STEPHEN J. LEONETTI *v.* MACDERMID, INC., ET AL.
(SC 19085)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and McDonald, Js.

Argued May 15—officially released October 1, 2013

John Horvack, Jr., with whom, on the brief, were *Fatima Lahnin* and *John Cordani, Jr.*, for the appellant (named defendant).

Jill F. Morrissey, with whom were *David Morrissey* and, on the brief, *Laura M. Mooney*, for the appellee (plaintiff).

Opinion

EVELEIGH, J. General Statutes § 31-296 (a)[1] of the Workers' Compensation Act (act) provides a mechanism through which employers and employees can work together to come to an agreement regarding the compensation owed to an employee who suffers an injury that falls within the purview of the act. Section 31-296 (a) instructs the Workers' Compensation Commissioner (commissioner) to approve these agreements only if the commissioner "finds such agreement to conform to the provisions of this chapter in every regard . . . ." The principal issue in this appeal is whether the Workers' Compensation Review Board (board) properly affirmed the commissioner's refusal to approve as a valid "stipulation"[2] a "termination agreement" (agreement) between the plaintiff, Stephen J. Leonetti (claimant), and the named defendant, MacDermid, Inc. (respondent).[3] The commissioner, relying on the claimant's testimony, found that there was no consideration offered by the respondent to the claimant in exchange for the release of his previously accepted workers' compensation claim. The respondent appealed from the decision of the commissioner to the board, which affirmed the decision of the commissioner. The respondent appealed from the board's decision to the Appellate Court pursuant to General Statutes § 31-301b.[4] We transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. We now affirm the decision of the board.

The record reveals the following undisputed facts and procedural history. The claimant worked for the respondent for twenty-eight years until he was discharged in early November, 2009. Five years earlier, in June, 2004, the claimant sustained a lower back injury during the course of his employment. The claimant timely filed notice of a workers' compensation claim related to this injury on April 14, 2005. The parties stipulated to the commissioner that the injury suffered by the claimant was a compensable injury.

At the time that the respondent informed the claimant that he would be discharged from his employment, the respondent presented the claimant with a proposed termination agreement. Article II of the agreement signed by the parties provides that the claimant agreed to release the respondent from the following: "any and all suits, claims, costs, demands, attorney's fees, damages, back pay, front pay, interest, special damages, general damages, workers' compensation claims, punitive damages, liabilities, actions, administrative proceedings, expenses, accidents, injuries and any other cause of action in law or equity that [the claimant] has or may have or might in any manner acquire which arise out of, relate to, or is in connection with his/her employment with, relationship with or business dealings with [the respondent] . . . or the termination of

that employment, relationship or dealings, or any other act, occurrence or omission, known or unknown, which occurred or failed to occur on or before the date this [a]greement is executed."

Article III of the agreement provides that, in consideration "for the agreements and covenants made herein, the release given, the actions taken or contemplated to be taken, or to be refrained from," the claimant would be paid twenty-seven weeks "severance pay, determined solely upon the [claimant's] current base salary," which amounted to $70,228.51, within thirty days of the respondent's receipt of the properly executed agreement; the claimant would continue to earn paid time off through his final day of employment; the claimant would be able to continue to obtain medical and dental benefits for up to eighteen consecutive months from his last date of employment under the Consolidated Omnibus Budget Reconciliation Act of 1985; 29 U.S.C. §§ 1161 through 1168; and the claimant had the option to convert group life insurance to individual life insurance within thirty days of his last day of employment.

Article III of the agreement also provided that "[the claimant] understands that the payments and benefits listed above are *all* that [the claimant] is entitled to receive from [the respondent]. . . . [The claimant] agrees that the payments and benefits above are more than [the respondent] is required to pay under its normal policies, procedures and plans." (Emphasis in original.)

Article IV of the agreement also required the claimant to enter into a one year noncompete agreement and also contained a clause stating in part that "[the claimant] acknowledges that he has been given a reasonable period of time of at least thirty (30) days to review and consider this [a]greement *before* signing it. [The claimant] is encouraged to consult his or her attorney prior to signing this [a]greement." (Emphasis in original.)

The claimant did not want to release his preexisting workers' compensation claim relating to the 2004 injury by signing the agreement. He consulted with his attorney, who contacted the respondent's counsel and requested that the respondent remove from the agreement the language that could operate to release the claimant's workers' compensation claim. The respondent refused to modify the language of the agreement. The claimant's counsel wrote a letter to the respondent's counsel asserting that the release language of article II of the agreement "really has no effect without the [c]ommissioner's approval" and scheduled an informal hearing before a workers' compensation commissioner for January 8, 2010. The respondent's counsel did not attend the informal hearing, although a representative of Liberty Mutual Insurance Group, which administered the claim on behalf of the respon-

dent, did attend. Nothing was resolved on January 8, and on January 27, 2010, the hearing was rescheduled for March 1, 2010.

