SAFE WORK NEWFOUNDLAND & LABRADOR

WHSCC

September 11, 2013

Mr. Jorge P. Segovia
Cox & Palmer
Suite 1000 Scotia Centre
235 Water Street
St. John's, NL A1C 1B6

Dear Mr. Segovia:

[redacted]

I have conducted a review in accordance with Section 46 of the Workplace Health, Safety, and Compensation Act, RSNL 1990, Chapter W-11 (herein referred to as the Act) of all submissions with respect to your request for a determination as to whether the above-noted action brought by [redacted] (Plaintiff), represented by Mr. Eli Baker, Eli Baker Law Office, against your clients, 1st Defendant [redacted], and 2nd Defendant, [redacted], is prohibited by Section 44 of the Act.

BACKGROUND INFORMATION

[redacted] suffered an injury on September 24, 2007, when she was at the [redacted] waiting for a table. The waiter led them to the bar area and [redacted] walking behind the waitress, nearing the end of the bar, when she stepped in a puddle of liquid on the stone bar floor. [redacted] right leg slipped in the liquid. She did not fall, but had a hard jolt resulting in injury to her neck and back.

PLEADINGS

Statement of Claim

The Statement of Claim dated September 24, 2009, states:

5. *On or about September 24, 2007, the Plaintiff was attending the 1st Defendant's premises known as the [redacted] located at [redacted] the premises.*

6. *The Plaintiff and her party had been waiting for a table to be prepared until a waitress led the Plaintiff and her party from the bar area to the tables located behind the bar area in the restaurant.*

7. *The Plaintiff was positioned behind the waitress as she guided the party through.*

8. *Nearing the end of the bar the Plaintiff, with no warning or foresight stepped in a puddle of liquid on the stone bar floor. The Plaintiff's right leg slipped in the slippery liquid.*

9. *Though the Plaintiff did not fall to the floor, as a result of the slip received a "hard jolt".*

10. *As a result of the slip the Plaintiff received injuries to her neck and back.*

11. *The Plaintiff's said slip was caused solely and wholly by the presence on the said floor of a slippery liquid.*

12. *The presence of the said liquid on the floor constituted an unusual danger and unsafe situation to all customers on the said premises, particularly the Plaintiff.*

13. *Immediately prior to the said slip, the Plaintiff had neither knowledge nor notice that such an unusual danger and unsafe situation as aforementioned, exist, nor could such knowledge be imputed to the Plaintiff.*

14. *The Defendant owed a duty of care to the Plaintiff to take reasonable care to ensure that the Plaintiff was reasonably safe in using the said premises and the Defendants breached that duty of care."*

Defense of the First Defendant

"Defense of the 1st Defendant (1) the 1st Defendant states that within action is statute barred. In particular, the 1st Defendant states as follows:

a) *At all material times, the Plaintiff was a 'worker' with [redacted] or otherwise, and the 1st Defendant was an 'employer', all as defined by the Workplace Health, Safety and Compensation Act, RSNL 1990, c. W-11 (the 'Act').*

b) *If the Plaintiff suffered injury, then the injury arose out of and in the course of the Plaintiff's employment while she was at a business dinner.*

c) *Consequently, the within action is barred by Section 44 of the Act.*

d) *Pursuant to Sections 46 and 19 (1) of the Act, the Workplace Health, Safety and Compensation Commission has exclusive jurisdiction to determine whether the within action is barred by the Act. . . .*

11. *As to the whole of the Statement of Claim, the 1st Defendant denies any liability whatsoever. The 1st Defendant states that it took such care as, in the circumstances, was*

reasonable to see that the premises were reasonably safe to those lawfully attending the premises.

12. *Further and/or in the alternative, if the Plaintiff did slip while at the premises, the 1st Defendant says that any resulting injuries were caused by or contributed to by the Plaintiff's own negligence, particulars of which include, but are not limited to, the following:*

    (a) failing to take due care and attention for her own safety;
    (b) failing to maintain a proper or any outlook;
    (c) failing to take reasonable notice of her own surroundings;
    (d) failing to exercise reasonable care and skill while at the premises;
    (e) failure to wear appropriate footwear; and
    (f) such other instances of negligence as may appear."

