

# " ARISING OUT OF "

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This area of law is as clear as black and white, or white and black? Or maybe not so clear at all?

## INTRODUCTION

### Background

- ▶ Myself
- ▶ All questions are good questions, ask one at anytime

### Agenda

- ▶ 1. Definitions
- ▶ 2. Acts of God
- ▶ 3. Traveling Employees
- ▶ 4. Idiopathic Injuries
- ▶ 5. *Dybkoff* Line of Cases
- ▶ 6. Wrap up

### Some Very Simple Basic Definitions

#### *Elements of Worker's Compensation (A No-Fault system)*

1. Injury
2. Arising Out of Employment
3. Within Course and Scope
4. Notice

#### *Basic Elements of Negligence*

1. Duty of Care
2. Breach of Duty
3. Causation
4. Damages

#### *Legal Causation for Worker's Compensation Cases*

1. Statute
2. Case Law



## Acts of God




"Why does God need a spaceship?"

- ▶ *Meant to be non-religious, but rather, injuries resulting from natural events*
- ▶ **Examples**
  - ▶ *Lightning*
  - ▶ *Flood*
  - ▶ *Frostbite*
  - ▶ *Influenza*
  - ▶ *Emergency Situation*
  - ▶ *Not covered*
    - ▶ *Terrorism*
    - ▶ *War*

## Traveling Employees

- ▶ The Coming and Going Rule
- ▶ Street Risks
- ▶ Ingress and Egress
- ▶ Special Hazards
- ▶ Acts of Third persons or Co-employees





Idiopathic Injuries


*The General Rule*

*Conditions*

- Flat Surfaces*
- Stairs*
- Standing*
- Flexion/Extension*
- Pre-existing impairments*

*Definition*

- Increased Risk Test*
- Positional Risk Test*





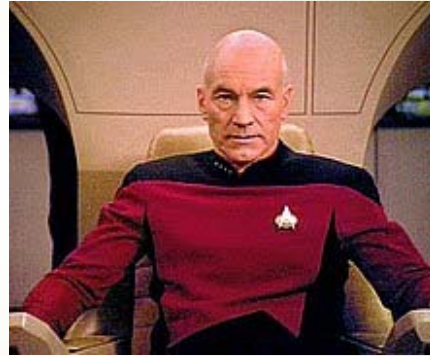
Prior History of Slip and Fall Cases

 Kirchner



The Big Change

➔ Dykhoff



Muddling Up the Law

Kainz  
Decision



Crushshow  
Case



## The Political Fight at the Supreme Court

- ▶ Kubie Decision

- ▶ Facts
- ▶ Decision
- ▶ Rationale

- ▶ Hohl Decision

- ▶ Facts
- ▶ Decision
- ▶ Rationale



## A Little More Clarity



- ▶ Roller-Dick and Lein Decisions

- ▶ Facts
- ▶ Decision
- ▶ Rationale
- ▶ Dissent

Where are we today?



To boldly go forward.....  
*Thank You, Luke*