

November 15, 2007

A recent decision of the Illinois First District Appellate Court has highlighted an aspect of the interplay between the Worker's Compensation Act and settlements with a person that may have been on the job at the time of the injury. We felt that highlighting this issue could be very helpful in your future handling of claims.

In *Chubb Group Ins. Co. v. Carrizalez*, an employer was able to successfully sue a defendant that had already settled and released a claim pursued by an employee. *Chubb Group Ins. Co. v. Carrizalez*, 313 Ill. Dec. 849, 873 N.E. 2d 473 (Ill. App. 1 Dist. 2007). In *Chubb*, an employee was involved in an auto accident with the defendant. The defendant's insurance carrier, Chubb, entered into a settlement agreement with the employee. At the time of the settlement, the worker's compensation carrier had not asserted any right to recover any proceeds of any settlement. Subsequent to the settlement, the worker's compensation carrier filed suit against the defendant (suits by worker's compensation carriers are allowed if the employee has not filed suit). The defendant sought to dismiss this suit based on the release entered into with the employee. The trial court granted the motion and dismissed the action as the defendant did not have constructive or actual knowledge of the worker's compensation carrier's interest in the proceeds.

On appeal, the court examined the potential remedies for a worker's compensation carrier that has paid benefits under the Act. The court stated that there are four remedies for an employer to recoup expenses paid under the Act - (1) a lien against any compensation to the employee; (2) the right to intervene in any suit filed by the employee; (3) to claim that any release signed by the employee is invalid unless there is (a) written consent of the employer, (b) the employer has been protected by a court order or (3) the employer has been fully indemnified; and (4) the right to file suit within 3 months of the statute of limitations if the employee has not filed suit.

As these remedies are all available, the Appellate Court held that the employer was allowed to pursue its claim against the defendant, despite the fact that the defendant had been released from all claims by the employee. The court held that one of the employer's options is to hold a release invalid unless the employer has consented in writing, been indemnified or protected by a court order. Absent any of these three things occurring, any release signed by an employee can be invalidated by the employer.

The defendant argued that he had no knowledge of the existence of any right to recovery by the employer at the time of settlement and that the defendant should not be punished for this lack of knowledge. The court held that the defendant was on notice of the fact that the employee was on duty as the police report stated that the vehicle was owned by his employer. Additionally, the court held that the defendant is held to have constructive knowledge of the laws and, specifically in this case, the applicability of the Worker's Compensation Act to the proceeds.

This can clearly have a drastic impact on claims as there are numerous situations where an employee is injured and the defendant's carrier may not have any knowledge of the existence of the employer/employee relationship at the time of the settlement. It is unclear what the outcome would be if there was no knowledge from any source that a person was working at the time or that the person had made a worker's compensation claim. The court stated that the existence of knowledge on the part of the defendant is not required as the statute does not require the employer to give any such notice; however, the court then went on to explain why there was sufficient notice in this case. Regardless, it is imperative to be aware of this potential trap in settling a claim that is not being litigated.

Very truly yours,

Busse, Busse & Grassé, P.C.

Edward K. Grassé

