Appendix III

RESERVATION OF RIGHTS

To: Insured

You are hereby notified that pursuant to Insurance Policy No. ____ and your claim for benefits submitted pursuant to said policy, Insurance Co. will investigate all facts pertinent to the claim submitted, and while such investigation is taking place Insurance Co. shall pay benefits pursuant to said policy and claim and that said investigation and payments shall not be considered to be a waiver of any right which Insurance Company may have under the terms of the said insurance policy.

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COMPANY

Note

WORKERS' COMPENSATION IN IOWA—THE GOING AND COMING RULE AND ITS EXCEPTIONS.

I. INTRODUCTION

Workers' compensation laws were originally enacted to provide benefits to employees victimized by work-related injuries. This social purpose is achieved by placing a "liability without fault" burden upon the employer of the injured employee for injuries incurred while the employee is acting within the scope of his employment.[1] To avoid thwarting the social purpose underlying these laws, most jurisdictions, including Iowa, have liberally construed workers' compensation statutes in favor of the employee.[2] However, this policy of liberal construction is not intended to make employers absolutely liable for all injuries suffered by an employee.[3] Certain requirements under present workers' compensation laws must be satisfied before an employee may be compensated for injuries. For example, in Iowa, two main requirements must be satisfied before an employee's injury is deemed to be compensable: it must both arise out of and in the course of the injured party's employment.[4] The circumstances in which an injury "arises out of and in the course of" employment is defined as follows:

> The words "*personal injury arising out of and in the course of the employment*" shall include injuries to employees whose services are being per-

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1. Larson, *The Nature and Origins of Workmen's Compensation*, 37 CORNELL L.Q. 206 (1952); 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION §§ 2.00-.10 (1978).

2. *See* Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 1175, 38 N.W.2d 161, 162 (1949) (claimant, who was employed to feed cattle, was in the course of employment when injured unloading cattle at the direction of the employer's local representative); Pohler v. T. W. Snow Constr. Co., 239 Iowa 1018, 1027-28, 33 N.W.2d 416, 421 (1948).

3. Bulman v. Sanitary Farm Dairies, 247 Iowa 488, 73 N.W.2d 27 (1955). The court in *Bulman* qualified the liberal construction doctrine by requiring that workmen's compensation laws be administered by logical rules, not by the sympathies and sentiments of any particular judge. *Id.* at 494, 73 N.W.2d at 30.

4. Lindahl v. L. O. Boggs, Co., 236 Iowa 296, 307, 18 N.W.2d 607, 613 (1945). In *Lindahl* the court stated that "[u]nder the Iowa act, to justify an award, three things must be shown by the evidence, direct or circumstantial. . . . These are: (1) That the employee suffered the injury; (2) that the injury was sustained in the course of employment; and (3) that the injury arose out of the employment." *Id.* at 308, 18 N.W.2d at 613-14.

> formed on, in, or about the premises which are occupied, used or controlled by the employer, and also *injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.*[5] (emphasis added)

Although a claimant must satisfy both the "arising out of" and "in the course of employment" requirements before his injury is compensable,[6] this Note will focus on a discussion of the "in the course of employment" requirement, and specifically address the general "going and coming" rule and its exceptions in Iowa.

In Iowa, the requirement that the injury arise "in the course of employment" refers to the time, place, and circumstances of the injury.[7] Professor Larson defines such an injury as occurring "within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or doing something incidental thereto."[8] Such language serves, at best, as a general guideline for determining which employee injuries are sufficiently work-related to be compensable under workers' compensation laws. Because of the breadth of such guidelines, certain general rules have evolved which lend clarity to the "in the course of employment" requirement. One of these rules is that "in the absence of special circumstances, an employee injured in 'going to or coming from' his place of work is excluded from the benefits of workmen's compensation."[9] Thus, an employee is not considered to be within the course of employment before reaching the employer's premises prior to commencing work and upon leaving the premises at the termination of the work period.[10]

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5. IOWA CODE § 85.61(6) (1977).

6. McClure v. Union County, 188 N.W.2d 283 (Iowa 1971); Crees v. Sheldahl Tel. Co., 258 Iowa 292, 139 N.W.2d 190 (1965). In *McClure*, the court defined the two requirements as follows: (1) "arising out of" means the origin or cause of an employee's injury; (2) "in the course of" refers to time, place, and circumstances of the injury. 188 N.W.2d at 287. *See also* Crowe v. De Soto Consol. School Dist., 246 Iowa 402, 406, 68 N.W.2d 63, 65 (1955).

7. *See* note 6 *supra*.

8. 1 LARSON, *supra* note 1, at § 14.00.

9. 8 SCHNEIDER, WORKMEN'S COMPENSATION § 1710 (3d or perm. ed. 1951). *See* 1 LARSON, *supra* note 1, at § 15.00, where the author states:

> As to employees having fixed hours and place of work, injuries occurring on the premises while they are going to and from work before or after working hours or at lunchtime are compensable, but if the injury occurs off the premises, it is not compensable, subject to several exceptions.

10. *See* Otto v. Independent School Dist., 237 Iowa 991, 993, 23 N.W.2d 915, 916 (1946); Griffith v. Cole Bros., 183 Iowa 415, 426, 165 N.W. 577, 581 (1917). In *Griffith*, the employee was working on a bridge. He was fatally hit by lightning while sitting in a tent furnished by his employer at a location near the job site. The court ruled that decedent was in the course of employment when killed because he was located on the employer's premises. *Id.* at 426, 165 N.W. at 581; Pixler v. Spencer Foods, Inc., Arbitration Decision (April 13, 1977) (Mueller, Dep. Comm'r). In *Pixler*, the defendant employer maintained that claimant was not

II. PREMISES DISTINCTION

Since the "going and coming" rule is applicable only to workers' injuries occurring *off* the employer's premises, a threshold issue is to define what constitutes being "on" an employer's premises.[11] The Iowa Code uses the terms "on, in, or about" premises "occupied, used, or controlled" by the employer to describe employee injuries occurring in the course of employment.[12] In addition, Professor Larson has defined the term "premises" as encompassing the entire area associated with the work which the employee is engaged in.[13]