On January 26, 2010, the respondent sent the claimant a letter stating that, unless the claimant signed the unmodified agreement within the next ten days, it would withdraw its offer of $70,228.51 in severance pay. The claimant signed the agreement on February 2, 2010, and the commissioner found that the claimant did so because he did not wish to forfeit his severance pay. After the respondent received the signed agreement from the claimant, it paid the claimant the $70,228.51. At that time, the commissioner had not approved the agreement as a "voluntary agreement" or stipulation as defined in § 31-296.

A formal hearing was held several months later to determine the enforceability of the language in article II of the agreement that dealt with the release of the claimant's workers' compensation claim. Specifically, the parties asked the commissioner to determine as follows: (1) "[w]hether a signed termination agreement between [an] employer and [an] employee can effectively waive the parties' rights and obligations set forth in the [act] . . . absent approval of the agreement by a [commissioner]"; and (2) "[i]f the termination agreement does not waive the parties' rights and obligations set forth in the [act]—whether the [c]ommissioner would issue an order that the termination agreement be entered as a full and final stipulation of the [c]laimant's workers' compensation claim against the [respondent]."

The commissioner first found that, without approval by a commissioner, the agreement did not effectively waive the parties' rights and obligations under the act. Next, the commissioner found that the agreement should not be approved as a full and final stipulation of the claimant's workers' compensation claim. In making this determination, the commissioner credited the claimant's testimony that "the [agreement] and payment of $70,228.51 was based on the number of years [the claimant] worked for the [respondent] and there was no money paid in this agreement for [the claimant's] workers' compensation claim." As a result, the commissioner found that the respondent had paid no consideration to the claimant for his accepted workers' compensation claim. In light of these findings, the commissioner found that the Workers' Compensation Commission (commission) retained jurisdiction over the claimant's 2004 injury and scheduled a further hearing on the claimant's assertion that the injury has rendered a 10 percent permanent partial disability rating to the claimant's lumbar spine.

The respondent appealed the commissioner's conclusions to the board and also filed a motion to admit additional evidence regarding the commissioner's con-

clusion that the $70,228.51 was not paid to the claimant in consideration for the release of his workers' compensation claim.[5] The respondent claimed on appeal to the board that the commissioner improperly: (1) made conclusions that were legally inconsistent with or unreasonably drawn from the facts as they were found by the commissioner; (2) concluded, as a matter of law, that the agreement was not enforceable as it related to the claimant's workers' compensation claim; (3) concluded, as a matter of law, that there was no consideration paid by the respondent to the claimant for his workers' compensation claim; (4) made findings and conclusions that were against the great weight of evidence presented at the formal hearing; and (5) credited the testimony of the claimant at the hearing.

The board affirmed the decision of the commissioner. The respondent claimed that, because the claimant voluntarily signed the agreement after receiving ample time to consult with counsel, the commissioner should have enforced the agreement. The board rejected this argument, finding that General Statutes § 31-290 provides a "blanket prohibition . . . against employers seeking to discharge their obligations outside the workers' compensation forum," and that, while voluntary agreements or stipulations may be reached between employees and employers regarding the settlement of workers' compensation claims, such agreements are nonbinding until approved by a commissioner pursuant to the provisions of § 31-296. The board found that there was sufficient evidence in the record in the form of the claimant's testimony to support the commissioner's conclusion that the respondent offered no consideration to the claimant in exchange for his release of his workers' compensation claim. The board also found not "remotely credible" the respondent's claim that, in refusing to enforce the agreement, the commissioner allowed the claimant to "perpetuate a fraud." The board refused to rule on the enforceability of the agreement as a whole, finding that its jurisdiction extended only to the purported release of the claimant's workers' compensation claim. This appeal followed.[6]

On appeal to this court, the respondent claims that the board improperly affirmed the commissioner's refusal to approve the agreement as a stipulation that, under § 31-296, would have fully and finally settled the claimant's preexisting workers' compensation claim. Specifically, the respondent asserts that the board improperly affirmed the decision of the commissioner for the following reasons: (1) the agreement complied with the requirements of the act and it was fair, reasonable, and voluntarily entered into by the claimant with the advice of counsel; (2) the board should have found that there was consideration for the claimant's release of his workers' compensation claim because there was no competent evidence to the contrary; and (3) the board improperly concluded that the commission lacks

competency to consider certain allegedly deceitful and fraudulent conduct in which the claimant engaged both before and after signing the agreement. In response, the claimant asserts that the commissioner's findings and conclusions should be affirmed because (1) the agreement did not conform to the provisions of the act, and (2) the $70,228.51 paid by the respondent to the claimant pursuant to the agreement, as found by the commissioner, did not constitute consideration for the claimant's release of his workers' compensation claim. We agree with the claimant.

"As a threshold matter, we set forth the standard of review applicable to workers' compensation appeals. The principles that govern our standard of review in workers' compensation appeals are well established. The conclusions drawn by [the commissioner] from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. . . . It is well established that [a]lthough not dispositive, we accord great weight to the construction given to the workers' compensation statutes by the commissioner and [the] board." (Internal quotation marks omitted.) *Dechio* v. *Raymark Industries, Inc.*, 299 Conn. 376, 388–89, 10 A.3d 20 (2010).

