CASE NOTE

LABOR AND EMPLOYMENT—The Going and Coming Rule: Drawing an Untenable Line in the Sand; *In re Worker's Compensation Claim of Barlow*, 259 P.3d 1170 (Wyo. 2011)

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INTRODUCTION

Every day in Wyoming vehicles travel more than 25,000,000 miles.[1] Per capita, Wyomingites drive almost twice as many miles as compared to the national average.[2] Undoubtedly, many of those miles involve employees traveling for employment related reasons.[3] When injuries occur in those situations the Wyoming Worker's Compensation Act (WWCA) may apply.[4] Under the WWCA, an employee's injuries are not generally compensable if the injuries occurred when going to or coming from his or her place of employment.[5] This rule of law is known as the going and coming rule.[6] Wyoming recognizes two exceptions to the

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[1] WYO. DEP'T TRANSP., 2011–2012 WYOMING TRANSPORTATION FACTS 15 (2012), *available at* http://www.dot.state.wy.us/files/content/sites/wydot/files/shared/Management_Services/Fact%20Book/factbook%202011-12_opt.pdf.

[2] *Id.* at 14. In January, 2011, Wyomingites drove 16,976 miles per capita as compared to the national average of 9,566 miles per capita. *Id.*

[3] *See Commuting In Wyoming First Quarter 2005 to Third Quarter 2011*, WYO. DEP'T OF WORKFORCE SERVS., http://doe.state.wy.us/lmi/commute/2012/default.htm (last visited Dec. 2, 2012).

[4] *See generally* WYO. STAT. ANN. §§ 27-14-101 to -806 (2012). In its original enactment, the worker's compensation act was called the Workmen's Compensation Law. 1915 Wyo. Sess. Laws 175–76. However, in 1975 the Wyoming Legislature amended the name of the act to the Wyoming Worker's Compensation Act. 1975 Wyo. Sess. Laws 222.

[5] *See* WYO. STAT. ANN. § 27-14-102(a)(xi)(D) (2012) ("'Injury' does not include: . . . [a]ny injury sustained during travel to or from employment unless the employee is reimbursed for travel expenses or is transported by the vehicle of the employer.").

[6] *In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1173 (Wyo. 2011) (quoting Archuleta v. Carbon Cnty. Sch. Dist. No. 1, 787 P.2d 91, 92 (Wyo. 1990)) ("This statute is the codification of a concept known as the 'going and coming' rule, which is based on 'a long-standing common law rule that injuries incurred while either going to or coming from work are not compensable unless the employer has in some fashion provided the employee with transportation or has reimbursed him for the costs of those travels.'"). For an explanation from what is generally known to be the authoritative guide on workers' compensation law, see LEX K. LARSON, LARSON'S WORKERS' COMPENSATION, DESK EDITION § 13.01[1] (Matthew Bender ed., rev. ed. 2012) ("The course of employment is not confined to the actual manipulation of the tools of the work, nor to the exact hours of work. On the other hand, while admittedly, the employment is the cause of the worker's journey between home and factory, it is generally taken for granted that workers' compensation

going and coming rule.[7] The two exceptions are the "reimbursement exception" and the "conveyance exception."[8] Furthermore, if the injuries occur on the premises of the employer then the injuries may be compensable according to the "injury rule."[9]

In *In re Worker's Compensation Claim of Barlow*, James W. Barlow suffered a knee injury when he slipped while climbing into his pickup truck to travel to a series of distant meetings as part of his employment.[10] His employer provided the pickup truck for both personal and employment related travel.[11] The issue was whether Barlow suffered a compensable injury as defined under the WWCA.[12] The Wyoming Workers' Safety and Compensation Division denied Barlow's claim for compensation benefits.[13] The Office of Administrative Hearings dismissed Barlow's claim on summary judgment.[14] The district court affirmed.[15] Ultimately, a majority of the Wyoming Supreme Court upheld the lower decisions, concluding that "an injury sustained during travel is only compensable if it occurs as the claimant is being carried or conveyed from one place to another (i.e. sitting in the vehicle and moving from one place to another)."[16]

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was not intended to protect against all the perils of that journey."). For further discussion of the going and coming rule, see generally Nathaniel R. Boulton, *Establishing Causation in Iowa Workers' Compensation Law*, 59 DRAKE L. REV. 463, 478 (2011) ("Generally, injuries sustained while an employee is traveling to or from work are not compensable because they are not considered to have been in the course of employment."); 82 AM. JUR. 2D *Worker's Compensation* § 269 (2012) (discussing the going and coming rule).

[7] *See* § 27-14-102(a)(xi)(D).

[8] *See id.*; *e.g.*, *In re* Jensen, 178 P.2d 897, 907 (Wyo. 1947) (discussing the conveyance exception); Berg v. State *ex rel.* Wyo. Workers' Safety and Comp. Div., 106 P.3d 867, 871 (Wyo. 2005) (discussing the application of the reimbursement exception).

[9] Under section 27-14-102(a)(xi), or the "injury rule" for the purposes of this case note, injuries occurring on the premises of the employer may be compensable if there is a causal nexus between the injury and the employment regardless of whether or not the elements of the "premises rule" can be established. *See* § 27-14-102(a)(xi); Finley v. State *ex rel.* Wyo. Workers' Safety and Comp. Div., 132 P.3d 185, 188–89 (Wyo. 2006) (discussing injuries occurring on the employer premises); Archuleta v. Carbon Cnty. Sch. Dist. No. 1, 787 P.2d 91, 94 (Wyo. 1990) (discussing the premises rule within the context of the going and coming rule); State *ex rel.* Wyo. Worker's Comp. Div. v. Miller, 787 P.2d 89, 90 (Wyo. 1990); *In re* Injury to Corean, 723 P.2d 58, 60 (Wyo. 1986) (discussing injuries occurring on the employer premises when the employee is going to or coming from the employment).

[10] *Barlow*, 259 P.3d at 1172.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Brief of Appellee, Wyo. Workers' Safety & Comp. Div. at 10, *Barlow*, 259 P.3d 1170 (No. S-10-0243) [hereinafter Brief of Appellee].

[16] *Barlow,* 259 P.3d at 1175.

The Wyoming Supreme Court decided *Barlow* incorrectly for three reasons. First, the interpretation of the rule articulated in *Barlow* leads to an absurd result by excluding compensable injuries under the conveyance exception and should not be followed.[17] Instead, the Wyoming Supreme Court should adhere to the causal nexus test.[18] Second, the majority could have found Barlow's injuries compensable under the reimbursement exception.[19] Finally, Barlow's injuries could have been compensable under the WWCA by considering the vehicle as the premises of his employer.[20]

BACKGROUND

The Wyoming Worker's Compensation Act

The Wyoming Legislature enacted the WWCA after an amendment to the Wyoming Constitution.[21] The WWCA abolished common law causes of action for injuries suffered by employees against employers in favor of providing compensation from a fund comprised of payments made by employers.[22] Causes of action under the WWCA are contractual in nature.[23] Therefore, the purpose of the WWCA is to provide compensation for injured employees regardless of fault.[24] In the first eighty-nine years of its enactment the Wyoming Supreme Court applied a liberal construction of the WWCA in favor of finding injuries compensable.[25] However, in 1994 the Wyoming Legislature amended the intent

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[17] *See infra* notes 157–85 and accompanying text.

[18] *See infra* notes 182–85 and accompanying text.

[19] *See infra* notes 186–203 and accompanying text

[20] *See infra* notes 204–41 and accompanying text.

[21] George Santini, *The Breaking of a Compromise: An Analysis of Wyoming Worker's Compensation Legislation*, 1986-1997, 33 LAND & WATER L. REV. 489, 489 (1998); *see* WYO. CONST. Art. 10, § 4; 1915 Wyo. Sess. Laws 175–76.

[22] Santini, *supra* note 21, at 489; *see* WYO. STAT. ANN. § 27-14-104(a) (2012) ("The rights and remedies provided in this act for an employee . . . for injuries incurred in extrahazardous employments are in lieu of all other rights and remedies against any employer . . . making contributions required by this act."). *See generally* Timothy R. Hancock, Comment, *Apportionment Between Preexisting Conditions and Work-Related Injuries: Why Wyoming Needs a Second Injury Fund*, 11 WYO. L. REV. 525, 527–28 (2011) (discussing compensation under the WWCA).

[23] Perry v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 134 P.3d 1242, 1249 (Wyo. 2006) (citing Spera v. State *ex rel.* Wyo. Workers' Comp. Div. (*In re* Injury to Spera), 713 P.2d 1155, 1156 (Wyo. 1986)) ("Thus, the worker's compensation system is not a tort-based system but is, instead, based upon contract.").

