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social, domestic, or even personal grounds.[47] This expansive doctrine espoused by the Florida court lends even more support to the contentions of the plaintiffs in the instant case regarding the liability of those who deal with fiduciaries, as it establishes a basis by which the outsiders may be held to be fiduciaries as well.

The purpose of anti-fraud statutes dealing with insider trading, be they federal, state, or manifestations of the common law, is to maintain fair and honest securities markets, and to prevent unfair and inequitable practices in those markets.[48] Through the use of equitable principles, a nexus can be established between the injured corporation and recreant outside third parties. The need for close scrutiny of such outsiders is great. While an officer or director of a corporation may not be in a position to indulge in stock transactions involving his corporation's stock due to statutory proscriptions (such as the Securities Exchange Act) or personal financial inability, outsiders, and particularly large institutional investors, are not so limited. By carefully avoiding liability under statutory enactments, institutional investors can reap large profits by the use of information which rightfully belongs to the entire trading public. Securities laws are a shield against such misappropriations; behind the shield of the statutes lurks the sword of the common law. The emerging trend towards the liability of the tippee, as indicated by *Texas Gulf Sulphur* on the federal level and now by *Schein v. Chasen* on the state level, provides the "disincentive"[49] needed to maintain the integrity of the country's stock exchanges. The use of state common law actions brought under equitable principles should prove extremely beneficial in cases where statutory enactments are unavailable, undesirable, or ineffective.

Matthew M. Julius

WORKMEN'S COMPENSATION—Waiver Of Benefits —Unlawful In Texas To Waive Right To File A Claim In Return For Compensation

James v. Vernon Calhoun Packing Co., 498 S.W.2d 160 (Tex. Sup. 1973).

Petitioner, Clifford James, a former employee of respondent, Vernon Cal-

47. *Id.* at 421.
48. *See, e.g.*, Preamble, Securities Exchange Act of 1934, 15 U.S.C. § 78b (1970).
49. Schein v. Chasen, 478 F.2d 817, 823 (2d Cir.), *cert. granted*, — U.S. — (1973).

houn Packing Company, while within the scope of his employment sustained injuries of a compensable nature according to applicable provisions of the Texas Workmen's Compensation Law.[1] As recommended by respondent, his employer, petitioner agreed not to file a workmen's compensation claim. Consideration for the agreement was to be lifetime employment at a job petitioner was physically capable of performing. After working as a supervisor for 7 years, petitioner was assigned to more strenuous duties. Thereafter, being unable to perform properly because of his injury, petitioner was discharged in violation of the earlier agreement. Petitioner initiated this action for damages alleging breach of contract and fraud as alternate grounds for recovery. Respondent defended alleging no cause of action was stated and petitioner's allegations of damages were vague and uncertain. The trial court dismissed the action and the decision was affirmed on appeal.[2] The Texas Supreme Court granted writ of error for the purpose of reexamining their decision in *Woolsey v. Panhandle Refining Co.*[3] which held, as here, that an injured employee may not waive his rights to compensation under Workmen's Compensation Law.[4] Held—*Affirmed.* An agreement for lifetime employment made in violation of a statute is invalid and illegal, and relief will not be granted by the courts.[5]

In 1913, the Texas Workmen's Compensation Law was enacted primarily to protect workmen and employees by providing an injured employee with immediate and adequate compensation for injury received while acting within the scope of his employment.[6] Such compensation for injury, however, may be denied if one attempting to claim benefits under the Workmen's Compensation Law fails to act in compliance with the provisions established by the legislature.[7] With the possibility of forfeiture, the Workmen's Compensation Law must be liberally interpreted to effectuate its beneficial purpose,[8] and the benefit of any doubt should be resolved in favor of the employee.[9]