I

To determine whether the agreement complied with the provisions of the act, we examine the statutory scheme. Section 31-290 provides in relevant part that "[n]o contract, expressed or implied, no rule, regulation or other device shall in any manner relieve any employer, in whole or in part, of any obligation created by [the act] . . . ." Section 31-296 (a) provides in relevant part: "If an employer and an injured employee . . . at a date not earlier than the expiration of the waiting period, reach an agreement in regard to compensation, such agreement shall be submitted in writing to the commissioner by the employer with a statement of the time, place and nature of the injury upon which it is based; and, if such commissioner finds such agreement to conform to the provisions of this chapter in every regard, the commissioner shall so approve it. . . ." "Payment of compensation under the act is consequently upon an entirely different basis from payments made in satisfaction of common law rights." (Internal quotation marks omitted.) *Welch* v. *Arthur A. Fogarty, Inc.*, 157 Conn. 538, 545, 255 A.2d 627 (1969).

Instead, "[t]he provisions of the [act] make clear that it is the underlying scheme and purpose of the law to protect the employee, even to the extent of rendering nugatory his own agreement when it fails to assure him of the compensation which the law intends he should have." (Internal quotation marks omitted.) Id. When an employee signs a stipulation or voluntary agreement which purports to settle or release a workers' compen-

sation claim, "[i]t is [the commissioner's] function and duty to examine all the facts with care before entering an award, and this is particularly true when the stipulation presented provides for a complete release of all claims under the act." Id. Under this statutory scheme, evidence that all parties entered into the agreement knowingly and voluntarily is a necessary, but not sufficient, requirement for the commissioner to approve the agreement.

Regardless of whether the agreement entered into by the parties might be enforceable at common law, "[a]s in the case of a voluntary agreement, no stipulation is binding until it has been approved by the commissioner." *Muldoon* v. *Homestead Insulation Co.*, 231 Conn. 469, 480, 650 A.2d 1240 (1994). Thus, in the present case, the agreement signed by the parties had no effect on the claimant's workers' compensation claim unless and until the commissioner approved the agreement. On appeal, the respondent claims that the commissioner improperly refused to approve the agreement as a full and final stipulation of the claimant's preexisting workers' compensation claim. We disagree.

The record in this case shows that the commissioner had not previously approved the agreement as a "voluntary agreement" or stipulation settling the claimant's preexisting workers' compensation claim prior to the formal hearing held on May 4, 2010. The claimant's workers' compensation claim was valuable—the parties stipulated that the claimant sustained the lower back injury and that the claimant had timely filed a notice of claim which, from the record, does not appear to have been contested in the hearings before either the commissioner or the board. The claimant also submitted an uncontroverted medical report to the commission on January 15, 2010, which indicated that the claimant had a 10 percent permanent partial disability of his lumbar spine, and that surgery might be required in the future. The commissioner credited the testimony of the claimant and found that the $70,228.51 paid by the respondent to the claimant pursuant to the agreement was based on the number of years for which the claimant worked for the respondent. As a result, the commissioner determined that none of the $70,228.51 was paid in consideration for the claimant's release of his workers' compensation claim. The board found that the evidentiary record in the full hearing did not support a finding that the claimant intended to release his compensation claim in exchange for the $70,228.51. Having concluded that the claimant was receiving nothing for the waiver of his previously accepted claim, the board properly affirmed the commissioner's refusal to approve the stipulation as a full and final settlement of the claimant's workers' compensation claim.

Further, "[t]he [act] 'provides the sole remedy for

employees and their dependents for work-related injuries and death.' " *Pietraroia* v. *Northeast Utilities*, 254 Conn. 60, 74, 756 A.2d 845 (2000), quoting *Green* v. *General Dynamics Corp.*, 245 Conn. 66, 71, 712 A.2d 938 (1998). The spirit and purpose of the act, which is remedial in nature and should be construed broadly to accomplish its humanitarian purpose; see, e.g., *Szudora* v. *Fairfield*, 214 Conn. 552, 557, 573 A.2d 1 (1990); also supports the board's decision to affirm the commissioner's refusal to approve the agreement pursuant to § 31-296. "[I]n construing workers' compensation law, we must resolve statutory ambiguities or lacunae in a manner that will further the remedial purpose of the act. . . . [T]he purposes of the act itself are best served by allowing the remedial legislation a reasonable sphere of operation considering those purposes." (Internal quotation marks omitted.) *DiNuzzo* v. *Dan Perkins Chevrolet Geo, Inc.*, 294 Conn. 132, 150, 982 A.2d 157 (2009), quoting *Pizzuto* v. *Commissioner of Mental Retardation*, 283 Conn. 257, 265, 927 A.2d 811 (2007). One reason for the existence of the act is the long recognized disparity in bargaining power that exists between an employee and his employer. See *Fair* v. *Hartford Rubber Works Co.*, 95 Conn. 350, 356, 111 A. 193 (1920) (discussing General Statutes [1918 Rev.] § 5361, the predecessor to § 31-296, and noting that, "by requiring that the commissioner shall see that the statutory rights of the contracting employee are protected, [the statute] recognizes the fact that in making such contracts the employee does not stand on an equal footing with his employer"), superseded by statute as stated in *Jacques* v. *H.O. Penn Machinery Co.*, 166 Conn. 352, 357, 349 A.2d 847 (1974). In the present case, the board observed the following regarding the actions of the respondent: "[I]t is abundantly clear that the protections and safeguards contemplated by the provisions of the [act] were not observed by the [respondent] relative to the circumstances surrounding the [respondent's] proffer of the termination agreement to the claimant purporting to release his workers' compensation claim. In fact, one could almost go so far as to say [that] the events portrayed in this matter represent exactly the type of scenario [that] the provisions of the [act] were intended to prevent." We agree.[7]

