

INTER-OFFICE MEMORANDUM

TO: ATTORNEYS & CLIENTS

FROM: W. Joseph Truce

DATE: December 20, 2006

RE: **George and the New C&R Form**

FROM THE LOBBY BAR AT THE HYATT:

After a hard day denying benefits, I finally arrived at the Hyatt Lobby Bar at approximately 9:30 p.m.

Although there were empty bar stools at the bar, I could not get the attention of George the bartender as he was in a heated discussion with his workers' compensation attorney, Mr. Ron Summers.

After flagging down Kim, the breathtakingly beautiful cocktail waitress, I put in my order for my usual Beefeater's Martini, straight up, with two olives. While waiting for my cocktail, I listened to the conversation between George and his attorney.

Apparently today was the day that George's case for epicondylitis (caused by pouring me too many martinis) went to trial and the case settled by way of Compromise and Release Agreement for \$35,000.00.

As the amount was agreed upon prior to trial the defense attorney had previously drafted the Compromise and Release Agreement with several addendums - one of which provided as follows: **"This is a full and final release which includes but is not limited to, all known, unknown and unanticipated injuries of whatever nature, resulting from the applicant's employment by the defendant..."**

George and his attorney had agreed to the Compromise and Release as written **with no corrections** and the Compromise and Release was filed with the Workers' Compensation Judge (WCJ).

The WCJ refused to approve the Compromise and Release Agreement although the parties had agreed to all language not only in the State approved Compromise and Release form but also the addendums.

The WCJ demanded that the defense attorney delete all addendums from the Compromise and Release Agreement. The WCJ was especially critical of the fact that the defense attorney had crossed out the language on the first page of **DWC** WCAB Form 15, paragraph 3, (revised October 20, 2005) and noted that the new Compromise and Release form provides on the first page that only designated injuries to designated body parts can be settled as it provides as follows:

“This Agreement is limited to settlement of the body parts, conditions, or systems and for the dates of injury set forth in paragraph 1 despite any language to the contrary in this document or any addendum...” (Emphasis added)

When the defense attorney refused to alter the Compromise and Release Agreement with the attached addendums as agreed to between the parties, the WCJ deleted all addendums and added back the language on paragraph 1 as contained in paragraph 3 and then approved the Compromise and Release Agreement.

However, the defense attorney then advised George and his attorney as well as the WCJ that he would be filing a Petition for Removal and/or Reconsideration to overturn the WCJ’s approval of the **altered** Compromise and Release Agreement as a WCJ cannot rewrite a settlement agreement between the parties and exceeds his/her authority in deleting language (the addendums) which represented the intention of the parties in settling this case.

In noticing that I was listening to this conversation, George asked me for my opinion.

I told George that it is the practice of our firm to delete the limiting language on page 1 paragraph 3 otherwise applicants can turn right around and file for specific injuries or continuing trauma injuries that they neglected to tell anyone about and/or are not specifically included in the Compromise and Release Agreement.

I also explained that the jurisdiction of the WCJ and the Board is limited to the sole issue of whether or not the submitted Compromise and Release Agreement is adequate to compensate the applicant based on the medical record.

Workers’ Compensation Appeals Board Rule 10882 provides that the “Workers’ Compensation Appeals Board shall inquire into the adequacy of all Compromise and Release Agreements and may set the matter for a hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved...”

I went on to explain that the WCJ in his case had three options and three options only:

1. The WCJ can approve the Compromise and Release as filed;
2. The WCJ can disapprove the Compromise and Release Agreement on the basis that it does not comply with Workers’ Compensation Appeals Board Rule 10882 and is not adequate to compensate the applicant for his injuries;
3. The WCJ can set the matter for a hearing to determine the adequacy of the submitted C&R.

The WCJ does not have the power to alter one paragraph, one sentence, one word or even one comma to change the express intentions of the parties. Labor Code § 5000 provides as follows: **“...Nothing in this division shall: (a) impair the right of the parties interested to compromise, subject to the provisions herein contained, any liability which is claimed to exist under this division on account of injury...”**

In George’s case the WCJ exceeded his/her authority by adding back the language of paragraph 3

on page 1 and deleting the signed addendums by the parties which were attached to the Compromise and Release Agreement.

If a WCJ disapproves the Compromise and Release Agreement on the **sole basis** that the parties have deleted paragraph 3 or have attached additional agreements (addendums), this action exceeds the power of the WCJ and/or Board pursuant to black letter case law.

In the **writ denied case** of Cardinal Industrial Finishes and Beaver Insurance Company v. WCAB and Jimmy Lee Carlisle, 54 Cal Comp Cases 449, the Board held that the WCJ “cannot rewrite a Compromise and Release Agreement without the parties’ consent and because the judge’s order changed the terms of the Compromise and Release...the order must be rescinded.”

In the case of Jefferson v. Department of Youth Authority (2002) 67 Cal Comp Cases 727, no less of authority than the California Supreme Court ruled that the Compromise and Release Agreement filed in a workers’ compensation case was a legal bar to a separate civil action as the Compromise and Release form “had an attachment expressing the parties’ intent to have the release also apply to the employee’s civil action alleging sex discrimination...” (Emphasis added).

Countless decisions by the Court of Appeals and Supreme Courts have held unanimously that a workers’ compensation Compromise and Release Agreement is based on contract law and is **controlled by the intent of the parties** - not the intent of the anonymous person that wrote paragraph 3 on the first page of **DWC WCAB Form 15**.

As long as the Compromise and Release Agreement adequately compensates the applicant the WCJ **must** approve the Compromise and Release Agreement **as written** as long as said document (with addendums if desired by the parties) expresses the intention of the parties with respect to the settlement. - Make mine a double George.

DISCLAIMER:

The views expressed above are those of the author and are based on the author’s interpretation of the Labor Code, WCAB Rules and current case law. Anyone wishing a copy of either the Supreme Court decision in **Jefferson** or the Board’s decision in **Cardinal Industrial Finishes and Beaver Insurance Company** should make the request by email. ---Joe Truce