Because the Iowa Supreme Court has not had the opportunity to definitively rule on the "premises" issue, it becomes necessary to examine several Iowa Industrial Commission decisions which have addressed this question. One such decision has deemed the "premises" concept to include the general areas of a construction or repair site other than the specific area employees are working in.[14] Also included within the "premises" definition are employer controlled parking lots[15] and, in some

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in the course of employment when injured on the employment premises prior to punching in for work. In refuting this contention, the Deputy Industrial Commissioner stated:

> It is well settled under Iowa law that an injury which occurred on the employer's premises, if not otherwise precluded, is compensable. *Crowe v. De Soto Consolidated School District*, 246 Iowa 402, 68 N.W.2d 63. This rule of law is so well entrenched and basic so as to require comment on the conduct of the defendant employer in resisting that portion of the claimant's case.

Id.

11. It is important to note that the employees, although on the employer's premises, may engage in some types of activity which remove them from the course of employment. For example, the employee may recklessly violate a specific employer's rule or instruction. *See* Buehner v. Hauptly, 161 N.W.2d 170 (Iowa 1968). Another instance in which an on-premises employee may deviate from the course of his employment is when he is a voluntary and aggressive participant in horseplay which results in an injury. *See* Ford v. Barcus, 155 N.W.2d 507, 511-12 (Iowa 1968); Wittmer v. Dexter Mfg., 204 Iowa 180, 181, 214 N.W. 700, 701 (1927).

12. IOWA CODE § 85.61(6) (1977).

13. 1 LARSON, *supra* note 1, at § 15.41. The rule is illustrated as follows:

> If the place of employment is a factory, the premises will include everything within the factory fence, even if the employer's property runs to many acres. If the employee works for a college, the premises has been held to be the entire campus. . . . If the employee works on a construction project consisting of a large number of apartment buildings, his 'premises' area is not confined to the particular building on which he is working.

Id.

14. Waters v. Backman Sheet Metal Works, Decision on Appeal (March 16, 1977) (Landess, Iowa Indus. Comm'r); Swanson v. Lynch Roofing & Siding, Decision on Appeal (Feb. 23, 1977) (Landess, Iowa Indus. Comm'r).

15. Scott v. Big Smith, Inc., Arbitration Decision (April 28, 1978) (Hanssen, Iowa Dep. Indus. Comm'r); Cady v. Cedar Rapids Comm. School, Review Decision (June 17, 1977) (Landess, Iowa Indus. Comm'r), *aff'd*, No. 2479 (Linn Cty., Iowa Feb. 27, 1978), *appeal docketed*, No. 2-61759 (Iowa March 3, 1978); Paras v. The Powers Mfg. Co., Decision on Ap-

situations, contiguous public areas and streets.[16] However, the Iowa Industrial Commission has refused to extend an employer's premises to include a public entrance to the defendant's building which was some distance away "and not in an area so close that it could only be considered part of the defendant's business."[17]

The above interpretations by the Iowa Industrial Commission of what constitutes an employer's premises are consistent with the majority of other jurisdictions.[18] However, since the Iowa Supreme Court has not as yet interpreted the "premises" issue to any great extent,[19] and because

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peal (April 27, 1977) (Landess, Iowa Indus. Comm'r). *But see* Osborne v. Kentucky Fried Chicken, Appeal Decision (March 3, 1978) (Landess, Iowa Indus. Comm'r); In *Osborne*, compensation was denied an employee who was injured approximately 200 feet from the employer's premises while en route to work. Kilburn v. Goodwill Indus., 32 Iowa Indus. Comm'r. Rep. 91 (1975). In *Kilburn*, compensation was denied an employee who was injured in the public parking sidewalk area in front of the employer's building while leaving work for lunch.

16. Scott v. Big Smith, Inc., Arbitration Decision (April 28, 1978) (Hanssen, Iowa Dep. Indus. Comm'r); Kibe v. John Deere Waterloo Tractor Works, Review-Reopening Decision (May 25, 1977) (Bauer, Iowa Dep. Indus. Comm'r). In *Scott*, the claimant was injured in an auto accident when her automobile was rear-ended pulling out of the company parking lot onto a public street. The Deputy Industrial Commissioner found that the claimant was in the course of employment even though the auto was situated substantially in the public street when hit. In *Kibe*, the claimant was crossing a public street between the employer's factory and parking lot when he fell attempting to avoid an oncoming car. The Deputy Industrial Commissioner, in awarding compensation, held that an employee injured on a public street or other off-premises place located between the employer's plant and parking lot is within the course of employment. The rationale for this ruling was that crossing the public street between employer controlled premises was necessary, thus injuries incurred there were compensable.

17. *See* Frost v. S.S. Kresge Co., Appeal Decision (June 29, 1978) (Landess, Iowa Indus. Comm'r), *appeal docketed*, No. CL2413740 (Polk Cty., Iowa July 28, 1978) (injury suffered when claimant fell on icy handicap ramp as she entered the public entrance of her place of employment held not compensable).

18. *See* 1 LARSON, *supra* note 1, at §§ 15.13-.43.

19. The Iowa Supreme Court had an opportunity to significantly extend the premises rule in *Otto v. Independent School Dist.*, 237 Iowa 991, 23 N.W.2d 915 (1946). In *Otto*, the claimant was injured only a short distance away from his employment premises, on a route which he regularly traveled from home to work. The court held, without emphasizing the premises issue, that the injury was not compensable. The dissent, however, stated that since the claimant was en route to performing an indispensable service for his employer, the journey was incidental to his employment and his injury should have been compensable. The dissent also mentioned the "zone of employment" extension to the premises rule, since the injury occurred only five blocks from the employment premises. Citing Bales v. Service Club No. 1, Camp Chafee, Ark., 208 Ark. 692, ____, 187 S.W.2d 321, 325, the dissent defined the "zone of employment" as that area where the "employee has reached a place so close to the employer's premises as to be considered a part thereof." Otto v. Independent School Dist., 237 Iowa 991, 1006, 23 N.W.2d 915, 922 (1946) (dissenting opinion). The Iowa courts to date have not adopted either the "zone of employment" or the "close proximity" extension to the employer's premises. However, in *Scott v. Big Smith, Inc.*, Arbitration Decision (April 28, 1978) (Hanssen, Iowa Dep. Indus. Comm'r), compensation was awarded to a claimant held to

the court could conceivably take a narrow view[20] of what constitutes an employer's premises,[21] the "going and coming" rule and its exceptions, as applied to off-premises injuries, becomes very important in determining whether employee injuries are compensable when suffered en route to and from work.