[24] *See id.*

[25] *See, e.g.*, Archuleta v. Carbon Cnty. Sch. Dist. No. 1, 787 P.2d 91, 92 (Wyo. 1990) (citing Deloges v. State *ex rel.* Wyo. Worker's Comp. Div., 750 P.2d 1329, 1331 (Wyo. 1988)) ("In applying that definition of 'injury,' we are guided by the oft-stated principle that the act should be liberally construed to afford coverage wherever that may be accomplished without unreasonably extending the clear language of the statutes."); Randell v. Wyo. State Treasurer *ex rel.* Wyo. Worker's Comp. Div., 671 P.2d 303, 309 (Wyo. 1983); *In re* Jensen, 178 P.2d 897, 907 (Wyo. 1947) ("We are not

statement of the WWCA and abolished the practice of liberally construing the act.[26]

The WWCA prescribes certain requirements for an employee to receive compensation benefits.[27] Initially, an employee must file an application for benefits with the Division of Workers' Safety and Compensation of the Department of Workforce Services.[28] In this application, an employee must show that he or she suffered a compensable injury.[29] An employee must establish the seven statutory elements of a compensable injury.[30] First, there must be a "harmful change in the human organism."[31] Second, the injury must occur "while at work."[32] Third, the place must be "used or controlled by the employer."[33] Fourth, the injury must occur "in or about the premises occupied."[34] Fifth, the injury must occur "in places where the employer's business requires an employee's presence."[35] Sixth, the employment must "subject[] the employee to extrahazardous duties incident to the business."[36] Finally, the injury must "aris[e] out of and in the course of

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unmindful that a few courts have taken a strict and as we think too narrow a view of the phrase 'in the course of employment' but having regard to the purposes of the law and the liberal construction thereof which we have consistently followed for many years and which the legislature of the state has never disapproved, we are not inclined to adopt such a view at this late date.").

[26] *See* 1994 Wyo. Sess. Laws 286; *see also* WYO. STAT. ANN. § 27-14-101 (2012) ("[T]he legislature declares that the Worker's Compensation Act . . . is not to be given a broad liberal construction in favor of any party."); Santini, *supra* note 21, at 514 (discussing the adoption of the amended statement of intent that abandoned the liberal construction practice and the negative effect on compensation).

[27] *See infra* notes 28–39 and accompanying text.

[28] 025-220-005 WYO. CODE R. § 4 (LexisNexis 2012).

[29] *In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1172 (Wyo. 2011).

[30] *See* WYO. STAT. ANN. § 27-14-102(a)(xi) (2012); Finley v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 132 P.3d 185, 188 (Wyo. 2006) (citing Hanks v. City of Casper, 16 P.3d 710, 711 (Wyo. 2001); Sherwin-Williams Co. v. Borchert, 994 P.2d 959, 963 (Wyo. 2000); Thornberg v. State *ex rel.* Wyo. Workers' Comp. Div. (*In re* Worker's Comp. Claim of Thornberg), 913 P.2d 863, 866 (Wyo. 1996)). "Injury" is defined under the WWCA as:

> [A]ny harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extrahazardous duties incident to the business.

§ 27-14-102(a)(xi).

[31] *See* § 27-14-102(a)(xi). This element is limited further by the statutory language, "other than normal aging and includes damage to or loss of any artificial replacement and death." *See id.*

[32] *See id.*

[33] *See id.*

[34] *See id.*

[35] *See id.*

[36] *See id.*

employment."[37] Additionally, injuries under the WWCA are limited by certain enumerated exceptions, including the going and coming rule.[38] The going and coming rule provides, "'Injury' does not include . . . [a]ny injury sustained during travel to or from employment unless the employee is reimbursed for travel expenses or is transported by a vehicle of the employer."[39]

The Division of Worker's Safety and Compensation reviews the application for benefits and may either request additional information or make a final determination.[40] A party may object to the final determination within fifteen days by filing a request for a hearing.[41] If a request for a hearing is filed the case is transferred to the Office of Administrative Hearings (OAH).[42] An adversarial adjudication will then be held before a presiding officer of the OAH subject to the Wyoming Administrative Procedure Act.[43] The presiding officer of the OAH will then make a final decision of the case.[44] Pursuant to the Wyoming Administrative Procedure Act and Rule 12 of the Wyoming Rules of Appellate Procedure an aggrieved party may appeal the final decision of the OAH for review to the district court in the county where the aggrieved party resides.[45] Finally, an

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[37] *See id.*

[38] *See* § 27-14-102(a)(xi)(D).

[39] *See id.*; *see also In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1173 (quoting Archuleta v. Carbon Cnty. Sch. Dist. No. 1, 787 P.2d 91, 92 (Wyo. 1990)) ("This statute is the codification of a concept known as the 'going and coming' rule, which is based on 'a long-standing common law rule that injuries incurred while either going to or coming from work are not compensable unless the employer has in some fashion provided the employee with transportation or has reimbursed him for the costs of those travels.'").

[40] 025-220-005 WYO. CODE R. § 4(a) (LexisNexis 2012).

[41] *Id.* § 4(e).

[42] 025-220-006 WYO. CODE R. § 1(a) (LexisNexis 2012). A request for hearing may also be transferred to the Worker's Compensation Medical Commission if appropriate. *Id.*

[43] *See* WYO. STAT. ANN. § 16-3-107 (2012); 270-000-003 WYO. CODE R. §§ 1–5 (LexisNexis 2012). *See generally* Nancy D. Freudenthal & Roger C. Fransen, *Administrative Law: Rulemaking and Contested Case Practice in Wyoming*, 31 LAND & WATER L. REV. 685, 698–709 (1996) (discussing contested case practice under the Wyoming Administrative Procedure Act).

[44] 270-000-003 WYO. CODE R. § 6 (LexisNexis 2012).

[45] *See* WYO. STAT. ANN. § 16-3-114 (2012); 270-000-004 WYO. CODE R. § 1 (LexisNexis 2012); WYO. R. APP. P. 12.1. Section 16-3-114(c) provides:

> To the extent necessary to make a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. In making the following determinations, the court shall review the whole record or those parts of it cited by a party and due account shall be taken of the rule of prejudicial error. The reviewing court shall:
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> (i) Compel agency action unlawfully withheld or unreasonably delayed; and
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> (ii) Hold unlawful and set aside agency action, findings and conclusions found to be:

aggrieved party may appeal the final decision of the district court to the Wyoming Supreme Court.[46]

The Going and Coming Rule

Generally, the going and coming rule denies worker's compensation benefits to employees who suffer injuries while traveling to or from work.[47] In 1915, the Wyoming Legislature codified the going and coming rule.[48] The original language of the statute did not include any exceptions and remained substantively unchanged until 1971.[49] When the Wyoming Legislature amended the statute in 1971 the revised legislation failed to include the going and coming rule.[50] The

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(A) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;

(D) Without observance of procedure required by law; or

(E) Unsupported by substantial evidence in a case reviewed on the record of an agency hearing provided by statute.

For further discussion, see generally Freudenthal & Fransen, *supra* note 43, at 704–05 (discussing challenging an agency's finding after a hearing).

[46] WYO. R. APP. P. 12.11(a) ("An aggrieved party may obtain review of any final judgment of the district court by appeal to the supreme court.").

[47] *See* LARSON, *supra* note 6 (discussing the basic going and coming rule within worker's compensation). *See generally* Henry Slowik, Note, *California's Going and Coming Rule in Workers' Compensation: A New Model for Consistency*, 36 HASTINGS L.J. 969, 973–75 (1985) (discussing the going and coming rule within worker's compensation).

[48] 1915 Wyo. Sess. Laws 175–76 ("The words 'injuries sustained in extra-hazardous employment,' as used in this chapter . . . shall not include injuries of the employee occurring while on his way to assume the duties of his employment or after leaving such duties . . . ."); *In re* Worker's Comp. Claim of Barlow, 295 P.3d 1170, 1173 (Wyo. 2011) (discussing the codification of the going and coming rule).

[49] *See* WYO. COMP. STAT. § 4321(l) (1920); WYO. COMP. STAT. § 124-106-7 (l) (1931); WYO. COMP. STAT. § 72-106 (1945); WYO. COMP. STAT. § 27-49(III)(a) (1957); 1971 Wyo. Sess. Laws 359–60; *Barlow*, 295 P.3d at 1173.

[50] 1971 Wyo. Sess. Laws 359–60. The statute defined injury as:

> The words "injury and personal injury" shall not include injury caused by the willful act of a third person directed against an employee for reasons personal to such employee, or because of his employment; nor a disease, except that which shall directly result from an injury incurred in the employment and except as is provided in the Occupational Disease Law; and further that the words "injury and personal injury" shall be construed only to mean an injury or injury directly and solely caused by a traumatic accident in the employment.

Id.

going and coming rule remained absent from the statutory language until 1986.[51] Nonetheless, the Wyoming Supreme Court continued to apply the rule and its exceptions.[52]

In 1986, the Wyoming Legislature reinstated the going and coming rule.[53] Unlike the original language, the new going and coming rule included express exceptions.[54] The Wyoming going and coming rule now provides that "[a]ny injury sustained during travel to or from employment" is not compensable "unless the employee is reimbursed for travel expenses or is transported by a vehicle of the employer."[55] Thus section 27-14-102(a)(xi)(D) contains two express exceptions to the going and coming rule, the "conveyance exception" and the "reimbursement exception."[56]

Statutory Interpretation of the Wyoming Worker's Compensation Act

Statutory interpretation plays a significant role in determining the application of the going and coming rule under the WWCA. Under Wyoming law if a statute is clear and unambiguous then the ordinary and plain language is given effect, making it unnecessary to resort to rules of statutory construction.[57] The Wyoming Supreme Court articulated the test for determining when a statute is ambiguous: "A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations."[58] Furthermore, the Wyoming Supreme Court has "recognized that divergent opinions among parties as to the meaning of a statute may be

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[51] *Compare* WYO. STAT. ANN. § 27-12-102(xii) (1971) (failing to include the going and coming rule), *with* WYO. STAT. ANN. § 27-14-102(xi)(D) (1987) (including the going and coming rule).

