

KEGEL, TOBIN & TRUCE

INTEROFFICE MEMORANDUM

TO: ALL ATTORNEYS AND CLIENTS

FROM: W. JOSEPH TRUCE

DATE December 6, 2004

RE: CAN A DEFENSE ATTORNEY BIND HIS CLIENT TO A SETTLEMENT AGREEMENT, EVEN THOUGH SAID CLIENT HAS NOT GIVEN SETTLEMENT AUTHORITY?

In the case of *City of Los Angeles v. Workers' Compensation Appeals Board, Denise Lewis, 69 CCC 1157*, the Board answered this question with a resounding "Yes."

The primary issue in this case involved a claim of penalty pursuant to Labor Code §5814. The defense attorney **thought** that he had settlement authority from the City of Los Angeles and on April 13, 2004, the defense attorney entered into a Compromise and Release Agreement resolving the penalty issues for the sum of \$84,500.00.

Subsequent to the approval of the Compromise and Release Agreement, the defense attorney "discovered that the Los Angeles City Counsel Claims Board must give authority for any proposed settlement in excess of \$50,000.00 pursuant to the Los Angeles City Charter..."

Therefore, on April 27, 2004, defendant filed a Petition to Rescind the Order Approving Compromise and Release Agreement, alleging that the case was settled "without the proper authority."

Defendant contended on appeal that (1) the Compromise and Release Agreement should be set aside as the City of Los Angeles did not give settlement authority pursuant to the City Charter and (2) that there was a mutual mistake of fact and law "because both applicant's attorney and defendant's counsel mistakenly believed that defendant had authority to settle the penalty claim..."

The Board rejected defendant's argument and the Court of Appeal denied defendant's petition for Writ of Review.

Although the Board did not expand on its reasoning in this case, we should all be aware that a defense attorney has ostensible authority to bind his and/or her client to a stipulation or to a settlement agreement which clearly means that we have to be certain that we have express authority from our client.



WJT/sr