The actions of the respondent in the present case were in derogation of the safeguards contemplated by the act. The respondent refused to negotiate with the claimant regarding the issue of the workers' compensation release even though the claimant clearly expressed a desire not to release his workers' compensation claim as part of the agreement. The respondent's counsel did not attend an informal hearing scheduled by the claimant for the purpose of discussing the enforceability of the release as it related to the claimant's workers' compensation claim. Before the informal hearing was rescheduled, the respondent informed the claimant that

if he did not sign an unmodified version of the agreement within ten days, it would withdraw the offered severance package of $70,228.51. Only then did the claimant sign the release, and he testified that he did so because he "ran out of time," and felt as though he had no choice but to sign the unmodified agreement because he felt that he "needed the money." The unwillingness of the respondent to engage in meaningful attempts to amicably resolve the claimant's concerns regarding his undisputed workers' compensation claim demonstrates the need in our society for the protection afforded to employees by the act. The decisions of both the commissioner and the board, in refusing to approve the stipulation pursuant to § 31-296, comported with the remedial purpose of the act.

The respondent claims next that the board should have found that the commissioner's finding was illegally or unreasonably drawn from the competent evidence presented at the formal hearing. In support of its claims, the respondent relies on the plain language of the agreement, the testimony of its general counsel, and aspects of the claimant's own testimony that it claims contradicts the commissioner's conclusion that the $70,228.51 had not been paid to the claimant as consideration for the release of his workers' compensation claim.

The respondent claims that the language of the agreement provides that the payment of funds by the respondent is in exchange "for the covenants and agreements contained in the agreement itself," which includes the claimant's release of his workers' compensation claim. As a result, the respondent claims, the claimant's testimony was contradicted by the writing, making the claimant's testimony on this issue "unqualified, self-contradicted, and inconsistent with the presumptively proper recitation of consideration in the contract." In support of this claim, the respondent relies on *TIE Communications, Inc.* v. *Kopp*, 218 Conn. 281, 291–92, 589 A.2d 329 (1991), for the proposition that a recitation of consideration in a contract is prima facie evidence that there was consideration.

In *TIE Communications, Inc.*, we examined the application of the parol evidence rule to testimony regarding whether a party had fully performed its obligations under an integrated contract. Id., 287–94. We reiterated that the parol evidence rule "prohibits the use of extrinsic evidence to vary or contradict the terms of an integrated written contract." Id., 287–88; see also General Statutes § 42a-2-202; 3 A. Corbin, Contracts (1960) § 573; 4 S. Williston, Contracts (3d Ed. 1961) § 631. We also concluded that the parol evidence rule does not bar the admission of evidence that varies or contradicts the written terms of an integrated contract if it is offered: "(1) to explain an ambiguity appearing in the instrument; (2) to prove a collateral oral agreement

which does not vary the terms of the writing; (3) to add a missing term in writing which indicates on its face that it does not set forth the complete agreement; or (4) to show mistake or fraud." (Internal quotation marks omitted.) *TIE Communications, Inc.* v. *Kopp*, supra, 218 Conn. 288–89. Finally, in *TIE Communications, Inc.*, we noted that the parol evidence rule does not prevent a party from showing that, despite the recital of consideration in an integrated contract, no consideration was actually received. See id., 291–92.

In the present case, it is apparent from the commissioner's findings that the commissioner chose to credit the claimant's testimony on the issue of consideration over the evidence put forth by the respondent.[8] This decision was well within the commissioner's province as the trier of fact. Cf. *State* v. *Hawthorne*, 176 Conn. 367, 370–71, 407 A.2d 1001 (1978). Commissioners, in deciding whether a stipulation satisfies all of the provisions of the act, must be able to consider and credit the oral testimony of employees regarding the terms of a proposed settlement of a claim—even when the employee's testimony conflicts with the terms of the proposed agreement. General Statutes § 31-298 provides in relevant part the following guidance on the rules that govern commissioners in fulfilling their duty to examine all relevant facts in a particular case: "In all cases and hearings under the provisions of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter. . . ." While "[a] commissioner's evidentiary rulings, of course, must comport with the requirements of due process"; *Dzienkiewicz* v. *Dept. of Correction*, 291 Conn. 214, 221, 967 A.2d 1183 (2009); " 'the commissioner has broader discretion over evidence than does a trial court.' " Id., quoting *Bidoae* v. *Hartford Golf Club*, 91 Conn. App. 470, 479, 881 A.2d 418, cert. denied, 276 Conn. 921, 888 A.2d 87 (2005), cert. denied, 547 U.S. 1112, 126 S. Ct. 1916, 164 L. Ed. 2d 665 (2006). Thus, the fact-finding process in which commissioners engage when deciding whether to approve a voluntary agreement or stipulation should be viewed liberally, with an eye toward ascertaining the true nature of the stipulation or voluntary agreement.[9]

