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Deeds, damages and loss of rights for compensation

Insurance E-alert

On 2 October 2008, the NSW Court of Appeal held that a deed entered into by a worker for payment of damages, caused the worker to lose his rights to compensation under the Workers Compensation Act.

Mr Adams was employed as a meat worker from 1988 till 2003 when he was dismissed. He brought proceedings in the Industrial Relations Commission against the employer for unfair dismissal. The proceedings were compromised and the parties entered into a deed in early January 2005. The deed recited claims by the worker that he had sustained work injuries during his employment. These work injuries included an injury to his left hand and wrist.

Under the deed the employer agreed to pay the worker \$2,500 in respect of his general and other damages. The worker accepted this money.

On 19 January 2005 the applicant filed an application to resolve a dispute with the Workers Compensation Commission. In addition to weekly benefits and medical expenses, the worker sought lump sum compensation to the value of \$74,000.

Their Honours Allsop, Giles and Handley in a unanimous decision, held the deed itself did not affect the worker's right to compensation because you cannot contract out of the *Workers Compensation Act* or *Workplace Injury Management Act*.

However, as the worker accepted \$2,500, and it was in respect of an injury, section 151A(1)(a) applied and the worker ceased to be entitled to "any further compensation under the Act in respect of the injury".

The Court considered the outcome "a most unfortunate result for this worker who gave away rights of substantial value for an immediate payment of a mere \$2,500", but it was considered that the 1987 Act was clear and the Court had no option but to give effect to the clear language of Parliament. The appeal was dismissed.

This decision lends weight to the view that whilst you cannot contract out of the Act, a worker's acceptance of money for damages arising out of a work injury means that the worker has lost his rights to compensation under the Act.

Adams v Fletcher International Exports Pty Ltd [2008] NSWCA 238.

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