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SUPREME COURT RULES EMPLOYER MUST PAY ATTORNEY FEES OF HOBBS MAN INJURED IN WORK ACCIDENT

SANTA FE – The state Supreme Court ruled today that a Hobbs man's employer must pay all of his attorney fees in a workers' compensation dispute stemming from an accident when he was driving a truck hauling brine water to a drilling rig site.

In a 4-1 decision, the state's highest court reversed a decision of a Workers' Compensation Administration judge that had ordered the worker, Casey Baker, to pay half of the $42,925 in attorney fees awarded in the case. The other half is to be paid by Baker's employer, Endeavor Services Inc. and Great West Casualty Company, the employer's insurer.

The Court's majority decision overturned a ruling by the state Court of Appeals, which had upheld the worker's compensation judgment.

Baker injured his back and neck in the 2011 accident and filed a workers' compensation claim for medical benefits, temporary disability benefits and attorney fees. Baker suffered more injuries in 2014 when his vehicle was rear-ended while he was driving from his home to a doctor's office in Roswell for treatment of injuries from the 2011 accident. Baker filed a second workers' compensation complaint, and a trial was held in 2016 after the parties failed to reach a settlement of the claims.

New Mexico's workers' compensation law, in an attempt to promote settlements, forces employers to pay 100% of an injured worker's attorney fees when the employer rejects a worker's valid "offer of judgment" that would have resolved the dispute in an amount less than what was later awarded at trial.

In the majority opinion written by Justice Gary L. Clingman, the Court said Baker made an "unambiguous" judgment offer that was valid and it triggered the law's fee-shifting provision although some issues remained in dispute between the parties. Those issues included the date

when Baker's healing process was deemed complete and the percentage of his permanent impairment. Those are factors that help determine an injured worker's compensation and benefits.

The Court's majority said that "as long as the offer of judgment provides a sufficient frame of reference concerning contested issues, questions raised in the complaint may be left unresolved."

"In workers' compensation cases, the possibility of litigation continues until the worker is both healed and fully compensated. Until that time, disputes regarding the workers' medical bills, compensation rate, disability rating, or any number of other issues may arise," Justice Clingman wrote. "The purpose of an offer of judgment is to incentivize resolution of the complaint, but the offer's validity does not rest on all issues related to the worker's injury being immediately and completely resolved."

Justice Judith K. Nakamura dissented, saying the decision of the workers' compensation judge should be affirmed.

"Worker failed to offer terms resolving all of the disputed matters necessary to determine whether his settlement offer was less than the compensation awarded," Justice Nakamura wrote in a dissenting opinion.

"To hold, as the majority does, that an employer should be punished for refusing a settlement offer the value of which is indiscernible and which left unresolved crucial matters relating to benefits to which Worker claimed he was entitled and which the parties vigorously disputed from nearly the inception of the proceedings is error," Justice Nakamura wrote. "Our Legislature could not have intended this result."

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To read the opinion in *Baker v. Endeavor Services, Inc.*, No. S-1-SC-36651 slip op. (N.M. S. Ct. September 6, 2018), please visit the New Mexico Compilation Commission's website using the following link:

http://www.nmcompcomm.us/nmcases/nmsc/slips/SC36,651.pdf