III. IOWA GOING AND COMING RULE AND EXCEPTIONS

Although the Iowa courts have liberally construed workers' compensation laws in favor of employees,[22] the "going and coming" rule places some limits on that construction and reflects the general policy that coverage should not extend to injuries suffered by employees traveling to and from work.[23] There are several underlying rationales for the general rule, involving factors such as the employer's lack of control over the employee before and after work, the general public nature of the risk to the employee while traveling to and from work and the suspension of the relationship between employer and employee before and after work.[24] However, because a narrow application of the "going and coming" rule would preclude compensation for numerous work-related injuries, many court-made exceptions to the general rule have developed.[25]

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have been in a "zone of danger to employees which emanated from the operation of defendant employer's business." *Id.* However, this "zone of danger" extension to the employer's premises would appear to be substantially narrower than a general "zone of employment" extension as mentioned in *Otto, supra*, because "zone of danger" requires some type of employment-generated hazard causing an injury other than just mere proximity to the employer's actual premises. *See* 1 LARSON, *supra* note 1, at § 15.22.

20. The possiblity that the Iowa Supreme Court will take a narrow view of what constitutes an employer's premises is conceivable because the Iowa Industrial Commissioner has held that an employer's premises does not include the entrance to a place of employment. Frost v. S.S. Kresge Co., Appeal Decision (June 29, 1978) (Landess, Iowa Indus. Comm'r), *appeal docketed*, No. CL12413740 (Polk Cty., Iowa July 28, 1978).

21. *See* 1 LARSON, *supra* note 1, at § 15.42. Professor Larson cites six jurisdictions, Arizona, Kentucky, Tennessee, Kansas, New Mexico and Pennsylvania, as having narrow "premises" rules. These jurisdictions require a higher degree of causal connection between the worker's injury and the employer's premises, such as special risks or dangers caused by the employment. *Id. But see* Pauley v. Industrial Comm'r, 508 P.2d 1160 (Ariz. 1973) (employee's going to and from work on the employer's premises are in the course of employment if they are in places where they may reasonably be expected to be, such as customary ingress and egress routes).

22. *See* note 2, *supra*, and accompanying text.

23. *See* 1 LARSON, *supra* note 1, at § 15.11.

24. *See* 8 SCHNEIDER, *supra* note 9, at § 1710. *See* Note, *Arising "Out of" and "In the Course Of" the Employment Under the New Jersey Workmen's Compensation Act*, 20 RUTGERS L. REV. 599, 618-19 (1966).

25. There appears to be a difference in viewpoint among workers' compensation authorities concerning the value of the "going and coming" rule and its many exceptions. In Horovitz, *Workmen's Compensation: Half Century of Judicial Developments*, 41 NEB. L. REV. 1, 52 (1962), the author states:

A. The Employer Pays for or Furnishes Transportation

One major exception to the "going and coming" rule applies when the cost of the employee's transportation to and from work is paid for by the employer. This exception is applicable to those situations where the employee travels to a fixed place of employment with relatively constant working hours.[26] Additionally, it is generally required that the payment for transportation must be the result of a contractual obligation between the employer and the employee; mere gratuitous payment of the transportation costs will not be sufficient to invoke this exception.[27] In clarifying the contractual obligation requirement of this exception, the Iowa Industrial Commission has ruled that such a requirement may be satisfied by a very informal oral agreement between the employer and the worker.[28] Furthermore, the employer's contractual duty may also be implied.[29]

> The rule [going and coming] has been a source of injustice to injured workers for many years. It has put upon them the burden of proving an exception to this narrow court-made rule. It should be abandoned in favor of deciding liberally in each case whether the journey and injury in question arose "in the course of" the employment.

But see 1 LARSON, *supra* note 1, at § 15.12. Professor Larson defends the going and coming rule as an administrative necessity, and a logical restriction on recovery in that there is both a physical and tangible connection to the employer when the injury occurs on the premises. Also, Larson points out that no other alternative has really been offered to the going and coming rule, and until a workable alternative is presented, the rule should be retained.

26. Those situations in which the employee regularly travels as part of his employment, or is a resident employee with no regular hours or place of employment, are considered later in this Note. *See* text accompanying notes 36-49, *infra*.

27. Pribyl v. Standard Elec. Co., 246 Iowa 333, 342, 67 N.W.2d 438, 443 (1954).

Professor Larson disagrees with the "contractual obligation" language of this exception, preferring instead to include transportation in the course of employment if it involves "a deliberate and substantial payment for the expense of travel . . . when the travel itself is a substantial part of the service performed." 1 LARSON, *supra* note 1, at § 16.30.

28. Scharf v. Hewitt Masonry, 32 Iowa Indus. Comm'r Rep. 96 (1975).

29. Allied Mutual Casualty Co. v. Dahl, 255 Iowa 208, 213-14, 122 N.W.2d 270, 274 (1963). In *Allied*, several youths were hired informally to distribute handbills at a parking lot. The claimant was injured when he fell from the employer's pick up truck. The truck was to transport the boys to the employer's headquarters, and then to another parking lot one and one-half miles away. Appellant claimed that the employer had no express or implied contractual obligation to furnish transportation to and from work. In rejecting this contention, the court stated:

> This duty may be implied where it is shown that the transportation was provided as an incident to procuring the services of an employee whose home is a great distance from the place of work (citations omitted). It may also be implied where the transportation provided by the employer is shown to have been a necessary incident to the employment because it was the only practical means by which the employee could travel to and from the place of work (citations omitted) . . . The wages were so small the trial court could conclude the boys would not walk that far for such a wage.