1. TEX. REV. CIV. STAT. ANN. art. 8306, § 20 (Supp. 1974).
2. James v. Vernon Calhoun Packing Co., 486 S.W.2d 396 (Tex. Civ. App.—Tyler 1972).
3. 131 Tex. 449, 116 S.W.2d 675 (1938).
4. *Id.* at 454, 116 S.W.2d at 677; *see* TEX. REV. CIV. STAT. ANN. art. 8306, § 14 (1967).
5. James v. Vernon Calhoun Packing Co., 498 S.W.2d 160, 162 (Tex. Sup. 1973).
6. Woolsey v. Panhandle Ref. Co., 131 Tex. 449, 455, 116 S.W.2d 675, 678 (1938); Texas Employer's Ins. Ass'n v. Wright, 128 Tex. 242, 244, 97 S.W.2d 171, 172 (1936).
7. Petroleum Cas. Co. v. Dean, 132 Tex. 320, 324-25, 122 S.W.2d 1053, 1056 (1939); Mingus v. Wadley, 115 Tex. 551, 558, 285 S.W. 1084, 1087 (1926); Casualty Recip. Exch. v. Underwood, 33 S.W.2d 585, 586 (Tex. Civ. App.—Fort Worth 1930, no writ).
8. Reeves v. Liberty Mut. Ins. Co., 50 F. Supp. 772, 773 (N.D. Tex. 1943); Texas Employers' Ins. Ass'n v. Harrison, 207 S.W.2d 168, 171 (Tex. Civ. App.—Fort Worth 1947, writ ref'd n.r.e.).
9. Bailey v. American Gen. Ins. Co., 154 Tex. 430, 279 S.W.2d 315, 318 (1955).

To protect an employee's interest under the Act, Article 8306, Section 14 contains the express prohibition that "[n]o agreement by any employé to waive his rights to compensation under this law shall be valid."[10] For the further protection of the employee, the Act was amended in 1917 to provide that a compromise settlement between the parties could not be enforced without prior approval of the Industrial Accident Board.[11] This change was designed to prevent the employee from accepting a capricious and unwise settlement of a claim.[12] Additionally, any recovery as provided by the Workmen's Compensation Act is exclusive of any other right of action against the employer.[13] These provisions, in effect, require that a workman must either file a claim under the act or forfeit his right to recover by any other action against his employer.[14]

If an employee does file a complaint and is successful, his recovery may cause an increase in his employer's insurance premiums under Workmen's Compensation.[15] The premiums paid for Workmen's Compensation Insurance are determined by a base rate applicable to all subscribers of a particular class in addition to the application of an experience rate for each individual subscriber.[16] One of the factors used to determine the experience rate is the amount of benefits paid out to injured employees.[17] If an employer has a better-than-average experience or injury record, his experience rate will be reduced.[18] Conversely, if injuries exceed the average, the em-

10. TEX. REV. CIV. STAT. ANN. art. 8306, § 14 (1967).

11. Tex. Laws 1917, ch. 103, § 15, at 280, *as amended* TEX. REV. CIV. STAT. ANN. art. 8306 § 15 (1967). The statute as amended provides that "In cases where death or incapacity in any degree results from an injury, the liability . . . may be redeemed . . . by agreement of the parties thereto subject to the approval of the Industrial Accident Board."

12. Woolsey v. Panhandle Ref. Co., 131 Tex. 449, 454-55, 116 S.W.2d 675, 677 (1938).

13. TEX. REV. CIV. STAT. ANN. art. 8306, § 3 (1967) sets out that "The employees of a subscriber . . . shall have no right of action against their employer . . . but . . . shall look for compensation solely to the association . . . ." *See* Bell v. Humble Oil & Ref. Co., 142 Tex. 645, 647, 181 S.W.2d 569 (1944); Indemnity Ins. Co. of N. America v. Hare, 107 S.W.2d 739, 740 (Tex. Civ. App.—Beaumont 1937, writ ref'd).

14. Bell v. Humble Oil & Ref. Co., 142 Tex. 645, 647, 181 S.W.2d 569 (1944). *But see* TEX. REV. CIV. STAT. ANN. art. 8306, § 3a (1967) which provides that an employee may give written notice at the time he is employed of his intent not to waive his common law cause of action.

15. *See* California Comp. Ins. Co. v. Industrial Acc. Comm'n, 276 P.2d 148, 153 (Cal. Dist. Ct. App. 1954); Associated Indemn. Corp. v. Oil Well Drilling Co., 258 S.W.2d 523, 528-29 (Tex. Civ. App.—Dallas 1953), *aff'd*, 153 Tex. 153, 264 S.W.2d 697 (1954).

16. *See* California Comp. Ins. Co. v. Industrial Acc. Comm'n, 276 P.2d 148, 153 (Cal. Dist. Ct. App. 1954); TEX. INS. CODE ANN. art. 5.60 (1963).

17. California Comp. Ins. Co. v. Industrial Acc. Comm'n, 276 P.2d 148, 153 (Cal. Dist. Ct. App. 1954); *see* TEX. INS. CODE ANN. art. 5.60 (1963); 12 W. SCHNEIDER, WORKMEN'S COMPENSATION TEXT § 2508 (3d ed. 1960).