Defense of the 2nd Defendant

1. *"The 2nd Defendant states that the Plaintiff is barred by statute, or otherwise, from taking action as against the 2nd Defendant with regards to the matter set forth in the Statement of Claim.*

2. *Further and/or in the alternative, the 2nd Defendant states as follows:*

    (a) At all material times, the Plaintiff was a 'worker' with Pathfinder Management Group Limited, or otherwise as defined by the Workplace Health, Safety and Compensation Act, RSNL 1990, c. W-11 (the 'Act').

    (b) if the Plaintiff suffered injury, then the injury arose out of and in the course of the Plaintiff's employment while she was at a business dinner.

    (c) the 2nd Defendant was an 'employer', as defined by the Act. Further and/or in the alternative the 2nd Defendant is entitled to the benefit of the Act statutory bar.

    (d) The within action is barred by Section 44 of the Act, or otherwise.

    (e) Pursuant to Section 46 and 19 (1) of the Act, the Workplace Health, Safety and Compensation Commission has exclusive jurisdiction to determine whether the within action is barred by the Act. . . .

12. *As to the whole of the Statement of Claim, the Defendant denies any liability whatsoever.*

13. *Further and/or in the alternative, if the Plaintiff did slip while at the premises, the 2nd Defendant says that any resulting injuries were caused by or contributed to by the Plaintiff's own negligence, particulars of which include, but are not limited to, the following:*

    (a) failing to take due care and attention for her own safety;
    (b) failing to maintain a proper or any lookout;
    (c) failing to take reasonable notice of her own surroundings;

(d) failing to exercise reasonable care and skill while at the premises;
(e) failure to wear appropriate footwear; and
(f) such other instances of negligence as may appear."

DETERMINATION, REQUEST, AND SUBMISSIONS

In the May 31, 2011, Application for Determination, you requested on behalf of the Defendants, that the Commission determine, pursuant to Section 46 of the Workplace Health, Safety, and Compensation Act, RSNL 1990, Chapter W-11 (herein referred to as the Act) whether the above-noted action brought by [redacted] Plaintiff), presented by Mr. Eli Baker, Baker Law Office, against your clients [redacted] (1st Defendant) and [redacted] (2nd Defendant) is prohibited by Section 44 of the Act.

[redacted] suffered an injury on September 24, 2007, when she was attending dinner at the [redacted]. The Plaintiff had been waiting for a table to be prepared for her party at the bar area. The tables were located behind the bar area in the restaurant. As the waitress guided the party through, nearing the end of the bar, the Plaintiff, with no warning, stepped in a puddle of liquid on the stone bar floor. The Plaintiff's right leg slipped in the slippery liquid. As a result of the slip, she received a "*hard jolt*". This resulted in injuries to her neck and back. [redacted] did not file a claim with the WHSCC.

I have provided a copy of the application for determination to the Plaintiff's lawyer. Mr. Baker responded in a submission dated August 8, 2011. Mr. Baker states that [redacted] dominant purpose for the dinner was a social event between friends and therefore, the Plaintiff submits the action is not statute barred pursuant to the provisions of the Act. A copy of this submission was forwarded to Mr. Segovia, who in turn responded September 14, 2011. This was copied to Mr. Baker, who in turn provided additional submission which was copied to yourself.

LEGISLATION AND POLICY

The Workplace Health, Safety, and Compensation Act, RSNL 1990, Chapter W-11, Section 2 (1) states:

> *"In this Act*
>
> *(j) 'employer' means an employer to whom this Act applies and who is engaged in, about or in connection with an industry in the province and includes*
>
> *(i) a person having in his or her service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in a work in or about an industry within the scope of this Act,*

(ii) the principal, contractor and subcontractor referred to in section 120."

(o) 'injury' means

(i) an injury as a result of a chance event occasioned by a physical or natural cause,

(ii) an injury as a result of a wilful and intentional act, not being the act of the worker,

(iii) disablement,

(iv) industrial disease, or

(v) death as a result of an injury

arising out of and in the course of employment and includes a recurrence of an injury and an aggravation of a preexisting condition but does not include stress other than stress that is an acute reaction to a sudden and unexpected traumatic event."

