

Jefferson Case Holding Clarified

The Second District Court of Appeals has issued a decision that further clarifies the issues surrounding the Supreme Courts holding in **Jefferson v. Department of Youth Authority (2002) 28 Cal.4th 299**, and the impact that a compromise and release in a workers' compensation case has on a civil suit arising from the same facts.

Most of the facts in this case arise before the decision of the appellate courts in **Jefferson**. Plaintiff, Mitchell, had filed both a WC claim and a lawsuit under FEHA both essentially alleging causes of action for similar conduct alleged as sexual harassment. Both cases proceeded through their respective forums with applicant being represented by separate counsel in each case. While an offer to settle the civil case for \$1.1 million pursuant to CCP 998 from the employer was pending, the workers' comp case was settled by means of a C & R for \$57,000. The C & R agreement made no mention of the civil action and the parties did not discuss any value in the settlement for the civil issues.

Shortly after the Order of Approval issued, the appellate decision in **Jefferson** came out and the employer raised the C & R as an affirmative defense in the civil proceeding arguing that the WC settlement included the civil case. The issue was deferred while the Supreme Court considered the **Jefferson** case. After the California Supreme Court decision issued (see above citation), Defendant raised the issue again and the Trial judge granted their motion for summary judgment holding that under **Jefferson**, the WC settlement included the civil case unless the parties specifically excluded that issue from the settlement agreement. The trial judge ruled that it was applicant/plaintiff's obligation to affirmatively exclude the civil proceeding from the C & R agreement.

Plaintiff appealed and the Court of Appeal reversed the trial judge's decision. The court looked to several factors as demonstrating a lack of intent on the part of the parties to resolve the civil case in the C & R; including there were two separate attorneys handling the different cases, the WC attorney testified that he did not have his client's authority to settle the civil case and that the civil claim was never discussed in the WC resolution.

The court also pointed to the language in *Jefferson* on the issue of the employer's knowledge of the pendency of the civil claim as significant:

"...Accordingly, we hold that when, as in this case, an employee has knowledge of a potential claim against the employer at the time of executing a general release in the workers' compensation proceeding, but has not yet initiated litigation of that claim, the employee has the burden of expressly excepting the claim from the release. Absent this exception, *and absent contrary extrinsic evidence*, a court will enforce general language, such as is found in the compromise and release and attachment in the present case, releasing all claims, including civil claims."

In *Jefferson*, the court made it clear that a critical issue is whether the employer is, in effect, misled into settling one case (the WC case) only to have the civil case pop up at a later date. Where notice of the civil case has not been given to the employer, the burden on the employee is to expressly indicate that the settlement does not include the potential civil claim. Where the employer is aware of the civil claim it appears that the burden is on the employer to make it clear that a WC settlement includes any civil exposure if that is the parties intent. In that respect this case is entirely consistent with the *Jefferson* holding in that it encourages full disclosure and not settlement by deceit and or default.

The case can be located at: [Mitchell v Union Central Life Inc.](#)

Jake Jacobsmeyer

Adelson, Testan, Brundo & Popalardo

Managing Partner

East Bay Office (Concord, Ca.)

Ph: (925) 609-1990

Fx: (925) 609-1995