[52] *See In re* Willey, 571 P.2d 248, 251 (Wyo. 1977) (citations omitted) ("This court subscribes to the almost universal rule that generally injuries sustained by an employee who is 'going to or coming from' the duties of his employment are not covered by worker's compensation. In fact, this rule was a part of the statutory definition of 'injury' until the recodification of the worker's compensation laws . . . .").

[53] 1986 Wyo. Spec. Sess. Laws 7.

[54] *Compare* 1915 Wyo. Sess. Laws 175–76 (containing no express exceptions), *with* 1986 Wyo. Spec. Sess. Laws 7 (containing express exceptions).

[55] *See* WYO. STAT. ANN. § 27-14-102(a)(xi)(D) (2012); *accord* 1986 Wyo. Spec. Sess. Laws 7.

[56] *See* § 27-14-102(a)(xi)(D).

[57] *In re* Estate of Johnson, 231 P.3d 873, 878 (Wyo. 2010) (quoting BP Am. Prod. Co. v. Dep't of Revenue, 112 P.3d 596, 604 (Wyo. 2005)). *See generally* Debora A. Person, *Legislative Histories and the Practice of Statutory Interpretation in Wyoming*, 10 WYO. L. REV. 559, 565–66 (2010) (discussing the Wyoming Supreme Court's approach to ambiguity in statutes).

[58] Office of State Lands & Invs. v. Mule Shoe Ranch, Inc., 252 P.3d 951, 955 (Wyo. 2011) (quoting Dorr v. Smith, Keller & Assocs., 238 P.3d 549, 552 (Wyo. 2010)).

evidence of ambiguity but is not conclusive."[59] If a statute is ambiguous then the court will apply the rules of statutory construction.[60] Ultimately, if an interpretation of a statute leads to absurd results then that interpretation will not be followed.[61]

Prior to *Barlow*, the Wyoming Supreme Court determined the language of section 27-14-102(a)(xi)(D) to be unambiguous.[62] In *Lloyd v. State ex rel. Wyoming Workers' Safety and Compensation Division*, Lloyd argued that common law exceptions to the going and coming rule applied regardless of the language of the statute.[63] The State argued that the adoption of section 27-14-102(a)(xi)(D) renounced the common law exceptions, except for the exceptions expressly enumerated within the language of the statute.[64] The Wyoming Supreme Court agreed with the State and determined that section 27-14-102(a)(xi)(D) is unambiguous in that it only contains the exceptions stated therein.[65] In two subsequent cases, the Wyoming Supreme Court reaffirmed that the language contained in the going and coming rule was unambiguous.[66] In *Berg v. State ex rel. Wyoming Workers' Safety and Compensation Division*, the issue before the court was whether Berg was "reimbursed for travel expenses."[67] Citing *Lloyd* for the proposition that the language of section 27-14-102(a)(xi)(D) is unambiguous, the Wyoming Supreme Court interpreted the phrase to require actual compensation for travel expenses.[68] The court held that because Berg had received no compensation for travel expenses, his injuries suffered during travel were not compensable.[69] In *Quinn v. Securitas Security Services*, the issue before the court was whether the vehicle in which Quinn was injured was a "vehicle of the employer."[70] The Wyoming Supreme Court, again citing *Lloyd*, held that

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[59] Chevron U.S.A., Inc. v. Dep't. of Revenue, 154 P.3d 331, 335 (Wyo. 2007) (quoting RME Petroleum Co. v. Wyo. Dep't of Revenue, 150 P.3d 673, 683–84 (Wyo. 2007)) (internal quotation marks omitted).

[60] *Id.*

[61] *Mule Shoe Ranch, Inc.*, 252 P.3d at 956 (citing *Chevron U.S.A., Inc.*, 154 P.3d at 332). *See generally* Leonard R. Carlman, Casenote, *Wildlife-Private Property Damage Law*, 29 LAND & WATER L. REV. 89, 109 (1994) (discussing an application of the absurd result doctrine).

[62] Quinn v. Securitas Sec. Servs., 158 P.3d 711, 714 (Wyo. 2007); Berg v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 106 P.3d 867, 871 (Wyo. 2005); Lloyd v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 93 P.3d 1001, 1004 (Wyo. 2004).

[63] 93 P.3d at 1005.

[64] *Id.*

[65] *See id.*

[66] *Berg*, 106 P.3d at 871; *Quinn*, 158 P.3d at 714.

[67] *Berg*, 106 P.3d at 871.

[68] *Id.*

[69] *Id.* at 871–72.

[70] *Quinn*, 158 P.3d at 714–15 ("[T]he bus was not a 'vehicle of the employer.'").

because Quinn's employer had no control over the bus it was not a "vehicle of the employer."[71]

The Causal Nexus Test

Section 27-14-102(a)(xi) of the WWCA provides, "'Injury' means any harmful change in the human organism . . . *arising out of* and *in the course of employment*."[72] In many jurisdictions the determination of whether an injury is sufficiently connected to the employment and thus compensable under worker's compensation law depends on an interpretation of both the phrases "arising out of" and "in the course of employment."[73] The Wyoming Supreme Court, however, has "construed 'arising out of' employment to mean the same thing as 'in the course of employment.'"[74] As a result, instead of applying the two phrases, the Wyoming Supreme Court adopted the "causal nexus test" for determining when injuries are compensable under the WWCA.[75] The causal nexus test is a "general test for compensability."[76] The court articulated the test as follows:

> In either case, the injury is compensable if it arises out of and in the course of employment. This requirement emphasizes the need for a causal connection between the injury and the employment. Such a causal connection is supplied when there is a nexus between the injury and some condition, activity, environment or requirement of the employment.[77]

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[71] *Id.*

[72] WYO. STAT. ANN. § 27-14-102(a)(xi) (2012) (emphasis added).

[73] LARSON, *supra* note 6, § 3.01 ("Few groups of statutory words in the history of law have had to bear the weight of such a mountain of interpretation as has been heaped upon this slender foundation."); *see, e.g.*, *Quinn*, 158 P.3d at 714; Archuleta v. Carbon Cnty. School Dis. No. 1, 787 P.2d 91, 92–93 (Wyo. 1990); *In re* Injury to Corean, 723 P.2d 58, 59–63 (Wyo. 1986) (citations omitted) ("In a majority of the states, when an employee is hurt on the employer's premises, it is conclusively established under the premises rule that the employee was acting within the course of his employment. This does not mean, however, that the worker is necessarily entitled to benefits. He still must show that the harm arose out of his employment, i.e., was causally connected to his employment."); *see also* 2 JON L. GELMAN, MODERN WORKERS COMPENSATION § 110:2 (West 2012) (discussing the single work-connectedness test of various jurisdictions, including Wyoming).

[74] *Corean*, 723 P.2d at 60 (citing *In re* Willey, 571 P.2d 248, 250 (Wyo. 1977)).

[75] *Willey*, 571 P.2d at 250; *Corean*, 723 P.2d at 61 ("Under the nexus test, we have developed several clear rules and exceptions which dispose of most claims that arise out of accidents that occur during travel to or from work."). *See generally* Patricia Pattison & Philip E. Carca, *Workers' Compensation for Mental Stress Claims in Wyoming*, 29 LAND & WATER L. REV. 145, 151–52 (1994) (discussing the causal connection requirement under the WWCA).

[76] *In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1176 (Wyo. 2011) (Burke, J., dissenting).

[77] *Willey*, 571 P.2d at 250 (citations omitted); *accord Quinn*, 158 P.3d at 714.

Thus, for an injury to be compensable under the WWCA, "there must be a causal nexus between the injury and some condition, activity, environment or requirement of the employment."[78] The Wyoming Supreme Court has applied the causal nexus test to differentiate between compensable and non-compensable injures under the WWCA generally.[79]

The Conveyance Exception

The language of section 27-14-102(a)(xi)(D) provides the "conveyance exception" to the going and coming rule.[80] Under the statute the conveyance exception applies if an injury occurs "during travel to or from employment" and "the employee . . . is transported by a vehicle of the employer."[81] To satisfy the conveyance exception, an injured employee must establish all of the elements of a compensable injury and the elements of the conveyance exception.[82] Generally, "If the trip to and from work is made in a truck, bus, van, car, or other vehicle under the control of the employer, an injury during that trip is incurred in the course of employment."[83] The Wyoming Supreme Court applies the causal nexus test to the conveyance exception to determine if the injury arises out of and in the course of the employment.[84] In *Quinn v. Securitas Security Services*, the Wyoming Supreme Court stated the causal nexus test is satisfied under the conveyance exception when "the employer has in some fashion provided the employee with transportation."[85]

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[78] *Barlow*, 259 P.3d at 1177–76 (quoting Shelest v. State *ex rel*. Wyo. Workers' Safety & Comp. Div., 222 P.3d 167, 170 (Wyo. 2010)) (internal quotation marks omitted).

[79] *See, e.g.*, Anderson v. Solvay Minerals, 3 P.3d 236, 240 (Wyo. 2000) (discussing the application of the causal nexus test to a mine accident); State *ex rel.* Wyo. Workers' Comp. Div. v. Espinoza, 924 P.2d 979, 981 (Wyo. 1996) (discussing the application of the causal nexus test to an injury suffered by a restaurant employee due to horseplay); Baker v. Wendy's of Mont., Inc., 687 P.2d 885, 891–92 (Wyo. 1984) (discussing the application of the causal nexus test to assaults and batteries suffered at the workplace).

