Reprinted with permission from the Corporate Law Departments Section of The Los Angeles County Bar Association

The Corporate Counselor

Fall 2004

THE CALIFORNIA SUPREME COURT LIMITS THE REACH OF WORKERS' COMPENSATION SETTLEMENT AGREEMENTS

By: Michele C. Coyle and David R. Singer
Hogan & Hartson

If employers are not paying close attention to California's ever-changing rules governing employment relationships, they may find themselves haunted by past disputes long since put to rest. This is especially true when it comes to the settlement of claims under California's workers' compensation laws.

Generally, California's workers' compensation law is the exclusive remedy for employee injuries that arise out of and in the course of employment. (Lab. Code § 3600, *et seq.*) Certain claims, such as sexual harassment, race discrimination, or other conduct that is contrary to fundamental public policy, are not subject to the exclusivity provisions of the workers' compensation law. Those claims which fall "outside" of the workers' compensation scheme can be subject to both workers' compensation proceedings and civil actions. (*City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143, 1161.)

In order to settle a workers' compensation claim, the parties are required by law to execute a preprinted standardized release of claims issued by the Workers' Compensation Appeals Board ("WCAB"). The form contains broad language whereby the employee "releases and forever discharges said employer . . . from all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury . . . ." (*Claxton v. Waters* (2004) WL 1920780, *1 [citing WCAB form 15].) The plain language of the release – from all claims and causes of action – appears on its face to cover causes of action that are brought outside of the workers' compensation scheme. Under normal principles of contractual interpretation, this plain, unambiguous language would be given its ordinary meaning. (Civ. Code § 1644.)

In the 1990s, however, the Courts of Appeal published a series of opinions holding that, absent express language, the preprinted workers' compensation release form did not cover claims falling outside of the workers'

Michele C. Coyle is a partner in the Los Angeles office of Hogan & Hartson where her active labor and employment practice focuses on representing management concerning workplace legal issues.

compensation laws. (*See, e.g., Lopez v. Sikkema* (1991) 229 Cal.App.3d 31; *Asare v. Hartford Fire Ins. Co.* (1991) 1 Cal.App.4th 856; *Delaney v. Superior Fast Freight* (1993) 14 Cal.App.4th 590.) Unless employers could show, through the use of extrinsic evidence, that the WCAB release form also covered ongoing or potential civil actions (related to the same injuries), the release would not cover those causes of action. This line of cases relies on the policy that injured workers must be protected against entering into unfair releases as a result of economic pressure or bad advice. (*See Claxton*, at *3, citing *Summers v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 965, 972-973.)

In some respects, ordinary contract principles might explain why extrinsic evidence is necessary to prove that a WCAB release form covers claims outside of the workers' compensation laws. To the extent the employer and employee are aware of an ongoing civil lawsuit at the time they settle the workers' compensation claims, an argument can be made that, absent an express reference to the ongoing civil litigation, the WCAB release form contains a latent ambiguity. (See *Claxton*, at *11, Brown., J. concurring and dissenting.) Because extrinsic evidence is admissible to clarify an ambiguous contractual term, the traditional principles of contractual interpretation can justify the reasoning of the Courts of Appeal when both employer and employee are aware of ongoing causes of action outside of the workers' compensation scheme at the time of settlement. (*Id.*, at *8; *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.)

Recently, the California Supreme Court upheld this line of appellate cases. In *Claxton v. Waters*, 2004 WL 1920780 (decided on August 30, 2004), an employee filed a workers' compensation claim against her employer for injuries sustained due to sexual harassment. She also filed a civil action for sexual harassment under the Fair Employment and Housing Act (FEHA). When the parties settled the workers' compensation claim, they signed the preprinted WCAB release form. The employer then moved for summary judgment in the civil action seeking to dispose of the sexual harassment cause of action based on the broad release of claims. The trial court granted the motion, but was reversed by the Court of Appeal. (*Claxton*, at *2.) The Supreme Court affirmed the Court of Appeal, holding that "the standardized language of the preprinted form used in settling workers' compensation claims releases only those claims that are within the scope of the workers' compensation system, and does not apply to claims asserted in other civil actions." (*Claxton*, at * 5.)

However, the Supreme Court went even further, holding that extrinsic evidence can no longer be used to show that the standard preprinted workers' compensation release also applies to claims outside the workers' compensation system. (*Claxton*, at *6.) The Supreme Court explained that such evidence "would unduly burden the courts." Referencing the *Lopez*, *Asare*, and *Delaney* cases, which necessitated the resolution of disputed facts as to "what occurred in the negotiations at the workers' compensation proceedings," the high Court has determined that "allowing such extrinsic evidence would require our trial courts, which currently are under severe budgetary restraints, to expend their already scarce resources to divine and reconcile the parties' intentions . . . ." (*Claxton*, at * 6.) The Court also relied on the "public policy of protecting the injured worker against the unintentional loss of workers' rights." (*Id.*)

Other than Justice Brown's concurring and dissenting opinion, the Claxton decision ignores the fundamental tenets of contractual interpretation which, upon a finding of ambiguity, permit parties to introduce extrinsic evidence of their true intent and understanding when entering into a contract or settlement agreement. (*See Civ. Code §§ 1647, 1649; Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.) Apparently, overburdened dockets and scarce judicial resources now justify the erosion of an employer's right to rely on long-standing principles of contractual interpretation, as well as California's "well established public policy" that settlement of litigation is favored and should be encouraged. (*Bush v. Superior Court [Rains]* (1993) 10 Cal.App.4th 1374, 1385.)