(z) 'worker' means a worker to whom this Act applies and who is a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes

(i) in respect of the industry of fishing, whaling or sealing, a person who becomes a member of the crew of a boat, vessel or ship under an agreement to prosecute a fishing, whaling or sealing voyage in the capacity of a person receiving a share of the voyage or is described in the Shipping Articles as a person receiving a share of the voyage or agrees to accept in payment for his or her services a share or portion of the proceeds or profits of the venture, with or without other remuneration, or is employed on a boat, vessel or ship provided by the employer,

(ii) a person who is a learner, although not under a contract of service or apprenticeship, who becomes subject to the hazards of an industry for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment,

(iii) a part-time or casual worker, and

(iv) an executive officer, manager or director of an employer."

Section 43 (1) of the Act states:

> *"Compensation under this Act is payable*
>
> *(a) to a worker who suffers personal injury arising out of and in the course of employment, unless the injury is attributable solely to the serious and wilful misconduct of the worker."*

Section 44 of the Act states:

> *"(1) The right to compensation provided by this Act is instead of rights and rights of action, statutory or otherwise, to which a worker or his or her dependents are entitled against an employer or a worker because of an injury in respect of which compensation is payable or which arises in the course of the worker's employment.*
>
> *(2) A worker, his or her personal representative, his or her dependents or the employer of the worker has no right of action in respect of an injury against an employer or against a worker of that employer unless the injury occurred otherwise than in the conduct of the operations usual in or incidental to the industry carried on by the employer."*

Section 46 of the Act states:

> *"Where an action in respect of an injury is brought against an employer or a worker by a worker or his or her dependent, the Commission has jurisdiction upon the application of a party to the action to adjudicate and determine whether the action is prohibited by this Act."*

Policy EN-19, *"ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT"*, of the Client Services Policy Manual states:

> *"**POLICY STATEMENT***
>
> *Entitlement to compensation is based on two fundamental statutory requirements:*
>
> *1. the worker meets the definition of 'worker' under subsection 2 (z) of the Act; and*
>
> *2. the injury as defined under subsection 2 (o) is one arising out of and in the course of employment.*
>
> *This policy focuses on the established principles that have evolved to define 'arising out of and in the course of employment' within the compensation system. It also provides established guidelines on the extent and/or limitations of coverage in varying circumstances.*

GENERAL

Arising out of and in the course of employment

Section 43 of the Act states:

(1) Compensation under this Act is payable

(a) to a worker who suffers personal injury arising out of and in the course of employment, unless the injury is attributable solely to the serious and wilful misconduct of the worker; and,

(b) to the dependents of a worker who dies as a result of such an injury.

The term 'arising out of and in the course of employment' means the injury is caused by some hazard which results from the nature, conditions or obligations of the employment and the injury happens at a time and place, and in circumstances consistent with and reasonably essential to the employment. Arising out of refers to what caused the injury; in the course of refers to the time and place of the injury and its connection to the employment.

While no single criterion is conclusive in classifying an injury as one arising out of and in the course of employment, various indicators are used for guidance, including:

- *whether the injury occurred on the premises of the employer (see also **'Employer's Premises'** section);*
- *whether it occurred in the process of doing something for the benefit of the employer;*
- *whether it occurred in the course of action in response to instructions from the employer;*
- *whether it occurred in the course of using equipment or materials supplied by the employer;*
- *whether it occurred in the course of paid employment;*
- *whether the risk to which the worker was exposed was the same as the risk to which he/she is exposed in the normal course of production;*
- *whether the injury occurred during a time period for which the worker was being paid; and*
- *whether the injury was caused by some activity of the employer, a fellow worker, or a third party.*

*Workers are not considered to be in the course of the employment while traveling to and from work, unless the conditions apply under the provisions for **Travel for the Purpose of Employment** or **Transportation Controlled by the Employer** contained in this policy.*

Presumption

Section 61 of the Act provides that where the injury arose out of the employment, it shall be presumed, unless the contrary is shown, that it occurred in the course of the employment, and where the injury occurred in the course of the employment, it shall be presumed, unless the contrary is shown, that it arose out of the employment. In other words, entitlement is based on a two part test.