[80] WYO. STAT. ANN. § 27-14-102(a)(xi)(D) (2012). The language of § 27-14-102(a)(xi)(D) also provides the reimbursement exception. *See id.*

[81] *Id.*

[82] *See id.*; *supra* notes 30–39 and accompanying text.

[83] LARSON, *supra* note 6, § 15.01[1] (discussing the conveyance exception); *accord* 99 C.J.S. *Workers' Compensations* § 440 (2012) (discussing the conveyance exception).

[84] *See, e.g.*, Quinn v. Securitas Sec. Servs., 158 P.3d 711, 714 (Wyo. 2007) (citing Berg v. State *ex rel*. Wyo. Workers' Safety & Comp. Div., 106 P.3d 867, 871 (Wyo. 2005); Archuleta v. Carbon Cnty. Sch. Dist. No. 1, 787 P.2d 91, 92 (Wyo. 1990); *In re* Claims of Naylor, 723 P.2d 1237, 1241 (Wyo. 1986)) ("Those exceptions find a causal nexus where the employer has in some fashion provided the employee with transportation . . . .").

[85] *Id.*

The Reimbursement Exception

The language of section 27-14-102(a)(xi)(D) also provides the "reimbursement exception" to the going and coming rule.[86] Under the statute, the reimbursement exception applies when an injury occurs "during travel to or from employment" and "the employee is reimbursed for travel expenses."[87] To satisfy the reimbursement exception, an injured employee must establish all of the elements of a compensable injury and the elements of the reimbursement exception.[88] Generally, the reimbursement exception is a codification of "the underlying principle that a journey is compensable if the making of that journey is part of the service for which the employee is compensated."[89] The Wyoming Supreme Court has consistently employed the causal nexus test for determining whether the injury suffered during travel arises out of and in the course of the employment with regards to reimbursement.[90] The Wyoming Supreme Court determined that when an employer has assumed the cost of travel then injuries suffered during that travel arise out of and in the course of the employment, or in other words, satisfy the causal nexus test.[91] *Larson's Workers' Compensation Law* provides that several factors may be considered when payment for travel is at issue: (1) an employee may receive actual payment for the travel, (2) an employee may be provided a vehicle as payment for the expense of travel, and (3) the length of the journey itself if the journey "is a substantial part of the service performed."[92]

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[86] *See* § 27-14-102(a)(xi)(D); *see also* LARSON, *supra* note 6, § 14.07 (discussing the reimbursement exception). The language of § 27-14-102(a)(xi)(D) also provides the conveyance exception. *See* § 27-14-102(a)(xi)(D).

[87] § 27-14-102(a)(xi)(D).

[88] *See id.*; *supra* notes 30–39 and accompanying text.

[89] LARSON, *supra* note 6, § 14.06 (discussing payment for travel time); *see also id.* § 14.07 (discussing payment for travel expenses).

[90] *E.g.*, *Quinn*, 158 P.3d at 714; *Berg*, 106 P.3d at 871; *Archuleta*, 787 P.2d at 92; *Naylor*, 723 P.2d at 1241. *But see In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1173–75 (Wyo. 2011) (stating but failing to apply the causal nexus test).

[91] *See, e.g.*, *Quinn*, 158 P.3d at 714 (citing *Berg*, 106 P.3d at 871; *Archuleta*, 787 P.2d at 92; *Naylor*, 723 P.2d at 1241) ("Those exceptions find a causal nexus where the employer . . . has reimbursed him for the costs of those travels.").

[92] *See* LARSON, *supra* note 6, § 14.06 (discussing payment for travel time); *see also id.* § 14.07 (discussing payment for travel expenses); *id.* § 14.06[1] (citations omitted) ("When an employee is paid an identifiable amount as compensation for time spent in a going and coming trip, the trip is within the course of employment."); *id.* § 14.07[1] (citations omitted) ("However, in the majority of cases involving . . . the provision of an automobile under the employee's control, the journey is held to be in the course of employment."); *id.* § 14.07[1] ("[W]hen the subject of the transportation is singled out for special consideration it is normally because the transportation involves a considerable distance, and therefore qualified under the rule herein suggested: that employment should be deemed to include the travel when the travel itself is a substantial part of the service performed.").

Injuries Occurring on the Premises of the Employer

The language of section 27-14-102(a)(xi) provides for the statutory basis for finding injuries compensable when the injuries occur on the premises of the employer.[93] If the injury occurred on the premises of the employer, whether or not the employee was coming to or going from the place of employment, then the critical inquiry becomes whether the injury was causally connected to the employment.[94] Generally, an injury occurring on the employer's premises, whether or not the employee was going to or coming from work, is compensable only if the injury satisfies the causal nexus test.[95] Thus, the most significant element for

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[93] *See* WYO. STAT. ANN. § 27-14-102(a)(xi); Finley v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 132 P.3d 185, 188–89 (Wyo. 2006) (discussing the element of "arising out of and in the course of employment" with regards to injuries occurring on the premises of the employer); Archuleta v. Carbon Cnty. Sch. Dist. No. 1, 787 P.2d 91, 94 (Wyo. 1990) (discussing the premises rule within the context of the going and coming rule); State *ex rel.* Wyo. Worker's Comp. Div. v. Miller, 787 P.2d 89, 90 (Wyo. 1990); *In re* Injury to Corean, 723 P.2d 58, 60 (Wyo. 1986).

[94] *See, e.g.*, *Finley*, 123 P.3d at 188–89; *Archuleta*, 787 P.2d at 94; *Corean*, 723 P.2d at 61. In *Archuleta v. Carbon County School District No. 1*, the Wyoming Supreme Court held that when an injury occurs on the premises of the employer and the employee has fixed hours and a fixed place of employment then a rebuttable presumption arises that the injury is causally connected to the employment. 787 P.2d at 94. However, in *Corean*, a case predating *Archuleta* and never overturned, the Wyoming Supreme Court held that the causal nexus test should be applied to all injuries occurring on the premises of the employer when the injury occurs as the employee is going to or coming from work. 723 P.2d at 60–61. Accordingly, while a rebuttable presumption of a causal connection may arise if the employee had fixed hours and a fixed place of work, an injury may still be causally connected to the employment without fixed hours and a fixed place of work. *See id.*; *e.g.*, *Finley*, 123 P.3d at 188–89 (discussing the application of *Corean* to an injury occurring on the premises of the employer); *Miller*, 787 P.2d at 90 (citing *Archuleta*, 787 P.2d at 93) ("[W]e explained that we had rejected the premises rule in *Corean* only to the extent that it was understood to conclusively established a causal connection between on-premises injuries and employment. . . . Accordingly, we adopted the rule as creating a rebuttable presumption of a causal nexus between injury and employment."). *See generally* Joseph A. Kalamarides, *The Remote Site Doctrine in Alaska*, 21 ALASKA L. REV. 289, 291–293 (2004) (discussing injuries occurring on the premises of the employer and the requirement that injuries arise out of the employment).

[95] *See, e.g.*, *Finley*, 132 P.3d at 188 ("An employee-claimant in a worker's compensation case has the burden to prove all the statutory elements which comprise a compensable injury . . . . This includes . . . proving that the injury arose out of and in the course of employment."); *In re* Worker's Comp. Claim of Gomez, 231 P.3d 902, 906 (Wyo. 2010) ("To find Gomez's death compensable under these circumstances would require adoption of what would resemble a strict liability standard for cases where an employee is on call and on the employer's premises. That is not the law in Wyoming, where compensability requires some "nexus" between the work and the injury, as the citation above to *Finley* illustrates."); *Miller*, 787 P.2d at 90 ("[W]e adopted the rule as creating a rebuttable presumption of a causal nexus between injury and employment."); *Archuleta*, 787 P.2d at 94 ("[W]e hold that where the elements of the premises rule . . . have been established, a rebuttable presumption arises that the employee's injury is causally connected to his employment."); *Corean*, 723 P.2d at 61. *See generally* 99 C.J.S. *Worker's Compensation* § 425 (2012) (discussing injuries occurring on the premises of the employer); Mark Alan Johnson, Littlefield v. Pillsbury Co.*: A Turn to the Left in Worker's Compensation*, 46 OHIO ST. L.J. 411, 415 (1985) (discussing the work related requirement of injuries occurring on the premises of the employer).

determining if an injury that occurs on the employer's premises is compensable is whether the injury "aris[es] out of and in the course of employment."[96] Accordingly, if an injury occurs on the premises of the employer and all of the elements of a compensable injury are satisfied then that injury is compensable under the WWCA even if the employee was going to or coming from work.[97]

The Wyoming Supreme Court has never considered whether a vehicle may be the "premises" of an employer.[98] However, *Larson's Workers' Compensation* suggests considering a vehicle to be the premises of the employer in difficult cases where the employee is injured while entering or leaving the conveyance.[99] Other courts have followed this analogy and held a vehicle to be the premises of the employer where an employee is injured while entering or leaving a vehicle controlled by his or her employer.[100] The majority of cases discussing this issue have focused on injuries occurring as the employee was crossing a street before entering or after leaving the vehicle.[101] Additionally, some courts have considered instances where the employee was injured while entering or leaving the vehicle itself.[102] In *Williams v. Worker's Compensation Appeal Board (City of Philadelphia)*, an employee suffered an injury when he hit his head on his employer's van as he

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[96] *See, e.g.*, *Finley*, 123 P.3d at 188–89 ("Presence on an employer's premise is insufficient by itself to establish the requisite nexus between the injury and employment."); Haagensen v. State *ex rel.* Wyo. Workers' Comp. Div., 949 P.2d 865, 868–69 (Wyo. 1997) ("The requirement that the injury 'aris[e] out of and in the course of employment' is premised upon a determination whether the relationship between the injury and the employment is sufficient that the injury should be compensable."); *Corean*, 723 P.2d at 61 ("The causal nexus, not the premises, is the key.").

