gerous and that the defendant did not have actual or constructive knowledge of a dangerous condition. *Id.* at 1097.

In this case, on the day of the accident, plaintiff was acting as a chaperone for her child's school at a performance of Peter Pan produced by defendant and held at East Jefferson High School Auditorium. The auditorium is regularly used by defendant for its various theatrical and musical productions. Plaintiff guided the children to their seats when they arrived by way of the left center aisle. At intermission, she helped the children to leave and return by the same doors. The auditorium was well lit during these entrances and exits.

During the second act, while it was dark, plaintiff left her seat to exit the auditorium in order to use the restroom. She exited her seat along the farthest aisle between the seats and the left wall, trying not to disrupt the play. She proceeded to the back of the auditorium, turned to her left, where she proceeded along the back aisle of the auditorium, between the last row of seats and the wall giving access to the lobby. Along the way, she passed a group of acoustical shells which were folded into each other and stored against the back wall. The shells were located between two of the three sets of exit doors. Plaintiff did not see them. She then went out through the nearest set of doors. On her return, plaintiff attempted to proceed the same way, but as she proceeded along the back aisle, she struck her left shinbone on a protruding section of the acoustical shells, causing immediate pain.

The group of folded shells were approximately six feet high and six feet wide. However, a shelf-like protrusion extended approximately two feet from the ground and one foot into the aisle, giving the group of shells the approximate shape of an "L". Thus, it was visible only the observer looked down. Plaintiff struck her leg on the protrusion. As a result of the injury, plaintiff developed a severe hematoma and abscess at the injury site. She was treated for the injury from November 1994 to July 1996. Plaintiff has permanent scarring and residual chronic occasional pain from the injury.

Under these facts, I would find that defendant is partially at fault in the accident. The protruding "shelf" was located low to the floor and extended into the aisle. Patrons in dark theaters do not expect to encounter obstructions, especially when the object cannot be clearly seen in the dark. Furthermore, there were a number of children in the auditorium that day milling about and trying to either enter or exit the auditorium at the times that the lights were on. Plaintiff was distracted by her duty to the children during those times. In addition, she did not pass the acoustical shells at any time when the auditorium was lighted. The only time plaintiff walked along the back wall was during the production when all, but a few, of the auditorium lights were off and the place was dark. While plaintiff may have had some duty to ensure that she could see when she returned to the auditorium, defendant also had a duty to provide a safe walking aisle for defendant. Patrons of darkened theaters commonly leave their seats during productions for any number of reasons. Thus, I would find both parties equally at fault in this accident and award damages to plaintiff.

98-76 (La.App. 5 Cir. 6/30/98)

James R. PAYNE, Sr., et al.

v.

TONTI REALTY CORPORATION, et al.

No. 98–CA–76.

Court of Appeal of Louisiana,
Fifth Circuit.

June 30, 1998.

Employee sued employer, inter alia, in tort for injuries sustained when he was hit by golf cart driven by co-employee. The Twenty-Fourth Judicial District Court, Parish of Jefferson, No. 481,749, Jo Ellen Grant, J., granted an exception to no cause of action filed by employer and co-employee. Employer appeal-

ed. The Court of Appeal, Gaudin, J., held that workers' compensation exclusive remedy provision precluded cause of action sounding in tort.

Affirmed.

Workers' Compensation ⇐2084

Employee had no cause of action sounding in tort against employer for injuries sustained after being hit by golf-cart driven by co-employee, despite contention that employer failed to provide prompt treatment, since worker's compensation act provided exclusive remedy for this in the form of penalties and attorney fees. LSA–R.S. 23:1032.

Robert W. "Doc" Booksh, Jr., John B. Fox, New Orleans, for plaintiff-appellant.

Jack E. Truitt, Metairie, for TONTI Realty Corp., defendant-appellee.

Thomas J. Eppling, Robin Hoban Vogt, Staines, Eppling and Myers, Metairie, for Louisiana Workers' Compensation, defendant-appellee.

Kirsten B. David, R. Gray Sexton, Baton Rouge, for State Claims Adjusters, Inc., defendant-appellee.

Before GAUDIN, DUFRESNE and WICKER, JJ.

GAUDIN, Judge.

This is an appeal by James Payne from a September 29, 1997 district court judgment which:

(1) granted an exception of no cause of action filed by Tonti Realty Corporation (Payne's employer) and Julie Green (Payne's co-worker),

(2) granted an exception of no cause of action filed by the Louisiana Workers' Compensation Corporation, and

(3) granted an exception of no cause of action filed by State Claims Adjusters, Inc.

Payne was injured when struck by a golf cart driven by Green. He filed for workers' compensation benefits, which were paid. The current tort claim, the one now before this Court, is being pursued allegedly in accord with *Weber v. State of Louisiana*, 635 So.2d 188 (La.1994). We find, as did the trial court, that Payne's claims are drastically different from those involved in *Weber;* consequently, we affirm the appealed-from judgment.

Payne contends in his tort action that Tonti failed to provide prompt treatment. The compensation act, however, provides a remedy for this in the form of penalties and attorney fees. The claimants in *Weber* did not have access to these claims as the worker had died before there was a judicial determination of his employer's possible arbitrary and capricious refusal to pay medical expenses. In any event, *Weber* is to be narrowly applied to the very particular facts of that case and does not allow a tort claim to run counter to the exclusive remedy provision of LSA–R.S. 23:1032.

AFFIRMED.

98-160 (La.App. 5 Cir. 6/30/98)

Charlene FERGUSON

v.

SENTRY INSURANCE, a Mutual Company.

No. 98–CA–160.

Court of Appeal of Louisiana, Fifth Circuit.

June 30, 1998.

After plaintiff's personal injury action arising out of motor vehicle accident was dismissed pursuant to settlement, plaintiff brought suit against defendant's insurer, claiming in part that settlement was nullity because plaintiff did not consent to release defendant. The Twenty-Ninth Judicial District Court, Parish of St. Charles, No. 41-091, Joel T. Chaisson, J., granted insurer's exception of no cause/right of action, and plaintiff