We have also tacitly approved of the admission of evidence to the commissioner regarding each party's understanding of the terms of a voluntary agreement or stipulation prior to the commissioner's approval of the agreement, even if it varies from the plain and unambiguous language of the agreement. In *Welch* v. *Arthur A. Fogarty, Inc.*, supra, 157 Conn. 546–47, we found

that the trial court had acted improperly when it relied on oral testimony to vary the plain meaning of a voluntary agreement or stipulation *after* the commissioner had approved the agreement pursuant to § 31-296. We noted that "[i]f there was an understanding or agreement not embraced within the language of the stipulation, *it should have been made known to the . . . commissioner*." (Emphasis added.) Id., 547. Had this understanding been revealed, "[i]n view of the apparent seriousness of the injuries claimed, the commissioner then might well have refused to approve the stipulation and render an award." Id. Thus, we have previously suggested that, even if a party's understanding of the nature or circumstances of an agreement clashes with the unambiguous, plain language of that agreement, the commissioner may properly consider that understanding when he or she decides whether a voluntary agreement or stipulation should be approved pursuant to § 31-296.

Because any agreement releasing an employer from obligations under the act must be approved by the commissioner, such agreements cannot be viewed as fully executed until such approval is obtained. Accordingly, the principle applied to fully executed contracts, under which an agreement's recitation that consideration has been given establishes prima facie evidence that must be rebutted by competent evidence is inapplicable. See *TIE Communications, Inc.* v. *Kopp*, supra, 218 Conn. 292. In most cases, both the employer and employee wish to have the agreement approved. Therefore, there is no concern about the burden of proof. In the present case, however, since the respondent was the proponent of the agreement and the claimant opposed the agreement as it related to his workers' compensation claim, the burden rested with the respondent to demonstrate that adequate consideration was paid for the workers' compensation claim. It failed to meet its burden in this regard. This rule is especially applicable where, as here, evidence regarding the employer's practices with respect to payment of severance and compensation for release of claims was within the control of the employer and where, as here, there are concerns of unequal bargaining power. Therefore, the employer must establish through evidence satisfactory to the commissioner that the agreement is in conformity with the purposes of the act.

In *Zhang* v. *Omnipoint Communications Enterprises, Inc.*, 272 Conn. 627, 645–46, 866 A.2d 588 (2005), we explained that " '[i]t is an elementary rule that whenever the existence of any fact necessary in order that a party may make out his case or establish his defense, the burden is on such party to show the existence of such fact.' . . . *Nikitiuk* v. *Pishtey*, 153 Conn. 545, 552, 219 A.2d 225 (1966); see C. Tait, Connecticut Evidence (3d Ed. 2001) § 3 3.1, p. 136 ('[w]hoever asks the court to give judgment as to any legal right or liability has

the burden of proving the existence of the facts essential to his or her claim or defense'). Therefore, as the proponent of the defense that it was entitled to enter and use the plaintiffs' property pursuant to easement rights it had obtained from the power company, the defendant had the burden of proof as to that fact. See *Branch* v. *Occhionero*, 239 Conn. 199, 205, 681 A.2d 306 (1996) (defendant asserting right-of-way as special defense to plaintiff's quiet title action had burden of proving facts necessary to prove defense)." (Footnote omitted.)

In the present case, apart from the written language of the agreement itself, the only evidence that the respondent offered on this issue was that of its attorney, who confessed that he was not aware of how the claimant's severance pay was calculated. Furthermore, the attorney was not aware of the value of the claimant's preexisting workers' compensation claim. "It is the power and the duty of the commissioner, as the trier of fact, to determine the facts." *Castro* v. *Viera*, 207 Conn. 420, 435, 541 A.2d 1216 (1988). We will not retry the case now on appeal. The respondent failed to produce sufficient evidence in order to sustain its burden of proof that there was adequate consideration for the release of the workers' compensation claim. Therefore, we conclude that the board properly affirmed the commissioner's refusal to approve the agreement as it related to the claimant's workers' compensation claim.

II

The respondent also claims that the commissioner and the board improperly refused to consider what the respondent labels "deceitful" conduct by the claimant when deciding whether to enforce the agreement. Specifically, the respondent claims that the board improperly concluded that it was not competent to consider allegedly fraudulent conduct by the claimant, most notably, the claimant's testimony before the commissioner that, despite signing the agreement and retaining the $70,228.51 paid to him, it was never his intention to give up his workers' compensation claim. The respondent asserts that this behavior should have been considered by the board when considering whether to affirm the commissioner's refusal to approve the agreement. We disagree.

