INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS

FROM: W. JOSEPH TRUCE

DATE: September 5, 2002

RE: **LEGAL EFFECT OF A COMPROMISE AND RELEASE AGREEMENT IN BARRING OTHER ACTIONS AGAINST AN EMPLOYER**

In the case of Mary Jefferson v. California Department of Youth Authority the California Supreme Court has ruled that a Compromise and Release Agreement executed in workers' compensation proceedings which expressly releases "all claims and causes of action" relating to an injury and which includes an attachment establishing the parties "intent" to include civil claims within the scope of the release, bars a civil action brought against the employer under the California Fair Employment and Housing Act.

In this case, the plaintiff, Mary Jefferson, filed an Application for Adjudication of Claim against her employer, the California Youth Authority, alleging psychiatric and/or psychological injuries caused by "...sexually degrading words used to describe females..." and also a hostile work environment.

In October of 1994 or while the workers' compensation case was still pending, Mary Jefferson also filed a California Fair Employment and Housing Act sex discrimination claim with the Department of Fair Employment and Housing against her employer, the California Department of Youth Authority.

On July 9, 1996 Mrs. Jefferson settled her workers' compensation case by way of Compromise and Release Agreement (for the sum of $49,000) and signed a preprinted Compromise and Release form. The release stated that the applicant "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..." This language was in the preprinted DWC Compromise and Release Agreement.

However, a typed attachment to the Compromise and Release provided as follows:

> **"The applicant desires to avoid the hazards of litigation and defendant's wish to buy their peace...The settlement is to compensate for all aspect of all injuries herein...applicant agrees that this release will apply to all unknown and unanticipated injuries and damages resulting from such accident and all rights under Section 1542 of the Civil Code of California are hereby expressly waived...applicant agrees that this release extends and covers...employees of the defendant's..."**

The Compromise and Release Agreement was approved on August 2, 1996.

On August 23, 1996 the applicant and plaintiff, Mary Jefferson, filed a civil lawsuit against the California Department of Youth Authority making the same allegations that were made in the underlying workers' compensation case.

The trial court granted defendant's motion for summary judgment and ruled that the plaintiff's claim was barred by the Compromise and Release Agreement.

The Court of Appeal affirmed the judgment of the trial court and held that the **preprinted language** releasing "all claims and causes of action" settled the FEHA action.

The Supreme Court has now affirmed the judgment of the Court of Appeal and made reference to the "long-established general rule that...in absence of fraud, deception, or similar abuse - a release of all claims covers claims that are not expressly enumerated in the release."

In noting that Ms. Jefferson knew full well that her FEHA claim was pending when she signed the Compromise and Release Agreement, the court observed as follows:

> **"Furthermore, here the workers' compensation judge had sufficient information to assess the fairness of releasing Jefferson's FEHA claim, because the same evidence (including expert medical opinion) that enabled him to evaluate the merits of the workers' compensation claim also enabled him to evaluate potential FEHA remedies for the same injury. Under these circumstances, and in absence of extrinsic evidence, the release of 'all claims and cause of action' must be given a comprehensive scope..."**

Although I certainly applaud the decision of the Supreme Court, I certainly have a genuine doubt as to whether the workers' compensation judge who evaluated the workers' compensation case for adequacy also took into account Ms. Jefferson's **"potential FEHA remedies..."**

Therefore, the Supreme Court seems to infer that the two page preprinted Compromise and Release Agreement was enough to bar Jefferson's FEHA claim alone but the court considered the addendum (attached by the defendant) as proof positive that the parties intended to settle any and all claims against the employer. In making reference to the addendums to the Compromise and Release Agreement, the court stated as follows:

> **"Furthermore, if the preprinted reference to 'all claims and causes of action' is somehow not clear enough to establish the parties intent to settle civil claims, then their express reference to Section 1542 and a specially prepared attachment to the Compromise and Release certainly serves that purpose...Section 1542 in also stating, 'this release will apply to all known or unanticipated injury,' the addition of this language from the Civil Code in the Compromise and Release establishes unambiguously the parties' intent that the release cover possible civil claims..."**

The court concluded by establishing the following rule:

> **"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 a workers' compensation proceeding, but has not yet initiated litigation of that claim, the employee has the burden of expressly accepting the claim from the release..." (Emphasis added)**

As you might expect, the applicant's bar is greatly troubled by this decision and certain applicant's attorneys are refusing to go forward with Compromise and Release Agreements that include addendums such as in the Jefferson case. As you know, we have similar addendums to our own Compromise and Release Agreement which we send to applicant's attorneys on a regular basis.

In the future, applicant's attorneys may recommend to their clients that they refuse to sign a Compromise and Release Agreement unless all of the language as referred to by the court in **Jefferson** is deleted from the addendums. Therefore, our clients will be confronted with the question of whether or not to delete the so-called offending language and go forward with the Compromise and Release Agreement. However, even had the addendums in the **Jefferson** case been deleted, the Supreme Court in **Jefferson** inferred very strongly that the result in this case would have been the same based on the preprinted language in the two page Compromise and Release Agreement as promulgated by the Division of Workers' Compensation (DWC).

WJT:dab
Attach - **Jefferson** case