Id. at 213-14, 122 N.W.2d at 274.

The Iowa Supreme Court has recognized this exception in *Pribyl v. Standard Electric Co.*[30] In *Pribyl*, an employer, pursuant to a collective bargaining agreement, paid its employees to transport themselves to work in lieu of having them transported in employer-owned vehicles. The claimant's husband, an employee, was fatally injured in an accident while driving his car to work. Despite the fact that the decedent was traveling to work in his own vehicle under his own control, the court affirmed an award for the claimant, holding: (1) that the responsibility of transportation was imposed upon the employer by contract and, as such, was incidental to the nature of the employment and in the interest of and at the direction of the employer, and (2) that the employer paid the employee for transportation costs as a means of carrying out its obligation to furnish such employment.[31] The court in *Pribyl* adopted the theory of paid transportation as an exception to the "going and coming" rule, and required that the payment be made pursuant to a contractual obligation between the employee and the employer. The language in *Pribyl* also suggests that once the employer's obligation exists, the method of transportation—either the employer's or the employee's—is immaterial, and injuries suffered going from or coming to work are compensable.[32]

B. Employee Must Furnish Transportation as a Job Requirement

In Iowa, an employee is considered within the course of employment en route to and from work when he is required, as a condition of employment, to furnish his own transportation. This is true even though the employee has a fixed place of work on the employer's premises. This exception is distinct from the one of employer-furnished transportation because here, the employer is not contractually obligated to provide or pay for the employees' transportation, and does not reimburse the employee for his initial journeys to or final journeys home from work.

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30. 246 Iowa 333, 67 N.W.2d 438 (1954).

31. Pribyl v. Standard Elec. Co., 246 Iowa 333, 343, 67 N.W.2d 438, 444 (1954).

32. *Id.* at 342, 67 N.W.2d at 444. In *Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469 at 483, the United States Supreme Court stated: "In other words, where the employer has promised to provide transportation to and from work, the compensability of the injury is in no way dependent upon the method of travel which is employed."

At least one commentator favorably views the Iowa Supreme Court's holding that injuries sustained while the employee is being transported in an employer-owned vehicle to and from work are compensable provided that the transportation resulted from a contractual obligation. 8 SCHNEIDER, *supra* note 9, at § 1741. However, the distinction between employer transportation provided by contract and that provided without a contractual obligation has been questioned. A worker being transported by an employer is subject to the same employment-controlled risks whether a contract for transportation exists or not. Therefore, the argument goes that an injury should be compensable if it occurs while an employee is being transported in a vehicle controlled by the employer, regardless of whether the transportation is a casual gratuity or courtesy. *See* 1 LARSON, *supra* note 1, at § 17.30.

The Iowa Supreme Court had the opportunity to consider this exception in *Davis v. Bjorenson*,[33] where a mechanic was required by his employer to furnish an automobile for the purpose of making service calls during the work day. At night, the car was to be available for night service work. The Iowa Supreme Court held that the car was an "instrumentality of the business," and hence when the employee drove to work each morning he was acting within the course of his employment.[34] Injuries incurred by the employee during that trip were held to be compensable. The rationale for the *Davis* decision was that by providing transportation to the employer as was required, the employee during his travel to and from work was performing a substantial service to the employer.[35] An alternative rationale for the *Davis* decision is that by requiring the employee to furnish transportation to work, the employer submits the worker to dangers of the highway which might otherwise be avoided.[36]

C. Traveling is a Job Requirement

Another exception to the going and coming rule arises when the employee's work involves travel away from the employer's premises.[37] In these situations a traveling employee is considered to be within the course of employment on a "portal to portal" basis from the time of departure from his home until his return.[38] Although sometimes referred to as the "traveling salesman exception,"[39] the rule logically applies to all employees whose job involves significant traveling. The rationale for this exception is that the traveling itself is a large part of the job service being provided by the employee to the employer,[40] and consequently injuries sustained by the employee are compensable, having occurred at a time or location dictated by the traveling.

The Iowa Supreme Court has recognized the rule that a traveling employee injured while performing any act considered incidental to his

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33. 229 Iowa 7, 293 N.W. 829 (1940).

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

35. *Id.*

36. *See* 1 LARSON, *supra* note 1, at § 17.50.

37. *See generally* HOROVITZ, INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS 163 (1944); Madison v. Kapperman, Decision on Appeal (Aug. 16, 1977) (Landess, Iowa Indus. Comm'r), *aff'd*, No. 83912-Law (Woodbury Cty., Iowa Dec. 22, 1977); Lalor v. Kem Mfg. Corp., Decision on Appeal (July 26, 1977) (Landess, Iowa Indus. Comm'r).

38. Heissler v. Strange Bros. Hide Co., 212 Iowa 848, 237 N.W. 343 (1931). In *Heissler*, the court stated that "[a] traveling salesman or canvasser is assumed to be under coverage after the completion of his work for the day or for the week when he shall have reached his home or a place that may be reasonably regarded as his headquarters." *Id.* at 850, 237 N.W. at 343-44.

39. *See* Note, *Workmen's Compensation: The "Going and Coming Rule" and Its Exceptions in Arkansas*, 21 ARK. L. REV. 414, 421 (1967).