Despite the uncertainties and inconsistencies raised by the *Claxton* opinion, the Supreme Court provides some practical guidelines to employers. Under the new *Claxton* rule, parties settling a workers' compensation claim who also intend to settle and release claims outside the workers' compensation system, must indicate those intentions in a *separate* document. (*Claxton*, at *7.) The separate release need not identify precise claims being released; "it would be sufficient to refer generally to causes of action outside the workers' compensation law 'in clear and non-technical language.'" (*Id.*)

Applying the principles of retroactivity, the Supreme Court recognized the inherent unfairness of imposing the *Claxton* rule on existing settlement agreements. The Court held that its ruling should only apply prospectively. (, at *7.) Employers that have already settled workers' compensation claims, without using a separate document for the release of claims outside the workers' compensation laws, may prove the intended scope of the preprinted release form through extrinsic evidence. (*Id.*)

Employers can take additional practical steps to comply with in future settlement agreements, and to ensure the enforceability of existing settlement agreements. Here are some examples: First, with respect to future settlements of workers' compensation claims, employers should ensure that any attachments to a Workers' Compensation release and settlement are easily understood. In other words, the use of legalese that might confuse an employee should be avoided.

Second, if there are existing civil claims when the workers' compensation settlement is reached, those civil claims should be specifically enumerated in the separate general release. This will not only help to ensure the enforceability of the separate release, but it will put the workers' compensation judge (who is required to approve all workers' compensation settlements) on notice of the specific claims released.

David R. Singer is an attorney in the Los Angeles office of Hogan & Hartson and is a member of the firm's litigation group where he works on a broad range of matters including employment, complex business litigation, and technology.

Third, with respect to settlements and releases in closed workers' compensation claims, employers should preserve any existing evidence that relates to the parties' understanding of the civil claims intended to be released. Employers that have entered into WCAB preprinted release forms, with the understanding that those releases govern claims outside the workers' compensation laws, can still use this extrinsic evidence to demonstrate their intent. Employers should inventory all workers' compensation claims that have been settled and gather any documents related to the settlement negotiations. If, for example, there is correspondence between the parties regarding the settlement that is probative of the parties' intent, those documents should be preserved. Likewise, if outside counsel settled a

The Los Angeles office of Hogan & Hartson presents sophisticated custom solutions to clients in a broad range of areas including civil and complex commercial litigation, intellectual property, media and entertainment, labor and employment, corporate and securities, antitrust law, food, drug and medical device and agriculture, and environmental law. The Los Angeles office is ideally suited to serve the full range of needs of clients ranging from global media conglomerates to biotech startups. Founded in 1904, Hogan & Hartson is an international law firm with nearly 1,000 attorneys practicing in 21 offices worldwide. The firm has a broad-based national and international practice that cuts across virtually all legal disciplines and industries.

workers' compensation claim, the employer should request copies of all documents related to the negotiations of the settlement agreement.

Fourth, if there were oral negotiations between the parties, the persons involved in those negotiations on behalf of the employer (including outside counsel) may want to memorialize their recollections of the negotiations for future reference.

Whether the opinion becomes part of a trend that chips away at the certainty formerly provided by settlement agreements remains to be seen – one Court of Appeal recently found an arbitration clause in a settlement agreement procedurally unconscionable, even though both the employee and the employer were represented by counsel throughout the entire settlement negotiation. (*See Nyulassy v. Lockheed Martin Corporation*, (2004) 16 Cal.Rptr.3d 296 [request for depublication submitted on Sept. 16, 2004].) California Courts appear to be less concerned with preserving a balance in the bargaining power between employees and employers than in the past. This recent development provides employees with an extra layer of protection that tips the balance of power in their direction. Employers must remain vigilant and willing to update their procedures to comply with the courts' latest directives on the use of extrinsic evidence to demonstrate the parties' intent in releasing civil claims in addition to workers' compensation claims.

HOGAN & HARTSON LLP

LOS ANGELES OFFICES:
DOWNTOWN: 500 SOUTH GRAND AVENUE; LOS ANGELES, CA 90071; 213/337-6700; 213/337-6702 (FAX)
CENTURY CITY: 2049 CENTURY PARK EAST, LOS ANGELES, CA 90067; 310/789-5100; 310/789-5400(FAX)
WWW.HHLAW.COM