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ENFORCEABILITY OF A POST-INJURY WAIVER

CASE FACTS

Recently, in the case of *Bison Building Materials, Ltd. vs. Lloyd K. Aldridge*, 06-1084, 2012 WL 1370859 (Tex. Apr. 20, 2012), the Texas Supreme Court found that an arbitrator's award dismissing an arbitration demand because an injured worker signed a Post-Injury Waiver Agreement was not appealable, because the appeal was not authorized by the Texas statutory procedure applicable to an arbitration agreement governed by the Federal Arbitration Statute. It is the Court's analysis of the Post-Injury Waiver Agreement, and not the Supreme Court's holding, that is the focus of this newsletter.

POST-INJURY WAIVER AGREEMENT

Lloyd K. Aldridge's employment agreement with Bison Materials was governed by a mutual agreement to arbitrate any claims for work-related illness or injuries. After sustaining an on the job injury, Aldridge, who worked as a truck driver, signed a two-page "Post-Injury Waiver and Release" as consideration for receiving benefits under Bison's "Work Place Injury Plan." The release stated in pertinent part, "I am aware that...I could file legal action against [Bison, but]...I understand and agree to give up the right to file a legal action against [Bison] for any and all damages sustained by me because of my injury." Bison paid Aldridge substantial medical and wage placement benefits under the plan.

Subsequently, Aldridge filed a demand for arbitration seeking to recover damages for lost wages, medical expenses, pain and suffering, mental anguish, and loss of earning capacity. Bison moved to dismiss Aldridge's claim asserting that Aldridge had given up his right to arbitrate in the post-injury waiver and release. Aldridge contended that he did not remember signing a release, or alternatively, did not understand the consequences of signing the release.

The arbitrator found that Aldridge signed the post-injury release and waived his right to arbitrate his personal injury claim against Bison. Accordingly, the arbitrator dismissed Aldridge's claim with prejudice. Aldridge petitioned the state District Court to set aside the arbitration award while Bison moved to confirm the arbitration award.

GROUNDINGS FOR AN INJURED WORKER TO AVOID ENFORCEMENT OF A POST-INJURY WAIVER

Since the Court of Appeals and Texas Supreme Court both found they were without jurisdiction to rule upon the appeal, the significant analysis of the post-injury waiver issue was made by the trial Court. Significantly, the trial Court found that post-injury waivers are subject to the fair notice requirements discussed by the Texas Supreme Court in *Storage & Processors, Inc. v. Reyes*, 134 S.W.3d 190 (Tex. 2004). The Court further found that Aldridge's post-injury waiver was ambiguous as to whether the right to arbitration was forfeited. Accordingly, the arbitrator's award was vacated in part and the trial Court ordered the arbitrator to consider the following fact questions:

Is the post-injury waiver enforceable?

That is, (a) does the waiver satisfy the Fair Notice requirements, and, if not, (b) did both parties have actual knowledge of the terms of the waiver agreement? If the answer to these questions is, "no" the waiver is unenforceable. Even if the waiver is enforceable, there is a fact question on:

Do the ambiguous terms of the waiver preclude this action seeking arbitration?

POINTS TO REMEMBER

This case demonstrates the reluctance of some courts to enforce a post-injury waiver, despite the fact that Texas law strongly favors arbitration. In analyzing post-injury waiver agreements, it is important to evaluate:

Whether the agreement meets the Texas fair notice requirements;

To determine whether the agreement is clear and unambiguous;

To be certain that there is evidence (possibly through a video tape and/or witnesses) to prove that the employee signed and understood the release; and

To include a clause in the post-injury waiver which, in unambiguous terms, precludes the injured worker from seeking arbitration after execution of a post-injury waiver agreement.



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