[97] *See supra* notes 93–96 and accompanying text.

[98] *See, e.g.*, *Finley*, 132 P.3d at 189; Murray v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 993 P.2d 327, 333 (Wyo. 1999); *Haagensen*, 949 P.2d at 867–868; Cabral v. Caspar Bldg. Sys., Inc., 920 P.2d 268, 271 (Wyo. 1996); *Miller*, 787 P.2d at 90; *Archuleta*, 787 P.2d at 94.

[99] LARSON, *supra* note 6, § 15.04 ("If one thinks of the employer's truck as a floating fragment of the premises, the analogy will supply answers in several familiar types of cases."). *See generally* Boulton, *supra* note 6, at 478 (citations omitted) ("The exceptions to the [going and coming] rule 'extend the employer's premises under certain circumstances when it would be unduly restrictive to limit coverage of compensation statutes to the physical perimeters of the employer's premises.' These circumstances included a worker provided with a company vehicle or required to have a vehicle to perform the job.").

[100] *See* Williams v. Workers' Comp. App. Bd. (City of Philadelphia), 850 A.2d 37, 38 (Pa. Commw. Ct. 2004); Blaustein v. Mitre Corp., 36 Va. App. 344, 352 n.2 (Va. Ct. App. 2001) (citing Ferrara v. City of New Orleans, 100 So. 2d 896 (La. Ct. App. 1958); Gibbs v. Pizzolato, 67 So. 2d 139 (La. Ct. App. 1953)) ("By treating employer-provided transportation as an extension of the employer's premises, courts have extended the employer's liability to employees boarding and alighting from vehicles furnished by the employer.").

[101] LARSON, *supra* note 6, § 15.04; *see also In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1172–74 (Wyo. 2011) (citing Love v. BIPO, Inc., 146 P.3d 873 (Okla. Civ. App. 2006); State Lottery Com. v. Workers' Comp. Appeals Bd., 57 Cal. Rptr. 2d 745 (Cal. Ct. App. 1996)).

[102] *See Williams*, 850 A.2d at 38; *Blaustein*, 36 Va. App. at 352 n.2.

climbed into it.[103] The court adopted the theory in *Larson's Workers' Compensation* that a vehicle of the employer can be considered the premises of the employer for the purposes of determining compensability, and thus, found the employee's injury compensable.[104]

PRINCIPAL CASE

James W. Barlow worked as a tool pusher on an oilrig in Pinedale, Wyoming.[105] Barlow's employer Grey Wolf Drilling, Inc. provided him with a 2005 Dodge pickup truck for both his employment and personal use.[106] Barlow's employer owned the vehicle.[107] On December 1, 2008, Barlow was traveling from his home in Powell, Wyoming to Casper, Wyoming for a series of meetings he was required to attend as a condition of his employment.[108] In anticipation of traveling to the meetings, on November 30, 2008, Barlow loaded the pickup truck with clothing and food.[109] On the morning of December 1, 2008, while Barlow attempted to enter the pickup truck his foot slipped and he hit his right knee on the stirrup.[110]

As per the WWCA Barlow was required to show that he suffered a compensable "injury" as defined under section 27-14-102(a)(xi).[111] The Wyoming Workers' Safety and Compensation Division determined Barlow did not suffer a compensable injury under section 27-14-102(a)(xi) and denied Barlow any benefits.[112] The case was appealed to the OAH.[113] The OAH granted summary judgment in favor of the Wyoming Workers' Safety and Compensation Division.[114] The OAH held that "in order for there to be vehicle travel or transportation there must be a [sic] least some initial movement by the vehicle in which the employee is traveling as this is the most reasonable demarcation point between preparing

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[103] *Williams*, 850 A.2d at 38.

[104] *Id.* at 38–40; LARSON, *supra* note 6, § 15.04 ("The confusion that characterizes this class of cases could be cleared up by forthrightly following the analogy of exceptions to the main premises rule itself. If one thinks of the employer's truck as a floating fragment of the premises, the analogy will supply answers in several familiar types of case.").

[105] Brief of Appellant James W. Barlow at 2, *In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170 (Wyo. 2011) (No. S-10-0243) [hereinafter Brief of Appellant].

[106] *Id.* at 4.

[107] *Id.* (citation and internal quotation marks omitted) ("I mean, it's the employer's pickup . . . .").

[108] *Id.*

[109] *Id.*

[110] *Id.*

[111] *In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1172 (Wyo. 2011).

[112] Brief of Appellee, *supra* note 15, at 2.

[113] *Id.*

[114] *Id.*

for travel and actually traveling."[115] The district court affirmed the decision of the OAH.[116] Barlow appealed to the Wyoming Supreme Court.[117]

Majority Opinion

The majority determined that Barlow's injuries were not compensable under the WWCA.[118] Justice Voigt, writing for the majority, first identified section 27-14-102(a)(xi)(D) as a codification of the long-standing common law going and coming rule.[119] The majority recognized the codification of the rule represents "a legislative determination that, while no compensable nexus with the employment is generally present when an employee is travelling between home and work, such a nexus is created where the employer has assumed the cost of that travel."[120] Accordingly, the majority applied the conveyance exception to determine whether Barlow's injury was compensable.[121]

Both the Wyoming Workers' Safety and Compensation Division and Barlow relied on cases arising outside of Wyoming to support their arguments.[122] However, the majority distinguished those cases by recognizing that they relied on the common law going and coming rule, whereas Wyoming codified the rule.[123] Therefore, the majority reasoned that the application of the going and coming rule should be reviewed under Wyoming's statutory language instead of the common law.[124]

The majority restated that the language section 27-14-102(a)(xi)(D) is unambiguous.[125] Nevertheless, the majority determined that it must interpret the

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[115] Brief of Appellant, *supra* note 105, at 20.

[116] Brief of Appellee, *supra* note 15, at 2.

[117] *In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1172 (Wyo. 2011).

[118] *Id.* at 1175.

[119] *Id.* at 1173. Justice Voigt was joined by Justice Golden and Justice Hill. *Id.* at 1172.

[120] *Id.* at 1173 (quoting Archuleta v. Carbon Cnty. Sch. Dist. No. 1, 787 P.2d 91, 93 (Wyo. 1990)) (internal quotation marks omitted).

[121] *Id.*

[122] *Id.*

[123] *Id.* ("While all of the cases considered the 'going and coming rule' and the relevant exception, the important difference between our case and the Oklahoma and California cases is that those cases relied on the common law application of the rule, whereas Wyoming has codified the rule and defined its application with specific statutory language.").

[124] *Id.* ("Therefore, to discern the proper application of the rule, as defined in our statute, we must undertake a brief statutory analysis.").

[125] *Id.* at 1175 (citing Quinn v. Securitas Sec. Servs., 158 P.3d 711, 714 (Wyo. 2007); Berg v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 106 P.3d 867, 871 (Wyo. 2005); Lloyd v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 93 P.3d 1001, 1004 (Wyo. 2004)).

phrase "transported by the vehicle of the employer."[126] Citing one definition of "transport," the majority concluded the use of the term "leaves no doubt that an injury sustained during travel is only compensable if it occurs as the claimant is being carried or conveyed from one place to another."[127]

Consequently, the majority concluded that entering the vehicle does not entail transportation.[128] Therefore, Barlow's injuries were not compensable.[129] The majority rejected Barlow's argument that injuries suffered during preparation for travel are compensable, stating that such an interpretation would require adding terms not present in the statute.[130] The majority held, "for an 'injury sustained during travel' to be compensable, it must occur as the employee is being 'transported by the vehicle of their employer.' That is, the vehicle must be carrying the employee from one place to another."[131] Thus, because Barlow was merely entering the vehicle, he did not suffer a compensable injury under the WWCA.[132]

Dissenting Opinion

Justice Burke, writing for the dissent, disagreed with the majority's framing of the issue.[133] The dissent also applied the conveyance exception, however, the dissent argued that the issue presented in *Barlow* was not whether the injury occurred while the employee was "transported" but whether the injury occurred "during travel."[134] The dissent determined Barlow was "transported" by relying on the facts that Barlow's employer provided him with the truck and that Barlow was subject to being called into work at any time.[135] Therefore, the dissent concluded, "[i]n light of these facts, the claimant has established that he was 'transported by a vehicle of the employer.'"[136]

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[126] *Id.* ("The compensability of the appellant's injury hinges on the meaning of the word 'transported.'"); *cf.* JUSTICE ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 53 (2012) (citations omitted) ("It is sometimes said that a plain text with a plain meaning is simply applied and not 'interpreted' or 'construed.' Whether that is true is perhaps a matter of definition. . . . Any meaning derived from signs involves interpretation, even if the interpreter finds the task straightforward.").

[127] *Barlow*, 259 P.3d at 1175.

[128] *Id.*

[129] *Id.*

[130] *Id.* (quoting Krenning v. Heart Mountain Irrigation Dist., 200 P.3d 774, 781 (Wyo. 2009)).