40. *See* 1 LARSON, *supra* note 1, at § 16.00.

employment may be compensated for injuries arising out of such acts.[41] Compensation is awarded here on the theory that traveling employees are engaged in "continuous employment" while away from home. The "course of employment" for the purpose of this exception has been held to include activities such as eating, sleeping, and traveling.[42] Injuries are not compensable, however, when sustained while the employee has deviated from his employment purpose and is performing a personal errand unrelated to employment.[43] The Iowa Supreme Court has stated that there must be a close causal connection between the act being done and the employment.[44] How close this causal connection must be was at issue in *Crees v. Sheldahl Telephone Co.*[45] *Crees* involved an employee, away from home for employment purposes, who was injured in a car accident when returning to his resting place from a nearby town. The employee had gone to the nearby town for a late night dinner, as it was his habit to eat five or six meals during a day. In upholding a compensation award, the court indicated that there was a trend favoring an expansion of the range of activities included in the course of employment. It further stated that "[g]oing and returning from work or meals, preparing and eating food, rest, seeking shelter and other personal activities have in various jurisdictions been held within the purview of the statute."[46] In light of this language, it would appear that an increasing number of activities of an employee traveling away from home in connection with his employment arrangement would be included in the course of employment, and consequently, injuries sustained while engaged in those activities would be compensable.[47]

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41. *See, e.g.*, Crees v. Sheldahl Tel. Co., 258 Iowa 292, 139 N.W.2d 190 (1965); Walker v. Speeder Mach. Corp., 213 Iowa 1134, 240 N.W. 725 (1932).

42. Walker v. Speeder Mach. Corp., 213 Iowa 1134, 1146, 240 N.W. 725, 730 (1932). In *Walker*, the claimant's deceased husband, an expert repairman, was sent out of town for business reasons. Arriving early on a Sunday, the employee checked into a hotel. He was fatally injured while crossing the street to obtain a meal at a nearby restaurant. The court allowed compensation, noting that traveling, resting, and eating were all necessary and incidental to the work to be performed and therefore injuries sustained during these activities were sustained in the course of employment. *Id.* at 1149, 240 N.W. at 732.

43. 1 LARSON, *supra* note 1, at § 25.00.

44. Walker v. Speeder Mach. Corp., 213 Iowa 1134, 1150, 240 N.W. 725, 732 (1932). In *Walker*, the court distinguished between acts incidental to the employment of a traveling employee such as eating and sleeping, with personal acts solely for the amusement of the employee, such as going to the theater. *Id.*

45. 258 Iowa 292, 139 N.W.2d 190 (1965).

46. *Id.* at 297-98, 139 N.W.2d at 194.

47. *See* 1 LARSON, *supra* note 1, at §§ 25.22-23. However, the Iowa Industrial Commission has chosen not to extend coverage to include drinking and roller skating activities which resulted in injuries to a traveling employee. Ritter v. Double D. Inc., Arbitration Decision (Dec. 17, 1976) (Hanssen, Iowa Dep. Indus. Comm'r). In *Ritter*, the Deputy Industrial Commissioner refused to find that a roller skating injury suffered by a traveling employee was in the course of employment. The opinion cited *Linderman v. Cownie Furs*, 234 Iowa 708, 714, 13

Another type of traveling employee exception recognized in Iowa arises where an employee is injured traveling from one job site to another or moving between various places where employment duties are to be performed.[48] In *Marley v. Orval P. Johnson Co.*,[49] the claimant employee was ordered by his foreman to travel from one place of work to another. The claimant injured himself while attempting to start his car. The Iowa Supreme Court held that the claimant was in the course of his employment when going from one job location to another, even though he chose to use his own means of transportation with all its attendant hazards.[50] This "site to site" traveling exception was recently utilized by the Iowa Industrial Commission to compensate a worker who was the president of his local union, injured while traveling from a union hall to his employer's premises.[51]

D. Special Errand or Mission

Yet another exception to the "going and coming" rule is made when an employee is going to or coming from the employer's premises on a "special errand or mission," that is, a journey made in response to some special circumstances of employment.[52] This "special errand" exception is

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N.W.2d 677, 680-81 (1944), where the court set forth the test for determining whether an act of an employee is personal or in the course of employment. An act is personal if it is performed for the exclusive benefit of the employee or some other person. An act is in the course of employment if done for the benefit of the employer or for the mutual benefit of both employer and employee. *Id.*

48. Allied Mutual Casualty Co. v. Dahl, 255 Iowa 208, 122 N.W.2d 270 (1963); Marley v. Orval P. Johnson & Co., 215 Iowa 151, 244 N.W. 833 (1932).

49. 215 Iowa 151, 244 N.W. 833 (1932).

50. *Id.* at 158-59, 244 N.W. at 836-37.

51. Shook v. Caterpillar Tractor Co., Arbitration Decision (Nov. 16, 1977) (Gardner, Iowa Dep. Indus. Comm'r). In *Shook*, it was held that a union official is generally considered in the course of employment while involved in union activities which benefit the employer to a substantial degree. Consequently, travel from a union hall to the employer's plant is the equivalent of travel from one business location to another. *Id. See also* Mowen v. Iowa Realty Co., Inc., 31 Iowa Ind. Comm'r Rep. 77 (1973). In *Mowen*, the employee was an apartment building superintendent employed as a handyman and repairman. He had a workshop in his home building, and he traveled to other apartment complexes to make repairs. Although the employer did not reimburse the employee for travel expenses, the Industrial Commissioner held the employee to be in the course of employment when injured while returning from an apartment complex where he had been working to his home building. *Id. But see* Rubendall v. Brogan Constr. Co., 253 Iowa 652, 113 N.W.2d 265 (1962), where the Iowa Supreme Court did not consider the "site to site" exception when decedent was killed while traveling after the end of the work day from one job site to his home, which was located near a second job site. *Id.*

52. *See* 8 SCHNEIDER, *supra* note 9, at § 1732. Larson defines the special errand exception as follows:

> When an employee having identifiable time and space limits on his employment, makes an off-premises journey which would normally not be covered under the

not to be confused with the exception which applies when an employer directs an employee to perform a special off-premises task during the employee's regular working hours.[53] On the contrary, this exception refers to injuries sustained while an employee is making an off-premises journey to or from work in response to some special circumstances of his employment.