The board considered this issue to be one for another forum, concluding as follows: "Whether as a matter of law the contract as signed by the parties, apart from the references to the claimant's workers' compensation claim, is an enforceable termination agreement is a determination for another forum; our jurisdiction is limited to whether the document serves [as] an acceptable instrument for releasing the claimant's workers' compensation claim, and we find that the record clearly supports the . . . commissioner's decision that it does not."

The respondent claims that General Statutes §§ 31-290c and 31-298, as well as our decision in *Welch* v. *Arthur A. Fogarty, Inc.*, supra, 157 Conn. 545, in which we noted that the commissioner has a duty to consider "all the facts" when deciding whether to approve an agreement, required the commissioner and the board to consider the claimant's allegedly deceitful and fraudulent actions related to the parties' decision to enter into the agreement. We disagree. "Long ago, we said that the jurisdiction of the [workers' compensation] commissioners is confined by the [a]ct and limited by its provisions. Unless the [a]ct gives the [c]ommissioner the right to take jurisdiction over a claim, it cannot be conferred upon [the commissioner] by the parties either by agreement, waiver or conduct. . . . While it is correct that the act provides for proceedings that were designed to facilitate a speedy, efficient and inexpensive disposition of matters covered by the act . . . the charter for doing so is the act itself. The authority given by the legislature is carefully circumscribed and jurisdiction under the act is clearly defined and limited to what are clearly the legislative concerns in this remedial statute. . . . A commissioner may exercise jurisdiction to hear a claim only under the precise circumstances and in the manner particularly prescribed by the enabling legislation. . . . Because of the statutory nature of our workers' compensation system, policy determinations as to what injuries are compensable and what jurisdictional limitations apply thereto are for the legislature, not the judiciary or the board, to make." (Citations omitted; internal quotation marks omitted.) *Del Toro* v. *Stamford*, 270 Conn. 532, 541–42, 853 A.2d 95 (2004). Neither our decision in *Welch*, nor §§ 31-290c and 31-298 grant the commission subject matter jurisdiction over the general enforceability of severance agreements.

Section 31-290c (a)[10] criminalizes the behavior of a person who makes a claim or obtains an award based in whole or part on a material misrepresentation or intentional nondisclosure of material fact, and it also confers the right to bring a cause of action for statutory theft pursuant to General Statutes § 52-564. *Desmond* v. *Yale-New Haven Hospital, Inc.*, 138 Conn. App. 93, 98–99, 50 A.3d 910, cert. denied, 307 Conn. 942, 58 A.3d 258 (2012). Section 31-290c (a) does not create a private cause of action independent from the civil theft statute; see id.; nor does it require the commissioner or the board to consider these activities in approving a voluntary agreement or stipulation. See General Statutes § 31-290c (a).

Section 31-298,[11] meanwhile, has been interpreted to cover only the manner in which hearings are conducted. "[Section 31-298] deals with the manner in which testimony is obtained and hearings are conducted. It does not provide the commissioner with any specific jurisdic-

tion over particular types of claims or questions." *Stickney* v. *Sunlight Construction, Inc.*, 248 Conn. 754, 765, 730 A.2d 630 (1999). In *Stickney*, an insurance company moved to open a previously approved voluntary agreement to settle an issue of contract law that was "independent of the rights of [either] the injured employee or his employer . . . ." (Internal quotation marks omitted.) Id., 759. The insurance company claimed that the commission had subject matter jurisdiction over the motion because several sections of the act, including § 31-298, provided the commission with "equitable powers," that established subject matter jurisdiction over the motion to open. Id., 759. We rejected this claim, noting that "the act explicitly must provide authority by which the coverage issue central to this appeal may be determined." Id., 764. Section 31-298 does not, by its plain language, confer upon the commission the authority to consider and determine the enforceability of those portions of a contract that do not involve the rights of either the injured employee or the employer under the act. The "equity" reference relied upon by the respondent does not refer to the commission's jurisdiction. Rather, it indicates only that a commissioner is not bound by the rules of evidence or procedure when determining what evidence he or she may properly consider in deciding whether to approve a given agreement. See id., 765.

Thus, neither § 31-290c nor § 31-298 indicates that the commission has special competency to consider the type of fraudulent behavior in which the respondent accuses the claimant of engaging: the former statute criminalizes certain behavior and provides a claimant with the ability to bring a claim for civil theft in the Superior Court, while the latter statute governs the type of evidence that a commissioner may properly consider when he or she is determining the rights and liabilities of employers and employees that are expressly covered by the other statutory provisions of the act.