[131] *Id.*

[132] *Id.*

[133] *Id.* at 1176 (Burke, J., dissenting). Justice Burke writing for the dissent was joined by Justice Kite. *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.*

The dissent acknowledged that even at the administrative level the issue was whether the injury occurred "during travel."[137] Therefore, the dissent stated, "[a]lthough the majority focuses upon the statutory phrase 'is transported by,' it appears that the majority would also interpret 'during travel' to require initial movement of the vehicle in order for the injury to be compensable."[138] The dissent argued against that position by stating, "there is no indication in the statute that the legislature intended to impose that limitation on compensability." Instead the dissent argued that from a common sense perspective, one must enter a vehicle before one can travel in it.[139] Therefore, if an employee is entering a vehicle for the purposes of employment then injuries suffered when entering should be compensable.[140] Barlow was entering the vehicle when he suffered his injury, and thus he was injured "during travel" while being "transported by a vehicle of his employer."[141]

Furthermore, the dissent contended that the confusion of applying the conveyance exception could have been avoided by applying the Wyoming Supreme Court's causal nexus test.[142] The dissent stated:

> Rather than deciding these cases based on a finely drawn rule, it is better to approach each individual set of facts in light of the "causal nexus" standard that we have previously articulated. In interpreting the definition of injury under Wyo. Stat. Ann. § 27-14-102(a)(xi), we have repeatedly stated that, for an injury to be compensable, "there must be 'a causal nexus between the injury and some condition, activity, environment or requirement of the employment.'"[143]

The dissent argued that the application of the causal nexus test would have resolved the present case without creating a new bright line rule.[144] Arguing against creating a new bright line rule, the dissent stated, "[i]t is simply impossible to anticipate all of the potential ways in which an employee could be injured

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[137] *Id.* ("The hearing examiner, correctly determining that 'the dispositive legal issue is whether or not any injury [the claimant] sustained was, as a matter of law, sustained "during travel,"' referred to the definition of travel contained in Black's Law Dictionary.").

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] *Id.* (quoting Shelest v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 222 P.3d 167, 170 (Wyo. 2010)).

[144] *Id.*

'during travel.'"[145] Accordingly, the causal nexus test provides an equitable test for determining when an injury is compensable under the WWCA.[146] The dissent argued that the injuries suffered by Barlow satisfied the causal nexus test.[147] Barlow was climbing into the vehicle on his way to a work related matter when he suffered his injury.[148] He had no alternative means of entering the vehicle other than opening the door and using the stirrup.[149] His employment required him to use the vehicle for travel.[150] Therefore, according to the dissent, the injury suffered by Barlow was directly related to his employment and his injury was compensable under the WWCA.[151]

ANALYSIS

Barlow was decided incorrectly for three reasons. First, the majority's holding in *Barlow* will likely exclude compensation for injuries that should otherwise be compensable under the conveyance exception.[152] For example, injuries suffered during travel but while stopped would arguably not be compensable under the holding in *Barlow*.[153] Second, the court could have applied the reimbursement exception.[154] Specifically, Barlow's injuries could have been found compensable under the reimbursement exception because he was reimbursed for his travel expenses.[155] Finally, the premises could be extended to cover a vehicle of the employer.[156] Accordingly, the majority's holding in *Barlow* should be revisited.

Excluding Compensable Injuries Under The Conveyance Exception

In *Barlow*, the majority created a bright line rule for distinguishing between compensable and non-compensable injuries under the conveyance exception, holding that in order for the "is transported by" element to be satisfied the vehicle

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[145] *Id.*

[146] *Id.* at 1177.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.*

[151] *Id.*

[152] *See infra* notes 157–85 and accompanying text.

[153] *See infra* notes 157–85 and accompanying text.

[154] *See infra* notes 186–203 and accompanying text.

[155] *See infra* notes 186–203 and accompanying text.

[156] S*ee infra* notes 204–41 and accompanying text.

must be moving.[157] However, as noted in *Larson's Workers' Compensation*: "When a line of this kind is drawn, there are always cases very close to each side of the line."[158] The bright line drawn by the majority in *Barlow* leads to an absurd result by excluding what should be compensable injuries under the conveyance exception.

The statutory phrases "is transported by" and "during travel" are arguably ambiguous. Under Wyoming law, "[a] statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations."[159] Furthermore, the Wyoming Supreme Court has "recognized that divergent opinions among parties as to the meaning of a statute may be evidence of ambiguity but is not conclusive."[160] In *Barlow*, the majority cited the holding in *Lloyd* that the language of section 27-14-102(a)(xi)(D) is unambiguous.[161] However, the majority's reliance on *Lloyd* and its progeny is misguided.[162] *Lloyd* did not stand for the proposition that all words and phrases in section 27-14-102(a)(xi)(D) are unambiguous.[163] Rather, *Lloyd* stood for the proposition that section 27-14-102(a)(xi)(D) unambiguously abrogated the common law exceptions to the going and coming rule.[164] Furthermore, two Wyoming cases subsequent to *Lloyd* determined that the language of section 27-14-102(a)(xi)(D) was unambiguous; however those cases did not address the statutory phrases "is transported by" or "during travel."[165] In *Berg*, the Wyoming Supreme Court applied the reimbursement

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[157] *In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1175 ("We conclude the language of Wyo. Stat. Ann. § 27–14–102(a)(xi)(D) plainly and unambiguously requires that for an 'injury sustained during travel' to be compensable, it must occur as the employee is being 'transported by the vehicle of their employer.' That is, the vehicle must be carrying the employee from one place to another.").

[158] LARSON, *supra* note 6 (discussing the basic going and coming rule); *see also Barlow,* 259 P.3d at 1176 (Burke, J., dissenting) ("It is simply impossible to anticipate all of the potential ways in which an employee could be injured 'during travel.'").

[159] Office of State Lands & Invs. v. Mule Shoe Ranch, Inc., 252 P.3d 951, 955 (Wyo. 2011) (quoting Dorr v. Smith, Keller & Assocs., 238 P.3d 549, 552 (Wyo. 2010)). *See generally* Person, *supra* note 57, at 565–66.

[160] Chevron U.S.A., Inc. v. Dep't. of Revenue, 154 P.3d 331, 335 (Wyo. 2007) (quoting RME Petroleum Co. v. Wyo. Dep't of Revenue, 150 P.3d 673, 683–84 (Wyo. 2007)) (internal quotation marks omitted).

[161] *Barlow*, 259 P.3d at 1173 (citing Lloyd v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 93 P.3d 1001, 1004 (Wyo. 2004)).

[162] *See infra* notes 161–67 and accompanying text.

[163] *See supra* notes 62–66 and accompanying text.

[164] *See supra* notes 62–66 and accompanying text.

[165] *See* Quinn v. Securitas Sec. Servs., 158 P.3d 711, 714 (Wyo. 2007); Berg v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 106 P.3d 867, 871 (Wyo. 2005).

exception.[166] In *Quinn*, the Wyoming Supreme Court applied the phrase "vehicle of the employer."[167] Accordingly, the Wyoming Supreme Court was not bound by its precedent to determine that the statutory phrases "is transported by" and "during travel" were unambiguous.

The statutory phrases "is transported by" and "during travel" are subject to varying reasonable interpretations. As stated, disagreement among parties as to a statute's interpretation does not necessarily make it ambiguous, but is evidence of ambiguity.[168] At the administrative level, the hearing examiner interpreted the phrase "during travel" to require at least some initial movement.[169] Barlow argued that the phrase "during travel" should include activities related to preparation for travel.[170]

On the other hand, the Wyoming Workers' Safety and Compensation Division argued that the plain language of the phrase "mandates that a workers' compensation claimant be moving, journeying, or going somewhere in order for benefits to be awarded."[171] Finally, the dissent in *Barlow* argued that the phrase "during travel" should be viewed from a common sense perspective.[172] The dissent stated, "[f]rom a common sense perspective it is obvious that an individual must enter the vehicle to travel in it."[173] Furthermore, in *Barlow* the majority determined that the phrase "is transported by" "leaves no doubt that an injury sustained during travel is only compensable if it occurs as the claimant is being carried or conveyed from one place to another (i.e. sitting in the vehicle and moving from one place to another)."[174] Conversely, the dissent concluded, "[t]he statute does not require that the injury occur simultaneously with 'being transported,' just as it does not require that the injury occur while the employee is 'being reimbursed' for travel expenses."[175] Although divergent opinions among parties is not conclusive evidence of ambiguity, the amount of disagreement relating to the phrases "is transported by" and "during travel" is arguably sufficient to override the sweeping

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[166] *See supra* notes 67–69 and accompanying text.

[167] *See supra* notes 70–71 and accompanying text.

[168] Chevron U.S.A., Inc. v. Dep't. of Revenue, 154 P.3d 331, 335 (Wyo. 2007) (citing RME Petroleum Co. v. Wyo. Dep't of Revenue, 150 P.3d 673, 683–84 (Wyo. 2007)) (internal quotation marks omitted).

[169] *See* Brief of Appellant, *supra* note 105, at 23.

[170] *Id.*

[171] Brief of Appellee, supra note 15, at 14.

[172] *In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1176 (Burke, J., dissenting) (Wyo. 2011).

[173] *Id.*

[174] *Id.* at 1175 (majority opinion).