The Iowa Supreme Court adopted the special errand exception in *Kyle v. Greene High School*.[54] In *Kyle*, a high school janitor was fatally injured en route to the school building to fix the gymnasium lights. The key facts in the case were that the accident occurred after the employee's normal working hours and at the request of the superintendent. The compensation award was based on the following factors: (1) the janitor was performing a special errand; (2) the special errand was being performed at the request of the employer; (3) the errand was incidental to the nature of the claimant's employment; and (4) the errand was performed to further the interest of the employer.[55] A case subsequent to *Kyle* upheld a compensation award to a claimant whose husband was killed coming back from a special errand even though the errand was not performed at the request of the employer.[56]

In *Otto v. Independent School District*,[57] the Iowa Supreme Court refused to extend the special errand exception to a situation where the claimant, a janitor, was injured in a fall en route to work. Although it was the janitor's duty to open the building each morning, he had no fixed hours and the trip was routine. Thus the court held that the injury was noncompensable, there being nothing special about the claimant's errand.[58] In light of these cases, the correct analysis to determine whether a journey to or from work is considered a "special errand" will turn on the regularity or unusualness of the journey and the relative onerousness of the journey compared with the service to be performed at

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usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.

1 LARSON, *supra* note 1, at § 16.10.

53. *See* discussion at § III.C. *supra*.

54. 208 Iowa 1037, 226 N.W. 71 (1929).

55. Kyle v. Greene High School, 208 Iowa 1037, 1041, 226 N.W. 71, 73 (1929).

56. Pohler v. T. W. Snow Constr. Co., 239 Iowa 1018, 33 N.W.2d 416 (1948). In *Pohler*, the decedent was a supervisor of a work crew stationed away from home. The crew could not continue their work, excavation of a ditch, due to seepage of water into the excavation. Pohler left his premises that night to obtain pumping equipment which he felt was necessary to continue work the next day. *Id.* at 1020, 33 N.W.2d at 418. *See also* Owen v. Owen Constr. Co., Inc., 32 Iowa Ind. Comm'r Rep. 37 (1974).

57. 237 Iowa 991, 23 N.W.2d 915 (1946).

58. Otto v. Independent School Dist., 237 Iowa 991, 999, 23 N.W.2d 915, 919 (1946).

the end of the journey.[59] The Iowa Industrial Commission seems to have substantially adopted this position. In a recent decision a claimant, arguing that the "special errand" exception was applicable, was denied compensation. The Deputy Commissioner who authored the opinion reasoned that since the claimant's trip was not an important part of the job service, he was not performing an extraordinary service for the employer by traveling to work.[60] As a result, compensation was denied.

IV. Deviations From the Course of Employment

Quite often employees, going to or coming from work while in the course of their employment, will deviate from a business trip for personal purposes and subsequently become injured. Depending on the circumstances, such a personal deviation from the business purpose may remove an injured employee from compensation coverage he might normally receive under the previously discussed exceptions. When this situation arises, the general rule recognized in most jurisdictions is that a substantial deviation from a business trip for personal reasons takes the employee out of the course of his employment.[61] Generally, however, once the personal errand is finished and the employee has resumed his main business route, the course of employment is resumed and injuries suffered en route are compensable.[62]

The Iowa Supreme Court has adopted the general rule that a traveling employee is not covered under workers' compensation during a personal errand, but the coverage resumes if after the personal deviation the employee returns to his employment.[63] Whether the personal deviation

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59. *See* 1 Larson, *supra* note 1, at § 16.11.

60. Roepke v. Clinton Pallet, Inc., Arbitration Decision (June 21, 1978) (Bauer, Iowa Dep. Indus. Comm'r). In *Roepke,* the claimant was a high school student who worked irregular hours for his employer and in the past had often been telephoned to come to work for short periods of time. On the day of his injuries, the claimant had been phoned and was en route to work. The Deputy Industrial Commissioner held that since the claimant was merely en route to work when the injuries occurred, the "special errand" exception was not applicable and compensation was denied. *Id.*

61. *See* 1 Larson, *supra* note 1, at § 19.00. The crucial element here is whether the personal errand is substantial or insignificant. In discussing the magnitude of the deviation, Larson states that the courts generally:

> [U]phold awards in situations like the following: getting cigarettes during a trip to or from work in the employer's conveyance; running across the street in the course of a delivery trip to buy a little food; stopping at one's home to get a raincoat and leave some meat; crossing the road during a delivery trip to have a glass of beer at 2:00 in the afternoon; picking up two young ladies and taking them home while driving a car to test its brakes; buying a toy during spare time to take home to a child; and even picking cherries from a customer's cherry tree.

Id. at § 19.63.

62. 1 Larson, *supra* note 1, at § 19.00.

63. *See* Crees v. Sheldahl Tel. Co., 258 Iowa 292, 300, 139 N.W.2d 190, 195 (1965);

has been completed and the business purpose resumed is largely a matter of fact, therefore depending on the circumstances of each distinct situation. For example, in *Lamb v. Standard Oil Company*,[64] claimant's decedent husband, a traveling salesman, had journeyed from Mason City to Fort Dodge for business purposes. After taking care of his business matters, he joined some friends for several hours at a tavern for drinking, visiting, and dancing purposes. After a discussion of the bad weather, the decedent left and was killed on the highway. The court upheld an award for the claimant by inferring from the evidence that decedent had resumed his business purposes by returning home.[65]

A different result is reached when the employee deviates from his course of employment, completes his personal journey or errand, and is injured while moving toward but before arriving at his regular route or business destination.[66] In *Volk v. International Harvestor Co.*,[67] a traveling employee was killed on the way back to his motel after first going to a friend's house for drinks after work, proceeding to a supper club for dinner, and from there frequenting taverns in nearby towns. The decedent was killed while returning at a point on the highway between the supper club and the motel. The court denied compensation because at the point of the accident "he did not then resume any activity or duty connected with his employment and it is reasonable to infer that he would not have done so until the next day."[68] At first glance this decision appears to be contra to cases which would allow coverage for injuries suffered by traveling employees en route to or from meals,[69] since the decedent in *Volk* had passed the supper club en route to his motel. However, the *Volk* court found that upon reaching the supper club the decedent did not resume his course of employment because he had abandoned his employment until the next day by going to his friend's house for drinks before supper.[70]

Lamb v. Standard Oil Co., 250 Iowa 911, 916, 96 N.W.2d 730, 733 (1959); Pohler v. T. W. Snow Constr. Co., 239 Iowa 1018, 1024-25, 33 N.W.2d 416, 419 (1948).