Even if we were to assume, for the sake of argument, that the claimant's conduct prior to entering into the agreement was deceitful, those actions have no bearing on the commissioner's decision to approve the agreement as a voluntary agreement or stipulation pursuant to § 31-296. The facts referenced in *Welch* v. *Arthur A. Fogarty, Inc.*, supra, 157 Conn. 545–47, that a commissioner must consider when deciding whether to approve an agreement are those affecting the compensation owed to a claimant for a compensable injury. In the present case, the conduct of which the respondent complains does not relate to the existence or severity of the claimant's compensable workers' compensation claim. Indeed, the respondent did not challenge the validity of the claimant's injury or its compensable nature before either the commissioner or the board. Moreover, the conduct of the claimant related to the agreement does not affect the compensa-

bility of the claimant's injury. Thus, once the commissioner determined that the $70,228.51 was not paid to the claimant in exchange for his release of his workers' compensation claim, the actions engaged in by the claimant warranted no further consideration in the workers' compensation forum. The commission is not competent to rule on the rights and obligations of the parties to a contract when those rights and obligations do not involve the issues that the legislature has authorized the commission to consider.

Having concluded that no consideration was offered for the release of the claimant's workers' compensation claim, the board properly affirmed the commissioner's refusal to approve the agreement as a "voluntary agreement" or stipulation within the meaning of § 31-296. Ultimately, the lodestar of the workers' compensation statutory scheme is the assurance that an injured employee receives fair and just compensation for injuries that fall within the purview of the act. See *Welch* v. *Arthur A. Fogarty, Inc.*, supra, 157 Conn. 545; *Sugrue* v. *Champion*, 128 Conn. 574, 578–79, 24 A.2d 890 (1942). Thus, regardless of the claimant's intention in signing the agreement, the board properly concluded that the commissioner's refusal to approve the agreement was supported by the evidence contained within the record because of the commissioner's finding that the claimant was paid no money in consideration for the release of his workers' compensation claim. The enforceability of the remainder of the agreement is not a question for the workers' compensation forum, and the commissioner and the board properly refused to decide that aspect of the dispute between the claimant and the respondent. Of course, the respondent retains the right to seek whatever civil recourses it deems appropriate with respect to the remainder of the agreement, a matter about which we express no opinion.

We conclude that the board properly affirmed the commissioner's decision refusing to approve the agreement as a voluntary agreement or stipulation pursuant to § 31-296 in light of her finding that the claimant's release of his workers' compensation claim was not supported by consideration. We also conclude that the board properly concluded that the commission lacks the competency to determine the effect of the claimant's allegedly deceitful and fraudulent actions on the enforceability of the remainder of the agreement.

The decision of the Workers' Compensation Review Board is affirmed.

In this opinion the other justices concurred.

[1] General Statutes § 31-296 (a) provides: "If an employer and an injured employee, or in case of fatal injury the employee's legal representative or dependent, at a date not earlier than the expiration of the waiting period, reach an agreement in regard to compensation, such agreement shall be submitted in writing to the commissioner by the employer with a statement of the time, place and nature of the injury upon which it is based; and, if such commissioner finds such agreement to conform to the provisions of

this chapter in every regard, the commissioner shall so approve it. A copy of the agreement, with a statement of the commissioner's approval, shall be delivered to each of the parties and thereafter it shall be as binding upon both parties as an award by the commissioner. The commissioner's statement of approval shall also inform the employee or the employee's dependent, as the case may be, of any rights the individual may have to an annual cost-of-living adjustment or to participate in a rehabilitation program administered by the Department of Rehabilitation Services under the provisions of this chapter. The commissioner shall retain the original agreement, with the commissioner's approval thereof, in the commissioner's office and, if an application is made to the superior court for an execution, the commissioner shall, upon the request of said court, file in the court a certified copy of the agreement and statement of approval."

Although § 31-296 (a) was amended by the legislature in 2011 and 2012; see Public Acts 2011, No. 11-44, § 48; Public Acts, Spec. Sess., June, 2012, No. 12-1, § 85; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[2] We have previously defined the term "stipulation" as follows: "A stipulation is a compromise and release type of settlement similar to settlements in civil personal injury cases where a claim is settled with a lump sum payment accompanied by a release of the adverse party from further liability. . . . Although the act does not explicitly provide for this type of settlement, we have consistently upheld the ability to compromise a compensation claim as inherent in the power to make a voluntary agreement regarding compensation." (Citation omitted; internal quotation marks omitted.) *Muldoon* v. *Homestead Insulation Co.*, 231 Conn. 469, 479–80, 650 A.2d 1240 (1994).

[3] In this opinion, we refer to the parties as the claimant and the respondent in conformity with the designations used by both the parties and the board. For the sake of simplicity, references to the second defendant in this case, Liberty Mutual Insurance Group, will be by name.

[4] General Statutes § 31-301b provides: "Any party aggrieved by the decision of the Compensation Review Board upon any question or questions of law arising in the proceedings may appeal the decision of the Compensation Review Board to the Appellate Court, whether or not the decision is a final decision within the meaning of section 4-183 or a final judgment within the meaning of section 52-263."

[5] The board denied the respondent's motion to admit additional evidence. The respondent did not appeal from this denial and, consequently, the board's ruling on the motion to admit additional evidence is not at issue in the present appeal.

