee's activity is an "employer-sanctioned activity."