64. 250 Iowa 911, 96 N.W.2d 730 (1959).

65. *Id.* at 917, 96 N.W.2d at 733-34.

66. 1 LARSON, *supra* note 1, at § 19.33. A majority of the jurisdictions which have ruled on these situations deny compensation for injuries suffered when a personal deviation from employment has been completed but the primary course of employment not yet resumed. *See, e.g.*, Volk v. International Harvester Co., 252 Iowa 298, 106 N.W.2d 649 (1960); Carner v. Sears, Roebuck & Co., 337 Mich. 219, 59 N.W.2d 262 (1953); Kayser v. Carson Pirie Scott & Co., 203 Minn. 578, 282 N.W. 801 (1938); Luke v. St. Paul Mercury Indem. Co., 140 Neb. 557, 300 N.W. 577 (1941); Hunter v. Department of Indus., Labor & Human Relations, 64 Wis. 2d 97, 218 N.W.2d 314 (1974).

67. 252 Iowa 298, 106 N.W.2d 649 (1960).

68. *Id.* at 303, 106 N.W.2d at 652.

69. *See* text accompanying notes 40-45, *supra*. *See also* Crees v. Sheldahl Tel. Co., 258 Iowa 292, 139 N.W.2d 190 (1965); Walker v. Speeder Mach. Corp., 213 Iowa 1134, 240 N.W. 725 (1932).

70. Volk v. International Harvester Co., 252 Iowa 298, 303, 106 N.W.2d 649, 652 (1960).

Similar questions of compensability also arise when an employee is injured en route to or from a journey which serves both business and personal purposes.[71] The oft-stated general rule is:

> [W]hen a trip serves both business and personal purposes, it is a personal trip if the trip would have been made in spite of the failure or absence of the business purpose and would have been dropped in the event of failure of the private purpose, though the business errand remained undone; it is a business trip if a trip of this kind would have been made in spite of the failure or absence of the private purpose, because the service to be performed for the employer would have caused the journey to be made by someone even if it had not coincided with the employee's personal journey.[72]

The Iowa Supreme Court has accepted the concept that an injury suffered during a business trip is compensable even when the employee has a concurrent private purpose for making the trip.[73] Language in early Iowa cases suggest that if the employee was performing an employment duty, other *incidental* personal errands would not defeat the business nature of the journey.[74] However, more recent opinions have indicated that if the business journey is necessary, the fact that the employee is also serving a private purpose (whether incidental or not) is not a valid objection to compensating that employee for injuries suffered during such a dual purpose trip.[75]

Thus Iowa seems to follow the general rule quoted above: if the business trip is necessary, the fact that the personal purpose of the trip is significant does not change the business character of the trip.[76] There is a qualification to this rule, however. In *Golay v. Keister Lumber Co.*,[77] the Iowa Supreme Court indicated that for a dual purpose trip to be considered within an employee's scope of employment, the business purpose must be of "sufficient substance to be viewed as an integral part of the service."[78] While it is not entirely clear what is meant by "sufficient substance," it is assumed that the Iowa Supreme Court does not now require that the business purpose of the journey be the "dominant

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71. 1 LARSON, *supra* note 1, at § 18.00.

72. 1 LARSON, *supra* note 1, at § 18.12.

73. Pribyl v. Standard Elec. Co., 246 Iowa 333, 340, 67 N.W.2d 438, 442 (1954); Pohler v. T. W. Snow Constr. Co., 239 Iowa 1018, 1023, 33 N.W.2d 416, 419 (1948); Heinen v. Motor Inn Corp., 202 Iowa 67, 209 N.W. 415 (1926).

74. Pribyl v. Standard Elec. Co., 246 Iowa 333, 340, 67 N.W.2d 438, 442 (1954).

75. Golay v. Keister Lumber Co., 175 N.W.2d 385, 388-89 (Iowa 1970); Rubendall v. Brogan Constr. Co., 253 Iowa 652, 654, 113 N.W.2d 265, 267 (1962).

76. Golay v. Keister Lumber Co., 175 N.W.2d 385, 388 (Iowa 1970). In *Golay*, the court concluded that the decedent employee's trip was included in the dual purpose exception because it would have been necessary for the employer to have someone make the business journey if decedent had not done so himself. *Id.* at 388.

77. *Id.*

78. *Id.*

purpose"[79] in relation to the personal purpose before such a trip can be considered to be in the course of employment.[80]

V. Possible Areas of Expanding Coverage

Many jurisdictions have expanded workers' compensation coverage for employees injured going to and coming from work by increasing the number of exceptions to the general going and coming rule.[81] The Iowa Supreme Court has recognized that employees traveling as part of their job or on a special errand are in the course of their employment when injured going to or coming back from an off-premises meal or lunch break.[82] The general rule, however, is that an employee having fixed hours, a fixed place of work and a non-paid lunch break is not covered for injuries suffered during an off-premises lunch break.[83] Notwithstanding the general rule, several minority jurisdictions have allowed compensation awards for injuries suffered during an off-premises lunch break.[84] A limited number of other decisions have allowed compensation for off-premises lunchtime injuries if exceptional circumstances entitled the employee to an award, such as a hurried or shortened lunch hour at the employer's request.[85] Still other jurisdictions have distinguished off-premises coffee breaks

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79. Criticism has been extended to decisions using the "dominant purpose" test to determine whether injuries suffered during a dual purpose trip are compensable. Such a test requires that the primary purpose of the trip be for business. The test, derived from *Marks' Dependents v. Gray*, 251 N.Y. 90, 167 N.E. 181 (1920), is to ask "[W]ould this job have had to be done by someone else at some other time." *See* 1 Larson, *supra* note 1, at § 18.22.