[6] As previously indicated, the respondent appealed from the decision of the board to the Appellate Court pursuant to the provisions of General Statutes § 31-301b, claiming that the Workers' Compensation Commission improperly failed to: (1) approve the agreement as a "voluntary settlement" of the claimant's workers' compensation claim; and (2) consider allegedly deceitful and fraudulent conduct by the claimant when it decided not to enforce the release of the claimant's workers' compensation claim. After the board denied the respondent's appeal, the respondent also filed an action in the Superior Court seeking rescission of the $70,228.51 that it paid to the claimant pursuant to the agreement, treble damages, interest, attorney's fees, punitive damages, restitution, and court costs. *MacDermid, Inc.* v. *Leonetti*, Superior Court, judicial district of Waterbury, Docket No. CV-11-6012559-S (June 22, 2012). The claimant filed a counterclaim against the respondent in that action, which alleged that the respondent's action was in retaliation for the claimant's decision to exercise his rights under the act and sought compensatory and punitive damages as well as attorney's fees. Id. The respondent, claiming absolute immunity, moved to dismiss the claimant's counterclaim, and the trial court denied the motion. Id. The respondent filed an interlocutory appeal of that decision with the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. We heard oral argument on both of these cases on the same day. In this opinion, we resolve only the issues presented by the respondent's appeal from the decision of the board pursuant to § 31-301b. Therefore, our opinion in the present case applies only to the claimant's workers' compensation claim. A separate decision will be rendered by this court responding to the issues in *MacDermid, Inc.* v. *Leonetti*, SC 19077.

[7] Because we conclude that the board properly affirmed the commissioner's finding that the claimant's release of his workers' compensation claim

was unenforceable for lack of consideration, we need not address the respondent's claim that the commissioner refused to approve the agreement solely because the parties had not previously brought the agreement before the commissioner for approval.

[8] The respondent also claims that the doctrine of equitable estoppel should have operated to bar the commissioner from considering the claimant's testimony because the claimant engaged in allegedly deceitful actions that caused the respondent to materially alter its position. We address the propriety of the commissioner's refusal to consider the claimant's allegedly deceitful or fraudulent actions in part II of this opinion.

[9] The respondent also claims that the board acted improperly in concluding that "[b]efore a claimant may agree to a stipulation, a commissioner must canvass the claimant to insure that he has considered [issues related to the final settlement of a workers' compensation claim] and still wants to settle his case." We note that this language appears in *Festa* v. *Hamden*, No. 3052 CRB-3-95-4 (October 16, 1996). In the present case, the board cited this language in support of its conclusion that General Statutes §§ 31-278 and 31-298 "confer upon [commissioners] the powers necessary to not only review but, on occasion, reject an agreement reached between the parties." The record does not indicate that the commissioner actually canvassed the claimant in this case, but instead the commissioner merely credited his oral testimony. We note, however, that the commissioner would have acted entirely within the authority granted to her by the act had she chosen to canvass the witness. See General Statutes § 31-278 (commissioner has power to summon and examine witnesses under oath); General Statutes § 31-298 (commissioner is not bound by common-law or statutory rules of evidence or procedure when ascertaining substantial rights of parties).

[10] General Statutes § 31-290c (a) provides: "Any person or his representative who makes or attempts to make any claim for benefits, receives or attempts to receive benefits, prevents or attempts to prevent the receipt of benefits or reduces or attempts to reduce the amount of benefits under this chapter based in whole or in part upon (1) the intentional misrepresentation of any material fact including, but not limited to, the existence, time, date, place, location, circumstances or symptoms of the claimed injury or illness or (2) the intentional nondisclosure of any material fact affecting such claim or the collection of such benefits, shall be guilty of a class C felony if the amount of benefits claimed or received, including but not limited to, the value of medical services, is less than two thousand dollars, or shall be guilty of a class B felony if the amount of such benefits exceeds two thousand dollars. Such person shall also be liable for treble damages in a civil proceeding under section 52-564."

[11] General Statutes § 31-298 provides: "Both parties may appear at any hearing, either in person or by attorney or other accredited representative, and no formal pleadings shall be required, beyond any informal notices that the commission approves. In all cases and hearings under the provisions of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter. No fees shall be charged to either party by the commissioner in connection with any hearing or other procedure, but the commissioner shall furnish at cost (1) certified copies of any testimony, award or other matter which may be of record in his office, and (2) duplicates of audio cassette recordings of any formal hearings. Witnesses subpoenaed by the commissioner shall be allowed the fees and traveling expenses that are allowed in civil actions, to be paid by the party in whose interest the witnesses are subpoenaed. When liability or extent of disability is contested by formal hearing before the commissioner, the claimant shall be entitled, if he prevails on final judgment, to payment for oral testimony or deposition testimony rendered on his behalf by a competent physician, surgeon or other medical provider, including the stenographic and videotape recording costs thereof, in connection with the claim, the commissioner to determine the reasonableness of such charges."