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Arizona's Highest Court Refuses to Find Employer Vicariously Liable for Employee's Business Trip Car Accident

By Kristy Peters and Alex Hemenway

On July 9, 2012, the Arizona Supreme Court handed down its decision in *Engler v. Gulf Interstate Engineering, Inc.* and announced that an employer may not be held vicariously liable for an after-work accident caused by an employee who was on an extended out-of-town assignment. The court found that an employee who worked for the Texas-based energy consulting company Gulf Interstate Engineering, Inc. was not acting within the scope of his employment when he struck a motorcyclist with his car.

In determining whether an employee acts within the course and scope of employment, Arizona courts have long considered the extent to which the employee was subject to the employer's control. In *Engler*, the accident occurred when the employee was returning to his hotel after dinner during an extended out-of-town work assignment. The Arizona Supreme Court concluded the employee was not acting within the course and scope of his employment when the accident occurred because the employee was engaged in an independent course of action that did not further the employer's purposes and was not within the control or right of control of the employer. Specifically, the employee traveled to and from the restaurant during his non-working hours and the employer did not control where, when, or whether the employee chose to eat dinner.

The Arizona Supreme Court's decision in *Engler* distinguished a recent Arizona Court of Appeals decision, *McCloud v. Kimbro*, which held that a Department of Public Safety officer acted within the course and scope of employment when driving a state-owned vehicle to and from meals while on out-of-town travel. The Arizona Supreme Court noted that the *McCloud* decision involved an administrative regulation pertaining to state employees that did not apply in the *Engler* decision. The court specifically disagreed with the assertion in *McCloud* that liability existed because employees were acting within the course and scope of their employment when driving to a restaurant while off-duty during an extended out-of-town assignment because eating is incidental to the multi-day assignment.

What This Means for Employers

The court's decision in *Engler* is encouraging for employers who send employees on out-of-town business trips. The Arizona Supreme Court reinforced the rule that an employee's tortious conduct falls outside the scope of employment when the employee engages in an independent course of action that does not further the employer's purposes and is not within the employer's control. Employers should recognize that whether an employee is subject to the employer's control is a factual inquiry that must be assessed at the time of the employee's tortious act.

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