

FALL 2015 NEWSLETTER

AUTOMOBILE / TRUCKING LITIGATION UPDATE

By Gerald B. Lotzer

1. *SeaBright Insurance Company v. Maximina Lopez, Beneficiary of Candelario Lopez, Deceased* (Tex. Sup. Ct., No. 14-0272, opinion delivered June 12, 2015).

This case involved a fatal automobile accident which occurred in September 2007 when Candelario Lopez, Deceased, was traveling to a new job site for his work. Interstate Treating, Inc. is a company that fabricated and installed materials for oil and gas processing, and Interstate hired Mr. Lopez in 1999 as an installer. Interstate's primary office and fabrication department was in Odessa, Texas, however, they provided installation services at other, often remote, locations. Mr. Lopez resided in Rio Grande City, Texas, but never worked in the vicinity of Rio Grande City during his employment with Interstate. When Interstate assigned Mr. Lopez to work at remote job sites, Mr. Lopez made his own living arrangements, usually staying in a motel. Interstate paid Mr. Lopez an hourly wage plus per diem for his lodging and food expenses and would provide him with a company vehicle to use, however, he was not paid for any time traveling to or from the job site.

In September 2007 he was assigned to work on the installation of a gas processing plant near Ridge, Texas, which was an estimated 450 miles from Mr. Lopez's home in Rio Grande City. Mr. Lopez chose to stay at a motel in Marlin, Texas, which was approximately 40 miles from Ridge. Interstate paid the vehicle's insurance, and provided Mr. Lopez with a credit card so that he could buy fuel for the vehicle. Interstate had no express policy regarding carpooling, however, on the day of the accident, Mr. Lopez was transporting two other Interstate employees to the Ridge job site when the accident occurred.

Maximina Lopez, the spouse of Candelario Lopez, sought death benefits from Interstate's workers' compensation insurance carrier, SeaBright Insurance Co. SeaBright denied coverage taking the position that Mr. Lopez was not in the course and scope of his employment at the time of the accident. Administrative proceedings were held and at each level they found in Maximina Lopez's favor. Suit was subsequently brought and both parties filed motions for summary judgment. The trial court granted Maximina Lopez's motion and denied SeaBright's motion, affirming the administrative decision.

SeaBright appealed and the Court of Appeals affirmed. 427 S.W.3d at 450-51. The Court of Appeals began its opinion by noting that "[f]or an employee's injury to be considered in the course and scope of employment, it must (1) relate to or originate in the employer's business, and (2) occur in the furtherance of the employer's business." *Id.* at 447. The Court of Appeals concluded that the accident occurred during Mr. Lopez's commute from his employer-provided housing to the job site, in an employer-provided vehicle, and in an area of the state he would not have been in "but for" his employment with Interstate. *Id.* at 450. The Court went on to hold that Mr. Lopez's travel to the job site met the second element, because such travel always

further the employer's business. *Id.* at 447-48. The Court of Appeals affirmed the trial court's judgment.

The Texas Supreme Court granted judgment de novo as to both sides' summary judgments. The Court determined that the facts of this case were similar to those of *Texas Employers' Ins. Ass'n. v. Inge*, 208 S.W.2d 867 (Tex. 1948), in which Inge was working at a drilling site in Pecos County, Texas, some 31.5 miles from the nearest city. Inge was paid an hourly wage while working at the drilling site, but was not paid for travel time to and from the drilling site. The employer expected one of its employees to transport the other workers to and from the drilling site and paid that employee seven cents per mile for doing so. The company did not pay for gasoline or vehicle repairs or exercise control over Inge's route, speed, matter of driving, or schedule. Mr. Inge later died in a car accident on a return trip from work. Interstate had roughly 150 employees and about half of those employees worked at the Odessa office fabricating equipment and the other half worked on temporary assignment installing a gas processing plant near Ridge. The location of installation employees was never permanent and Interstate installed equipment in multiple states. Although Interstate could have hired local employees at each temporary remote job site, its general practice was to hire people who worked on previous installation jobs. The Court concluded that Interstate's business called for employing specialized non-local work crews in constantly changing, remote locations on temporary assignments. Mr. Lopez and his co-workers were paid per diem to offset lodging and food expenses, and Interstate provided him with a company vehicle to drive to and from the job site and paid the vehicle's fuel and insurance expenses. Accordingly, they held that the relationship between Mr. Lopez's travel and his employment "is so close that it can fairly be said that the injury had to do with and originated in the work, business, trade or profession" of Interstate.

The Court felt that it was undisputed that Mr. Lopez was traveling only to his place of employment, rather than furthering any of his personal or private affairs and they concluded that Mr. Lopez was acting in the course and scope of his employment at the time of his death on September 11, 2007.