

Significant Decision

C&R of Workers' Compensation Claim Does Not Include Separate Civil Suit Where Extrinsic Evidence Shows No Intent to Include Both.

Mitchell v. The Union Central Life Ins. Co.

(Filed 5/26/2004)

Second Appellate District, Div. One, Civil No. B164441

118 Cal. App. 4th 1331

Significance: In the 2002 *Jefferson* case, our California Supreme Court held that the general release language in a C&R covers civil claims too but *only* if the parties are represented by competent counsel, the C&R clearly shows the parties' intent to settle matters outside the scope of workers' compensation, and there is no extrinsic evidence to the contrary. Moreover, if the C&R does not specifically mention any civil claims *that have already been initiated*, such claims will likely not be covered. This is so because the employer would be in as good a position as the employee to include these claims in the release if that is what was intended. (See *Jefferson v. Calif. Dept. of Youth Authority* (2002) 28 Cal. 4th 299.)

Here, the Court of Appeal in Los Angeles applied *Jefferson* to a case where the injured worker had both a workers' compensation claim and a civil lawsuit under the Fair Employment and Housing Act (FEHA). The court concluded there was sufficient extrinsic evidence to show that the injured worker did not intend to include the FEHA claim when she settled her workers' compensation claim. This case is significant because it demonstrates just how narrow the Supreme Court's holding in *Jefferson* was.

Facts: Dorothy Mitchell went to work for Union Central Life Insurance Company in 1972, and held various positions until 1999. Early that year, Mitchell became physically ill, allegedly as a result of harassment and discrimination at work. So she filed an FEHA claim and, not unusually, was given a right to sue letter. In December 1999, Mitchell filed her FEHA lawsuit. Union Central answered the complaint.

In January 2000, Mitchell hired separate workers' compensation counsel and filed a claim for workers' compensation benefits in which she alleged she had suffered employment-related injury as a result of the same conduct at issue in her civil action. Union Central and its insurers likewise responded through separate workers' compensation counsel.

Back in civil court, Mitchell's civil lawyers offered to settle for \$3,650,000. Union Central's civil lawyers countered with an offer to settle for \$1,010,000. Both offers expressly included the civil action and the workers' compensation action. Neither party accepted the other's offer, but neither offer was revoked before it expired.

Meanwhile, the workers' compensation lawyers were busy trying to settle the workers' compensation claim. Eventually, they agreed to a C&R totaling \$57,500. The C&R included an

Addendum which stated, among other things, that the parties intended to include all injuries and disabilities Mitchell had suffered during her entire employment with Union Central. And, upon approval and payment of the C&R, Mitchell “releases and forever discharges [Union Central] ... 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....” Mitchell’s ongoing FEHA lawsuit was not specifically mentioned in the C&R.

After the C&R was signed, sealed and paid, Union Central’s civil lawyers offered to settle the FEHA lawsuit for \$1,100,000. Mitchell rejected the offer. Eventually, however, the *Jefferson* case hit the books and Union Central’s civil lawyers then argued that the C&R somehow included the FEHA lawsuit. To make a long story short, Union Central eventually sought summary judgment in its favor, contending that the FEHA lawsuit was included in the workers’ compensation C&R under *Jefferson*.

Holding and Rationale: The trial court granted Union Central’s request for summary judgment, but the Court of Appeal reversed. According to the court, the extrinsic evidence was more than sufficient to establish the existence of a triable issue of fact concerning the parties’ intent at the time the workers’ compensation claim was settled.

Mitchell had two lawyers, one representing her in her workers’ compensation action, the other representing her in her civil action. Her workers’ compensation lawyer had no authority to settle her civil action, and did not intend to do so. The civil action was not mentioned in the C&R, and both Union Central’s workers’ compensation lawyer *and* the workers’ compensation judge—not just Mitchell’s workers’ compensation lawyer—conceded that the civil action was not discussed at any time during their negotiations. Mitchell, of course, had no intent to include the civil action in her workers’ compensation C&R. As she herself put it, “Why would [she]?” At the time of the \$57,500 C&R, Union Central’s offer to settle the civil action for more than \$1 million was still open. Moreover, after the C&R was signed, sealed, and paid, Union Central once again offered to settle the civil action for \$1,100,000 plus Mitchell’s attorney’s fees.

These facts left no doubt in the court’s mind that neither the workers’ compensation lawyers nor their clients intended to include the civil action in their settlement of the workers’ compensation claim. And this extrinsic evidence should have easily resulted in an order denying Union Central’s motion for summary judgment.

Comment: The result in this case is, itself, unremarkable. It is a straightforward application of *Jefferson*. Whereas there was no extrinsic evidence at all regarding the parties’ intent in *Jefferson*, here there is plenty of extrinsic evidence showing that the parties did not contemplate settling the FEHA lawsuit along with the C&R. *Jefferson* was not intended to be a “gotcha” device allowing employers to buy-off civil lawsuits on the cheap. This is especially so in cases where, as here, the employer is still offering more than a million dollars for the civil lawsuit *after* the much more modestly priced C&R has been signed, approved, *and paid*.