The presumption provision ensures that workers are covered where one condition of compensability applies, i.e. the injury either arose out of or occurred in the course of employment, but there is insufficient evidence to establish that the other condition applies. The standard of proof to be applied when determining either of these shall be that established under section 60 (Policy EN-20 Weighing Evidence).

Principles of the scope of coverage (spectrum, boundaries)

*Coverage generally begins when the worker enters the employer's premises to start the work shift, and usually terminates on the worker leaving the premises at the end of the shift (refer to section **Employer's Premises**). Coverage may extend beyond the specific work shift or cycle in certain cases, such as captive or traveling workers, specifically discussed throughout this policy.*

However, in all cases, coverage is not so broad or expansive as to include personal hazards or deviations, removing oneself from employment, or serious and wilful misconduct.

1. Employer's Premises

*Employer's premises is any land or buildings owned, leased, rented, controlled, or used (solely or shared) for the purpose of carrying out the employer's business. It also includes captive roads and parking lots as described in this section of the policy (refer to **Captive Roads** and **Parking Lots**).*

Coverage is extended to a worker in the course of employment while entering or exiting the employer's premises using an accepted means of entering and leaving the employer's premises, all in relation to performing activities for the purposes of the employer's business.

Where the premises is occupied by more than one employer, the employer's premises includes the exclusive premises of the employer and the shared or common areas such as entrances, exits, elevators, stairs, and lobbies.

Employer's premises does not include public or private land, buildings, roads (except captive roads as discussed in this section) or sidewalks, used by the worker to travel to and from home and the employer's premises, or private parking arrangements made by the worker independent of the employer.

Employer premises does not include a picket line established by workers during a labour dispute or strike.

4. Special Assignments, Training and Educational Courses

Workers who are on special employer-directed assignments, including courses and conventions, and are paid regular wages are considered to be in the course of the employment during such special assignments. Where such assignments are at a place other than the normal or usual place of employment, travel to the place of the special assignment is covered, as long as the worker travels on a direct route without deviation for personal reasons.

Where the conditions of the special assignment require the worker to use overnight hotel accommodations, coverage is extended to activities related to the reasonable use of such facilities (e.g. restrooms, restaurants, etc.). However, activities under taken for purely personal reasons such as visiting a movie theatre or a lounge are not considered to be in the course of the employment."

POSITION OF THE DEFENDANTS

The Defendants have taken the position that the event at which the Plaintiff was allegedly injured was a business dinner related to her employment. As such, the Plaintiff was in the course of her employment at the time of the alleged injury. That being the case, the action is barred by the Act.

POSITION OF THE PLAINTIFF

The position of the Plaintiff in response to the application made by the Defendants is that the action commenced in the Supreme Court of Newfoundland and Labrador against the Defendants is not prohibited by the Act.

REASONING AND CONCLUSION

I have reviewed and considered all submissions from all parties. My task in this regard is to determine, in accordance with Section 46 of the Act, whether the action brought by [redacted] against [redacted] is barred by the Workplace Health, Safety and Compensation Act. I have reviewed the arguments put forth by both parties.

Section 43 of the Act provides that compensation is payable to a worker whose injury arose out of and in the course of employment. Hence, there are two basic statutory requirements which

must be met. The worker must meet the definition of "*worker*" according to Section 2 (1) (z) of the Act and the injury must meet the definition of *"injury"* under Section 2 (1) (o) of the Act.

In this determination, I have considered the following issues:

(1) Was [redacted] a *"worker"* within the meaning of the Act?

(2) Secondly, were [redacted] employers within the meaning of the Act.

(3) Lastly, did [redacted] injuries arise out of and in the course of employment.

