



COLORADO SUPREME COURT LEAVES EMPLOYERS FEELING UNSETTLED

On May 30, 2017, the Colorado Supreme Court announced a decision in *England v. AmeriGas Propane*, No. 16SC444, 2017 CO 55 (Colo. June 5, 2017). In this decision, the Colorado Supreme Court considered whether a provision of a mandatory settlement form established by the director of the Division of Workers' Compensation waives an injured employee's statutory right under section 8-43-204(1), C.R.S. (2016) to reopen a settlement based on a mutual mistake of material fact. The court concluded it does not, as provisions of the settlement document yield to statutory rights.

Petitioner, Victor England, injured his shoulder while making a delivery for AmeriGas Propane. He underwent two shoulder surgery repairs and continued to have pain after the second surgery. Nevertheless, Petitioner settled his 2012 workers' compensation claim for \$35,000. Petitioner's claim was governed by the Colorado Workers' Compensation Act ("the Act"). In the event of settlement, the Act requires the parties to submit a mandatory form agreement promulgated by the director to settle all claims pursuant to section 8-43-204, C.R.S. (2016). The parties complied with the Act, and Petitioner signed the settlement form. Paragraph six of the Form contained a release of claims for unknown injuries, while paragraph four incorporated the statutory right to reopen the settlement on the grounds of fraud or mutual mistake of material fact. See *Form WC104*, Colo. Dept't of Labor and Emp't (June 2016).

After settlement, Petitioner discovered an undiagnosed scapula fracture caused by a screw used in his second surgery. He filed a motion to reopen the case due to the discovery of the fracture, claiming that he would not have settled his claim if he had been aware of the fracture. The Administrative Law Judge ("ALJ") found the undiagnosed fracture to be a mutual mistake of material fact and granted Petitioner's motion to reopen the case. A panel of the Industrial Claim Appeals Office affirmed the ALJ's decision. The Colorado Court of Appeals reversed, noting that "unknown injuries" were specifically carved out of mutual mistake of fact in the settlement agreement language.

The Colorado Supreme Court granted certiorari and held that the settlement agreement form cannot waive statutory rights. The court considered its decision in *Padilla v. Industrial Commission*, 696 P.2d 273 (Colo. 1985), in which the court granted a Claimant's reopening of a settled case based on a worsening of condition. The court's analysis was based primarily on the intent overall purpose of the Act "to compensate injured workers, and therefore it should be interpreted liberally in their favor" and further noted, "the goal of achieving a just result overrides the interest of litigants in achieving a final resolution of their dispute." *Id.* at 276-278. The General Assembly responded to the *Padilla* decision by amending the Act to ensure that settlements could not be reopened based on a worsening of condition, so long as the settlement agreement waived the right to reopen. Nonetheless, the Colorado Supreme Court in *England* again relied on the reasoning of *Padilla* and noted that the General Assembly still left fraud and mutual mistake of material fact as avenues to reopen a settlement.

Therefore, the court concluded provision six of the Form, containing the release of claims for unknown injuries, cannot be read to conflict with paragraph four of the Form, which incorporated the statutory right to reopen a claim based on fraud or mutual mistake. For a mutual mistake of fact to occur, it must 1) be mutual, 2) be material, such that the parties would not have settled if it was known, and 3) the mistaken fact must be past or present, as opposed to a fact that will come into being in the future. The court concluded the settlement agreement language may only release claims for "unknown injuries" that develop after the signing of the agreement. If the injury is unknown and exists at the time of the signing, the claim can be reopened if the factors of mutual mistake of fact are met. The court determined that those factors were met, and reversed the Colorado Court of Appeals, allowing Petitioner's case to be reopened.

If you have any questions about this update, please contact Erica Jacobson, jacobsons@hallevans.com.