

KEGEL, TOBIN & TRUCE

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS

FROM: JOE TRUCE

DATE: May 2, 2001

RE: WELL DRAFTED COMPROMISE AND RELEASE
AGREEMENT MAY BE A BAR TO A SUBSEQUENT CIVIL
SUIT AGAINST THE EMPLOYER

I am enclosing an article from the April 2001 edition of the Workers' Compensation Advisor analyzing a pro-employer Court of Appeal decision in the case of Jefferson v. California Dept. of Youth Authority. This is a published decision and was filed on March 26, 2001.

The Court of Appeal ruled that the Compromise and Release filed by the applicant was a bar to a subsequent civil case brought by the same applicant by virtue of the pre-printed Compromise and Release which stated that the Compromise and Release released the employer from "all claims and cause of action, whether it now known or ascertained, or which may hereafter arise or develop as a result of said injury..."

The court also noted that there was an attachment (addendum) to the Compromise and Release Agreement advising that the release "extends to and covers employees of the defendants..."

This decision conflicts with a previous decision of the Court of Appeal, 2nd Appellate District, Division 2, in the case of Delaney v. Superior Fast Freight (1993) 14 Cal. Ap. 4th 590.

The court in Delaney held that the intentions of the parties to bar a subsequent civil case must be clearly delineated in the Compromise and Release Agreement and the pre-printed form is simply not enough.

However, the Court of Appeal in Jefferson pointed out that both parties were represented by counsel (presumably competent counsel).

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Although the Court of Appeal in Jefferson may have been influenced by the fact that

there was an addendum to the Compromise and Release Agreement excluding all employees of the defendant from future liability, it would appear that the decision really centers on the pre-printed form language in the Compromise and Release itself.

Even the court in Delaney may have been influenced to reach the same result as in Jefferson if there were a well-written addendum.

The split of opinion between the Court of Appeal in Jefferson and Delaney may well be eventually resolved by the California Supreme Court.

WJT:dab

Enclosure - Jefferson case - W.C. Advisor