The first question to be answered is whether [redacted] would be considered a "*worker*" as defined by the Act. Section 2 (z) of the Act directs the Commission to determine whether an individual is a worker under the Act. In order to determine if [redacted] is a "*worker*", several criteria may be considered. A Worker is a person who has entered into or works under a contract or service for apprenticeship, written or oral, expressed or implied, by way of manual labour or otherwise.

Secondly, according to Commission records, [redacted] are registered employers. Therefore, in accordance with Section 2 (1) (j) of the Act, [redacted] are considered employers. These facts are not in dispute.

At the time of [redacted] injury, she was employed with her husband, [redacted]. According to the Commission's records, [redacted] is a registered employer of which [redacted] is employed. Therefore, in accordance with Section 2 (1) (j) of the Act, [redacted] is considered an employer.

Lastly, did [redacted] injuries arise out of and in the course of employment.

Basically, in this case, why [redacted] attended the dinner, was it directed by the business with respect to "*how*", "*when*", and "*where*" for the purpose of her employment. There appears to be no request or requirement from a business perspective for [redacted] to have attended, therefore, it would be very tenuous, if not impossible to establish or indicate that her attendance at the dinner was one that was required of her employment as a "*worker*" under the Act. It does not appear that [redacted] attendance at the dinner was part of her normal duties, was not during regular working hours nor was she paid.

Information on file confirms that [redacted] slipped in a puddle of liquid on the stone bar floor and received a "*hard jolt*" resulting in injuries to her neck and back. In an Examination For Discovery hearing of [redacted] heard on November 17, 2010, at the offices of the Department of Justice, St. John's, Newfoundland and Labrador, [redacted], a friend of [redacted], was visiting from Ontario while attending the [redacted] Conference in St. John's. [redacted] and [redacted] had made arrangements for supper and asked [redacted] to join them. Apparently, the dinner was arranged as a result of the friendship and would have occurred, according to [redacted], whether there was any work

to be discussed or not. Initially, [redacted] declined the invitation, but her husband requested her presence that the supper may be an opportunity to explore the parallels of [redacted] new position who had close ties to a number of entrepreneurs in the [redacted] area and the work of [redacted] and to explore the possibility of working together to develop a better connection between companies located in [redacted] and companies located in [redacted]. This was also an opportunity to explore local businesses and highlight key roles of [redacted] in the development of start-ups in [redacted] as [redacted] is involved in commercialization and the developing and building of companies. According to the information submitted, some general business was discussed during the dinner, but it was acknowledged by [redacted] that meeting for dinner was primarily arranged due to the friendship and, again, would have occurred whether there was any work discussed or not.

Was [redacted] presence at the dinner on the day in question integral to the business operation? In this case, [redacted], while acknowledging common business interests, it was established that [redacted] came to the Province for a business conference. Given its location and a long term friendship between [redacted] and [redacted] [redacted] was invited and confirmed that while there may have been some business component and to catch up on their business and private lives, it appears no business was established nor expected as a result of meeting for dinner. This evidence has been indicated under oath by [redacted] during the Discovery and has not been shown as otherwise.

CASE LAW SUBMITTED

Section 19 (4) of the *Act* states:

> *"The decisions of the commission shall be upon the real merits and justice of the case and it is not bound to follow strict legal precedent."*

While the Commission is not bound to follow strict legal precedent, I have reviewed the cases submitted to determine relevance and applicability to the case at hand.

Ontario Workers' Compensation Appeals Tribunal, Decision No. 1091/96, Travis v. Beattie [1997] O.W.C. A.T.D. No. 65

B, T & S were all workers of a Schedule 1 employer which was in the business of distributing after-market automotive supplies. The employer had developed a sales incentive program with a number of its suppliers. Winners were entitled to attend a golf week at Hilton Head. All participants agreed to drive to Hilton Head. B was part owner of a private plane. S asked B if he would fly him to Hilton Head. B was not a winner, but agreed to take the trip. T was a winner who flew with S and B. On the return flight from Toronto the plane crashed killing all three. The estates of T and S brought a court action against the estate of B for negligence. The tribunal had no doubt that the trip was an event arising out of and in the course of employment. The issue was whether B, T & S were in the course of their employment. The primary characteristic of the trip was business oriented and therefore they were entitled to benefits under the Workers' Compensation Act.