[175] *Id.* at 1176 (Burke, J., dissenting).

statement that the language of section 27-14-102(a)(xi)(D) is unambiguous.[176] Accordingly, the rules of statutory construction should be applied to the statutory phrases "is transported by" and "during travel."

Under Wyoming law, an interpretation of a statute that leads to an absurd result will not be followed.[177] The holding in *Barlow* leads to an absurd result by denying compensation for injuries that would probably be compensable under the conveyance exception.[178] *Barlow* requires, "for an 'injury sustained during travel' to be compensable, it must occur as the employee is being 'transported by the vehicle of their employer.' That is, the vehicle must be carrying the employee from one place to another."[179] An employee who is not currently inside of the vehicle is not being carried from one place to another. Therefore, an employee who is injured outside of the vehicle, no matter the surrounding circumstances, would not have suffered a compensable injury under the majority's interpretation of the conveyance exception.[180]

Consider the application of the holding in *Barlow* to the following hypothetical situation: imagine an employee was provided with a pickup truck to travel to distant meetings but was not compensated in any fashion for the travel. Suppose the employee had successfully entered the pickup truck and begun movement towards the distant meetings. Assume the meetings were some great distance from the employee's home, and consequently, the employee had to stop and refuel. To refuel a vehicle, a person must exit the vehicle. During refueling a static spark ignited a fire and, as a result of the fire, the employee suffered catastrophic burns.[181] Applying the majority's bright line rule to the hypothetical situation would deny compensation and reveals that the rule leads to absurd results by denying compensation for injuries that would probably be compensable under the conveyance exception.

The dissent's interpretation of the conveyance exception avoids the absurd result created by the majority's holding. The dissent argued that the better approach to applying the conveyance exception is using the court's causal

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[176] *See supra* notes 168–75 and accompanying text.

[177] Office of State Lands & Invs. v. Mule Shoe Ranch, Inc., 252 P.3d 951, 956 (Wyo. 2011) (citing Chevron U.S.A., Inc. v. Dep't of Revenue, 154 P.3d 331, 332 (Wyo. 2007)) ("We will not construe statutory language to reach an absurd result.").

[178] *See infra* notes 179–81 and accompanying text.

[179] *Barlow*, 259 P.3d at 1175.

[180] *See id.* at 1176 (Burke, J., dissenting) ("Certainly, the employee could be injured while the vehicle is moving, but an employee could also be injured while the vehicle is not in motion.").

[181] *See, e.g.*, Perkins v. Wurster Oil Corp., 886 So. 2d 1229, 1231 (La. Ct. App. 2004) ("Fred Perkins stopped at a gas station to fill his truck. While the process was ongoing, static electricity ignited the fuel vapors. Mr. Perkins was burned by the fire.").

nexus test.[182] Under the dissent's articulation of the causal nexus test, "for an injury to be compensable, 'there must be a causal nexus between the injury and some condition, activity, environment or requirement of the employment.'"[183] Refueling is causally connected to traveling. In this case, Barlow had to travel approximately 235 miles.[184] Therefore, he would likely have had to refuel and that refueling would have been causally connected to the requirements of his employment. So long as Barlow was furthering the interests of his employer when he suffered his injury, then the injury should have satisfied the elements of the conveyance exception.[185] Accordingly, if Barlow could also establish the elements of a compensable injury then his injury should have been compensable under the conveyance exception. Therefore, to avoid an absurd result, the majority's bright line rule should be rejected in favor of applying the causal nexus test as the dissent urged.

Applying the Reimbursement Exception

Although in *Barlow* the majority and the dissent only applied the conveyance exception, Barlow's injury could also have been considered under the reimbursement exception.[186] While the language of section 27-14-102(a)(xi)(D) creates two express exceptions, the majority erroneously determined that only the conveyance exception was at issue in *Barlow*.[187] Neither Barlow nor the Wyoming Workers' Safety and Compensation Division argued for or against the application of the reimbursement exception; however, the reimbursement exception could have applied to Barlow's injury.

There are two elements to the reimbursement exception as codified under Wyoming law.[188] First, the injury must occur "during travel."[189] Second, the

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[182] *Barlow*, 259 P.3d at 1176–77 (Burke, J., dissenting) ("Rather than deciding these cases based on a finely drawn rule, it is better to approach each individual set of facts in light of the 'causal nexus' standard that we have previously articulated.").

[183] *Id.* (quoting Shelest v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 222 P.3d 167, 170 (Wyo. 2010)).

[184] *Id.*

[185] *See id.* ("So long as the employee was entering the vehicle in furtherance of the employment, there is no reason to deny recovery.").

[186] *See id.* at 1174–78 (majority opinion and opinion of Burke, J., dissenting).

[187] *Id.* at 1174–75 (majority opinion).

[188] *See* WYO. STAT. ANN. § 27-14-102(a)(xi)(D) (2012) ("reimbursed for travel expenses"); *e.g.*, Berg v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 106 P.3d 867, 871 (Wyo. 2005); Archuleta v. Carbon Cnty. Sch. Dist. No. 1, 787 P.2d 91, 92 (Wyo. 1990); Claims of Naylor, 723 P.2d 1237, 1241 (Wyo. 1986).

[189] *See* § 27-14-102(a)(xi)(D). Although the phrase "during travel" refers to the going and coming rule itself, it would be improper to exclude the phrase from a consideration of the reimbursement exception. If an injury occurs while an employee is not currently traveling but is reimbursed for travel generally then the reimbursement exception would not apply. Therefore, for

employee must be "reimbursed for travel expenses."[190] The causal nexus test can be applied to both elements of the reimbursement exception.[191] Additionally, an injured employee must also establish the elements of a compensable injury in order to receive compensation under the reimbursement exception.[192]

The first element of the reimbursement exception is satisfied by the facts of *Barlow*. Although the majority created a bright line rule for determining when an employee is "transported," the court did not rule on the issue of "during travel."[193] In this case, Barlow was required to travel to distant meetings as part of his employment.[194] Barlow's injuries occurred as he was climbing into the truck to travel to the meetings.[195] As the dissent aptly noted, "it is obvious that an individual must enter the vehicle to travel in it."[196] Accordingly, a causal connection existed between Barlow's injury and his employment.[197] Therefore, Barlow's injury did occur "during travel."

The second element of the reimbursement exception is also satisfied by the facts of *Barlow*.[198] Although this area of law in Wyoming is not well developed, in other jurisdictions providing an employee control over a vehicle to be used for the employment constitutes payment for travel expenses.[199] Another factor to

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an injury to be compensable under the reimbursement exception it must occur "during travel" and the employee must be "reimbursed for that travel." *See, e.g.*, *Berg*, 106 P.3d at 871 (emphasis added) ("Subsection (D) is the codification of 'a long-standing common law rule that injuries incurred *while either going to or coming from* work are not compensable unless the employer . . . has *reimbursed* him for the costs of those travels."); *Barlow*, 259 P.3d at 1176 (Burke, J., dissenting) ("The question we must answer, then, is whether the claimant's injury was sustained 'during travel.').

[190] *See* § 27-14-102(a)(xi)(D).

[191] *E.g.*, *Berg*, 106 P.3d at 871; *Archuleta*, 787 P.2d at 92 ("Thus, in terms of our 'nexus test,' that provision constitutes a legislative determination that, while no compensable nexus with the employment is generally present when an employee is traveling between home and work, such a nexus is created where the employer has assumed the cost of that travel.").

[192] *See supra* text accompanying notes 87–88.

[193] *See Barlow*, 259 P.3d at 1174–75 ("The compensability of the appellant's injury hinges on the meaning of the word 'transported.'").

[194] Brief of Appellant, *supra* note 105, at 2, 4.

[195] *Id.* at 2.

[196] *Barlow*, 259 P.3d at 1177 (Burke, J., dissenting).

[197] *See supra* notes 188–96 and accompanying text.

[198] *See* Quinn v. Securitas Sec. Servs., 158 P.3d 711, 714 (Wyo. 2007) ("Those exceptions find a causal nexus where the employer has in some fashion provided the employee with transportation or has reimbursed him for the costs of those travels.").

[199] LARSON, *supra* note 6, § 14.07[1] (citations omitted) ("However, in the majority of cases involving . . . the provision of an automobile under the employee's control, the journey is held to be in the course of employment.").

consider is the length of the journey itself.[200] In this case, Barlow was provided a pickup truck to be used for personal and employment related uses.[201] On the day he suffered his injury Barlow was entering the pickup truck to travel to meetings that were approximately 235 miles away as a requirement of his employment.[202] Accordingly, there existed a nexus between the injury Barlow suffered and the payment for travel expenses.[203] Thus, Barlow's injury could have satisfied the elements of the reimbursement exception. If Barlow could establish the elements of a compensable injury then his injury should have been compensable under the reimbursement exception to the WWCA.

Extending Premises to Include a Vehicle of the Employer

Barlow's injury could also have been compensable as an injury occurring on the premises of his employer.[204] If an injury occurs on the premises of an employer then the going and coming rule does not apply.[205] While the Wyoming Supreme Court has never ruled on the issue, other courts have determined a vehicle to be the premises of the employer.[206] In *Williams v. Worker's Compensation Appeal Board (City of Philadelphia)*, the court held that an employee, who suffered an injury when he hit his head as he entered a van of his employer, suffered a compensable injury because the van was a portion of the employer's premises.[207] Similarly, Barlow was injured while entering a vehicle.[208] Barlow's employer "provided him with a truck to use for his work."[209] Barlow's employer owned the vehicle.[210] Barlow's employer exercised control over the vehicle by requiring his use of the vehicle to travel to distant meetings.[211] Accordingly, the truck can properly be considered the premises of the employer.