80. The Iowa Industrial Commission has, subsequent to the "sufficient substance" language in *Golay*, upheld awards for claimants injured on trips made for both personal and business purposes. These decisions have been based on the general rule that an employee journey having both personal and business purposes is in the course of employment if the trip was necessary and would have been made by someone, at some time, even if the private purpose was canceled. In addition, no mention of a "sufficient substance" requirement for the business purpose has been made. *See* Fredericksen v. Northwest Iowa Masonry, Inc., 32 Iowa Ind. Comm'r Rep. 99, 101 (1976), *aff'd*, No. 60299 (Iowa Ct. App. Feb. 28, 1978); Koenen v. Woodford Wheeler Lumber Co., 31 Iowa Ind. Comm'r Rep. 60, 61 (1973). *But see* James v. Bluffs City Motors, Inc., Arbitration Decision (Aug. 18, 1977) (Hanssen Iowa Dep. Indus. Comm'r).

81. *See* Horovitz, note 25 *supra*.

82. *See* Crees v. Sheldahl Tel. Co., 258 Iowa 292, 139 N.W.2d 190 (1965); Walker v. Speeder Mach. Corp., 213 Iowa 1134, 240 N.W. 725 (1932).

83. *See* 1 Larson, *supra* note 1, at § 15.51. Larson states that for the sake of consistency, an off-premises trip for the purposes of obtaining lunch should be no different than trips before and after work and therefore the coming and going rule would exclude compensation for injuries suffered during such trips.

84. Wyatt v. Metropolitan Maint. Co., 74 N.J. 167, 376 A.2d 1222 (1977); Hornyak v. Great Atlantic & Pacific Tea Co., 63 N.J. 99, 305 A.2d 65 (1973); DeSautel v. North Dakota Workmen's Compensation Bureau, 72 N.D. 35, 4 N.W.2d 581 (1948).

85. *See* Bollard v. Engel, 254 App. Div. 162, 4 N.Y.S.2d 363, 365, *aff'd*, 278 N.Y. 463, 17 N.E.2d 130 (1938); Casper v. State Accident Ins. Fund, 13 Ore. Ct. App. 464, 511 P.2d 451 (1973).

from off-premises lunch breaks in allowing coverage for the coffee break injuries but not the lunch break injuries.[86]

The Iowa Industrial Commission has followed the majority rule by denying compensation to employees injured en route to and from work during off-premises lunch breaks.[87] However, the Commission has extended workers' compensation coverage to employees injured while en route to an off-premises coffee break.[88] In distinguishing coffee break periods from lunch break periods, the Commission's decisions high-light the basic reasons why the great majority of jurisdictions do not extend workers' compenstaion coverage to off-premises lunch break injuries. From a policy standpoint there appears to be little reason to compensate an employee injured while traveling to or from a lunch period which may have lasted a significant amount of time so as to allow for the pursuit of numerous personal, non-employment related errands. Also, generally the employer has little or no control over an off-premises lunch break of significant duration. On the other hand, coffee breaks are usually significantly shorter in duration, thus restricting employee movement and freedom, and allowing greater employer control. Additionally, such breaks are usually paid for by the employer as part of the employment contract.[89]

The Iowa Supreme Court, in *Halstead v. Johnson's Texaco*,[90] recently applied the "going and coming" rule in affirming a denial of workers' compensation coverage to an employee injured while returning to work from his home, where he had taken an unpaid lunch break. The facts of *Halstead* were such that to award compensation, the court would have had to significantly alter the "going and coming" rule in Iowa, because the claimant had a regular lunch hour which was unpaid and off the premises, and the claimant performed no special duties for the employer during the lunch hour.[91] The court pointed out that there were simply no exceptional circumstances connected with the lunch break which would place the claimant within an exception to the "going and coming" rule.[92]

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86. *See, e.g.*, Bronson v. Joyner's Silver and Electroplating, Inc., 127 N.W.2d 678 (Minn. 1964).

87. Kilburn v. Goodwill Indus. of S.E. Iowa, 32 Iowa Ind. Comm'r Rep. 91 (1975).

88. Stahle v. Holtzen Homes, Appeal Decision (Jan. 18, 1977) (Landess, Iowa Indus. Comm'r), *aff'd*, No. 92509-Equity (Woodbury Cty., Iowa Oct. 14, 1977).

89. Sweet v. Kolosky, 106 N.W.2d 908 (Minn. 1960). In *Sweet*, the court stated:

> Coffee breaks and other rest periods have now become so common in employment contracts that it must be held, at least where the right to such intervals are made a part of the employment agreement, that they are incidental to the employment and that, while exercising such rights, the employee remains within the scope of employment.

Id. at 910.

90. 264 N.W.2d 757 (Iowa 1978).

91. *Id.* at 760.

92. *Id.*

It is submitted that the importance of the court's decision in *Halstead* is not the holding of the case but rather the limitations the court placed on the decision. The court specifically noted that it was *not* ruling on whether coverage would be extended to off-premises coffee break and lunch break injuries where the claimant was somehow considered to be on company time.[93] Thus, it is suggested that, in the future, the court might possibly recognize a new exception for *paid* off-premises coffee or lunch break injuries sustained by a worker.

VI. CONCLUSION

The general going and coming rule does not always properly separate those employees who are injured in the course of employment from those who are not. Because of this, many exceptions to the general rule have evolved to cover off-premises injuries incurred by employees going to or coming from work who are "within the course of their employment." Iowa courts have recognized several very broad categories of exceptions to the general going and coming rule, and have managed to fit employee injuries into one of those exceptions where it is equitable to do so. Because of this, there is a strong argument to be made for Iowa courts to retain the going and coming rule as an administrative and logical necessity,[94] and expand the current number of general exceptions to the rule as needed. The language of the *Halstead* case certainly appears to indicate that the court might expand coverage to include some off-premises coffee and lunch break injuries. However, to forsake the going and coming rule and its exceptions without a better method of determining those off-premises injuries which are compensable and those that are not would at this time appear unwise.

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93. *Id.*
94. *See* 1 LARSON, *supra* note 1, at § 15.13.