Analysis:

With respect to this particular case being presented as a precedent for the case at hand, the tribunal determined that the primary characteristic was business orientated and all parties were covered under the Workers' Compensation Act. However, I find this is not the circumstance in the present case under review. It does not have any applicability to [redacted] matter as the primary characteristic of the dinner at [redacted] by [redacted] was not for business.

The Ontario Workplace Safety and Insurance Appeals Tribunal, Decision No. 316/99

In this case the worker was injured in an employee sponsored baseball game. The worker was hired by the employer as a real estate appraiser for loans and underwriting for residential housing. He was asked to play on the team which was comprised of the employees of the employers clients or prospective clients. The vice chair of the Tribunal concluded that the worker was injured while engaging in an activity for the employer. The fact that the games were after hours and voluntary did not mean participation was not work related. The Appeals Tribunal determined that the worker was entitled to benefits. The appeal was allowed.

Analysis:

The facts of this case are unlike the facts of [redacted] case. I find the analysis of the Tribunal concluded that the worker was engaging in an activity for the employer and, as such, it was determined that the baseball game at which the worker was injured was to the employer's benefit and was a promotional activity for the employer. Therefore, I do not find this particular case is similar to [redacted]. Although her attendance at the dinner was voluntary it was not established that her attendance at the dinner was required of her employment as a *"worker"* under the Act and she was not engaging in an activity for the employer. Therefore, this case is not similar.

Streifal vs British Columbia Workers' Compensation

J. McKenzie suffered injuries in a motor vehicle accident while a passenger in a motor vehicle driven by Randell Bracher. They were travelling to a restaurant to have lunch. J. McKenzie was employed by Western Greenhouse Growers Cooperative Association, registered with the WHSCC. He was a General Manager of operations responsible for negotiating contracts for the supply of raw packaging products.

Mr. Bracher was the Sales Representative with Weyerhauser, a secondary supplier of packaging products to the Western Greenhouse, Washington USA. The contract between the two companies ended because of US exchange rates. Mr. Bracher continued to telephone Mr. McKenzie periodically and occasionally went to lunch. The Board concluded the lunch trip arose out of and in the course of employment. The trip had a business purpose.

The Board concluded there was a business component to the trip and therefore, the injuries sustained from the MVA arose out of and in the course of employment. The court determined that while no specific work was transacted, no contract was being discussed or likely in the immediate future, the invitation was from a sales representative who hoped to maintain a former

client as a prospective future client. Therefore, they confirmed to meet due to the business relationship.

Analysis:

This case differs from the case at hand in that there had already been a business relationship established. In the case at hand, while it was acknowledged by [redacted], some general business was discussed, the dinner was primarily arranged due to friendship and there was no established business between the two parties and the dinner would have occurred anyway. I conclude that this case is not similar to the case at hand.

Newfoundland and Labrador Workplace Health, Safety, and Compensation Review Division, Decision No. 05259

The individual was involved in a motor vehicle accident. The claim was denied as the worker was not considered to be in the course of employment as the travel was routine commuting. The worker worked with Marine Atlantic Ferries from Argentia, NL to Port Aux Basques, NL. The individual lived in Lewisporte. The individual got on a Ferry in Argentia and was allowed to take his car. He disembarked in Port Aux Basques. During his commute he was involved in a MVA. The Commission's decision was upheld as it was the worker's choice where he wanted to live and the travel was considered routine commuting, therefore, the incident did not arise out of and in the course of employment.

Analysis:

In this decision, the worker's injuries were not considered to have arisen out of and in the course of employment, as the travel was considered a routine commute. I would agree that this case is similar to the case at hand as the individual was a worker but the injury did not arise out of and in the course of employment. I find this case relevant to the case at hand in that it addresses routine activities not integral to employment duties. While [redacted] was a worker of [redacted], the dinner she attended at [redacted] was primarily arranged due to friendship. It was [redacted] choice to attend the dinner voluntarily, but the description of the injury slipping on liquid on the floor, was not as a result of any employment activities and therefore her injury did not arise out of and in the course of employment duties.