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[200] *Id.* ("[W]hen the subject of the transportation is singled out for special consideration it is normally because the transportation involves a considerable distance, and therefore qualified under the rule herein suggested: that employment should be deemed to include the travel when the travel itself is a substantial part of the service performed.").

[201] *Barlow*, 259 P.3d at 1172.

[202] *Id.*

[203] *See* Shelest v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 222 P.3d 167, 170 (Wyo. 2010) (quoting Quinn v. Securitas Sec. Servs., 158 P.3d 711, 714 (Wyo. 2007); *In re* Willey, 571 P.2d 248, 250 (Wyo. 1977)).

[204] *See infra* notes 204–211 and accompanying text.

[205] *See supra* notes 93–97 and accompanying text.

[206] *See supra* notes 98–104 and accompanying text.

[207] Williams v. Workers' Comp. App. Bd. (City of Philadelphia), 850 A.2d 37, 38–40 (Pa. Commw. Ct. 2004).

[208] Brief of Appellant, *supra* note 105, at 4.

[209] *In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1176 (Wyo. 2011).

[210] Brief of Appellant, *supra* note 105, at 15–16 (internal citations omitted) ("I mean, it's the employer's pickup . . . .").

[211] *See id.* at 4, 16 ("It was the vehicle provided to him by his employer and the one, supposedly, that he had to use.").

Moreover, in order to receive compensation for an injury occurring on the premises of his employer an employee must establish all of the statutory elements of the "injury rule."[212] Under the injury rule, an employee must show that he suffered a "harmful change in the human organism."[213] Barlow suffered an injury to his knee, satisfying the first element.[214] The second element of the injury rule requires that the injury occur "while at work."[215] Here, Barlow's employment required him to travel to distant meetings.[216] Barlow was entering the vehicle to travel to the distant meetings when he suffered his injury.[217] Thus, Barlow was injured "while at work."[218] Accordingly, the second element of the injury rule is satisfied by the facts of *Barlow*.

In addition, the third element requires that the place be "used or controlled by the employer."[219] Barlow's employer owned the vehicle and exercised control by requiring his use of the vehicle.[220] The vehicle may properly be considered the premises of his employer.[221] Therefore, the third element is satisfied. The fourth element of the injury rule requires that an injury must occur "in or about the premises occupied."[222] Barlow slipped while climbing into the truck, hitting his knee on the stirrup.[223] If the truck is considered the premises of his employer then his injury occurred in or about the premises.[224] Thus, the injury occurred "in or about the premises occupied" and the element is satisfied. To satisfy the fifth element an injury must occur "in places where the employer's business requires an employee's presence."[225] Here, Barlow was required to travel to a series of meetings as part of his employment.[226] Barlow had to use the vehicle to travel to the meetings.[227] Accordingly, the fifth element of the injury rule is satisfied by the facts of *Barlow*.

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[212] *See supra* notes 28–39 and accompanying text.

[213] *See* WYO. STAT. ANN. § 27-14-102(a)(xi) (2012).

[214] Brief of Appellant, *supra* note 105, at 4.

[215] *See* § 27-14-102(a)(xi).

[216] Brief of Appellant, *supra* note 105, at 4.

[217] *Id.*

[218] *See* § 27-14-102(a)(xi).

[219] *Id.* § 27-14-102(a)(xi)(D).

[220] *See* Brief of Appellant, *supra* note 105, at 15–16.

[221] *See supra* notes 204–11 and accompanying text.

[222] *See* § 27-14-102(a)(xi).

[223] Brief of Appellant, *supra* note 105, at 4.

[224] *See id.*

[225] *See* § 27-14-102(a)(xi).

[226] Brief of Appellant, *supra* note 105, at 4.

[227] *Id.*

The sixth element requires that the employment "subjects the employee to the extrahazardous duties incident to the business."[228] The employment need not necessarily be extrahazardous if the employer has elected to obtain coverage under the WWCA.[229] It is unclear whether Barlow's employment was extrahazardous or whether Barlow's employer elected coverage, but Barlow's employment was covered by the WWCA.[230] Accordingly, the proper inquiry under the sixth element is whether Barlow was subject to the duties incident to the business.[231] Barlow was required to travel to the distant meetings by use of his employer-provided truck.[232] Thus, Barlow was subject to the duties incident to the business.

The final element of the injury rule requires the injury "aris[e] out of and in the course of employment."[233] The final element prompts the application of the causal nexus test, which requires that "there must be a causal nexus between the injury and some condition, activity, environment or requirement of the employment."[234] The final element is generally the most dispositive.[235] Here, Barlow was entering the vehicle of his employer to travel to a work related matter when he suffered an injury to his knee.[236] Barlow had no choice but to enter the vehicle in order to travel to the meetings.[237] Accordingly, his injury was causally connected to a requirement of his employment and the final element is satisfied.[238]

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[228] *See* § 27-14-102(a)(xi).

[229] *Id.* § 27-14-108(j) ("Any employee not enumerated under subsections (a) through (g) of this section or not employed in an extrahazardous employment enumerated under this section may be covered and subject to the provisions of this act and his employment shall be treated as if extrahazardous for purposes of this act, if his employer elects to obtain coverage under this act and makes payments as required by this act.").

[230] *See In re* Worker's Comp. Claim of Barlow, 259 P.3d 1170, 1170 (Wyo. 2012); Brief of Appellant, *supra* note 105, at 1–24; Brief of Appellee, *supra* note 15, at 2–18; *see also* § 27-14-108 (defining extrahazardous employment and optional coverage under the WWCA). Presumably, if Barlow's employment was not covered under the WWCA then that issue would have been litigated. *See Barlow*, 259 P.3d at 1170; *see, e.g.*, Araguz v. State *ex rel.* Wyo. Workers' Safety & Comp. Div., 262 P.3d 1263, 1268 (Wyo. 2011) ("Because Wal–Mart is not engaged in extrahazardous business activities and did not elect to contribute to the state workers› compensation fund, the appellants are not entitled to benefits.").

[231] *See* § 27-14-102(a)(xi).

[232] Brief of Appellant, *supra* note 105, at 4.

[233] *See* § 27-14-102(a)(xi).

[234] *Barlow*, 259 P.3d at 1176–77 (Wyo. 2011) (Burke, J., dissenting) (quoting Shelest v. State *ex rel*. Wyo. Workers' Safety & Comp. Div. 222 P.3d 167, 170 (Wyo. 2010)) (internal quotation marks omitted).

[235] *See supra* notes 94–97 and accompanying text.

[236] Brief of Appellant, *supra* note 105, at 4.

[237] *Id.*

[238] *See also Barlow*, 259 P.3d at 1175 (Burke, J., dissenting) ("I conclude . . . that the claimant has satisfied the general test for compensability by establishing a 'causal nexus' between the injury and his employment.").

Therefore, Barlow's injury could have been compensable under the injury rule if the Wyoming Supreme Court holds that a vehicle controlled by the employer is the premises of the employer.

Extending the injury rule to include a vehicle of the employer would help resolve the worry that a broad reading of the conveyance or reimbursement exceptions might cover injuries that should not be compensable.[239] In order for an injury to be compensable under the injury rule, the injury must occur "in or about the premises occupied, used or controlled by the employer."[240] Therefore, extending premises to include a vehicle of the employer would probably not cover situations where an employee is injured while crossing the street or leaving his house in the morning to get to the vehicle.[241] Under this narrow reading of the injury rule, only injuries occurring on the premises of the employer would be compensable. Accordingly, the injury rule could be extended to hold that injuries are compensable if the injuries occur on a vehicle of the employer.

CONCLUSION

Those employees who suffer injuries while entering a vehicle of their employer or who suffer injures while entering a vehicle and are reimbursed for travel expenses should be compensated under the WWCA. In *Barlow*, the majority of the Wyoming Supreme Court created a bright line rule that denies compensation for compensable injuries that should otherwise be compensable under the conveyance exception.[242] Even if the conveyance exception does not apply to the facts of *Barlow*, then compensation could have been awarded under the reimbursement exception.[243] Finally, the court should hold that a vehicle of the employer is the premises of the employer for purposes of injuries occurring on the premises of the employer.[244] By drawing an untenable line to determine compensation for injuries suffered as an employee is entering a vehicle of the employer, the Wyoming Supreme Court reached an incorrect conclusion.

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[239] *See id.* at 1175 (majority opinion) ("[T]here is simply no room for the notion that injuries suffered while 'preparing to travel,' or that all injuries suffered while doing any activity tangentially related to any travel 'necessary to employment,' are compensable."); LARSON, *supra* note 6, § 15.04 ("[I]t would be undesirable to start the dangerous and unending game of fixing a 'reasonable distance' to which protection is extended.").

[240] *See* WYO. STAT. ANN. § 27-14-102(a)(xi) (2012).

[241] *See Barlow*, 259 P.3d at 1173–74 (discussing cases where an employee was injured while crossing the street to get to a vehicle); LARSON, *supra* note 6, § 15.04 ("However, when the employee approaches the truck from home in the morning, or leaves the truck at night, the analogy just invoked does not apply.").

[242] *See supra* notes 157–85 and accompanying text.

[243] *See supra* notes 186–203 and accompanying text.

[244] *See supra* notes 204–41 and accompanying text.