Newfoundland and Labrador Workplace Health, Safety, and Compensation Review Division, Decision No. 07203

In this case, the worker was self-employed. The claim was accepted for right wrist tendonitis. The individual put in a claim for a water pillow for the neck and shoulder. The neck and shoulder were not considered compensable and therefore the request for a water pillow for the neck and shoulder was denied. Upon appeal, the Review Commissioner found the weight of evidence was equal and accepted the neck and shoulder condition as compensable. The Chief Review Commissioner found when reviewing the evidence for the position of the worker that her neck and shoulder area were compensable as a result of a nonspecific incident and that the injury actually occurred over some time. This would likely have been contributory to the worker's wrist condition as well as the condition related to her neck and shoulder. Therefore,

the additional symptoms to the neck and shoulder in addition to the right wrist tendonitis were considered to have arisen out of and in the course of employment and as such compensable.

Analysis:

In this case, the claim had been accepted. It was the issue of whether additional symptoms to other parts of the body were as a result of the employment. It was determined that the injuries did arise out of and in the course of employment. The Chief Review Commissioner's decision of the issue was the weighing of evidence based on the balance of probabilities and if evidence is equal, then the decision is in favour of the worker. While this case offers insight into the weighing of evidence and decisions pursuant to Section 60 of the Act, the question to be answered in [redacted] case is whether her claim is statute barred. My determination is therefore an issue pursuant to Section 46 and whether the action is prohibited by the Act.

Newfoundland and Labrador Workers' Compensation Review Division (WCRD) Decision No. 96128

The worker was owner/operator of a hotel in Port aux Choix. The worker went to Corner Brook on a business trip to purchase items and perform duties associated with the business. She was then to fly to Halifax that evening for business. While in Corner Brook she did purchase items for the business. At 3:30 p.m. she visited her sister at her home in Corner Brook (private dwelling). She had lunch and when exiting the home at around 5:00 to 5:30 p.m. she fell and injured her leg. It was determined that the injury did not arise out of and in the course of employment. The Commission's decision was upheld.

Analysis

I conclude the case does have some similarities to the case at hand in that the individual was the owner and operator of a hotel and was self-employed. The individual was on a business trip and her trip did have a business component, however, while visiting the home of her sister, this would be a deviation from the business at hand and therefore, the injury sustained while exiting her sister's home would not be considered to have arisen out of and in the course of her employment. In this case, while [redacted] attendance for dinner at [redacted] did have some business component, it was not primarily for business purposes.

SUMMARY

At the time of [redacted] injury she was employed with her husband, [redacted], with [redacted]. [redacted] attended a dinner on September 24, 2007 when she was at [redacted] waiting for a table. When the waitress led her to the bar area, [redacted] was walking behind the waitress, nearing the end of the bar, when she stepped in a puddle of liquid on the stone bar floor. [redacted] right leg slipped in the liquid. She did not fall, but did sustain a hard jolt resulting in injury to her neck and back. In this case, the issue was why [redacted] attended the dinner. It does not appear that [redacted] attendance at the dinner was part of her normal duties, was not during regular working hours, nor was she paid.

Re: [redacted] Mr. Jorge Segovia, Cox & Palmer [redacted]

September 11, 2013

Based on my review of the facts and evidence presented by the parties, review of the Case Law and the legislation, I conclude that in this case, at the time of the injury, [redacted] was not considered "*a worker*" as defined by the *Act*. Therefore, the injuries incurred by [redacted] on September 24, 2007 did not arise out of and in the course of employment with [redacted]

DETERMINATION

It is my determination that the action brought against [redacted] et al (1st Defendant) and [redacted] (2nd Defendant) is not statute barred. This is the Commission's final decision on this issue. Attached is a certificate which may be filed with the courts.

Sincerely,

Bernadette Chalker
Internal Review Specialist

BC:il
Enclosure

c: Ms Yvonne McDonald, Administrative Officer, Internal Review Division
c: Mr. Eli Baker, Eli Baker Law Office