18. Associated Indem. Corp. v. Oil Well Drilling Co., 258 S.W.2d 523, 526 (Tex. Civ. App.—Dallas 1953), *aff'd*, 153 Tex. 153, 264 S.W.2d 697 (1954).

ployer will be penalized with a greater experience rate.[19] The employer, therefore, may benefit if he can persuade an employee not to file a claim for compensation.

As a general rule, contracts such as the one in the instant case have been held to be illegal when they contravene either statutory or constitutional provisions.[20] The traditional view on the illegality of a contract as a bar to enforcement was explicitly stated in *Collins v. Blantern*[21] by Lord Chief Justice Wilmot wherein a contract, prohibited by the common law was sought to be enforced:

> [I]t is void by the common law; and the reason why the common law says such contracts are void is for the public good. You shall not stipulate for iniquity . . . . Whoever is a party to an unlawful contract, if he hath once paid the money . . . he shall not have the help of a court to fetch it back again, you shall not have a right of action when you come into a Court of Justice in this unclean manner . . . .[22]

It is this common law rationale which underlies the present American rule that relief will generally be denied to a party to an illegal bargain.[23] Accordingly, when a contract is made in contravention of statute and is therefore invalid and unenforceable,[24] the courts will not grant relief to either party when they are in *pari delicto*.[25] But the parties are not to be regarded as in *pari delicto* when the violated statute penalizes only one of the parties, or when one of the parties has been induced by fraud to enter into the agreement.[26] When the parties are not equally at fault it would be unconscionable to allow the one at greater fault to set up the contract's illegality in his own defense thereby precluding the party at lesser fault from recovery.[27] In *DeLeon v. Manuel Trevino & Bro.*[28] it was stated that any

19. *Id.* at 526. These rates are generally applied as a multiplier to the employer's payroll; see Associated Indem. Corp. v. Oil Well Drilling Co., 258 S.W.2d 523, 526 (Tex. Civ. App.—Dallas 1953), *aff'd*, 153 Tex. 153, 264 S.W.2d 697 (1954).

20. Lewis v. Davis, 145 Tex. 468, 477, 199 S.W.2d 146, 151 (1947); San Antonio Irr. Co. v. Deutschmann, 102 Tex. 201, 208, 114 S.W. 1174, 1176 (1908); Miller v. Babb, 263 S.W. 253, 255 (Tex. Comm'n App. 1924, jdgmt adopted); 6A A. CORBIN, CONTRACTS § 1374 (1962).

21. 95 Eng. Rep. 847 (K.B. 1767).

22. *Id.* at 852.

23. Lewis v. Davis, 145 Tex. 468, 477, 199 S.W.2d 146, 151 (1947); Morrison v. City of Fort Worth, 138 Tex. 10, 14, 155 S.W.2d 908, 909 (1941); Cain v. Franklin, 476 S.W.2d 952, 953 (Tex. Civ. App.—Austin 1972, writ ref'd n.r.e.).

24. E.g., Miller v. Babb, 263 S.W. 253, 255 (Tex. Comm'n App. 1924, jdgmt adopted); Bartlett v. Vinor, 90 Eng. Rep. 750 (K.B. 1728).

25. American Nat. Ins. Co. v. Tabor, 111 Tex. 155, 160-61, 230 S.W. 397, 400 (1921); Federal Life Ins. Co. v. Hoskins, 185 S.W. 607, 609 (Tex. Civ. App.—Dallas 1916, no writ); 6A A. CORBIN, CONTRACTS § 1536 (1962).

26. American Nat. Ins. Co. v. Tabor, 111 Tex. 155, 160-61, 230 S.W. 397, 399-400 (1921); Federal Life Ins. Co. v. Hoskins, 185 S.W. 607, 609 (Tex. Civ. App.—Dallas 1916, no writ).

27. *See* Graham v. Dean, 144 Tex. 61, 64, 188 S.W.2d 372, 373 (1945).

28. 49 Tex. 88 (1878).

rights between the parties that may have arisen in the execution of the illegal contract are to be recognized and settled.[29] By granting relief to the party at lesser fault, similar illegal transactions would be discouraged.[30]

The question of an employee's capacity to waive his right to workmen's compensation in exchange for a promise of lifetime employment has similarly arisen in other jurisdictions with derivative judgments rendered in favor of the employee.[31] These jurisdictions have utilized several theories to circumvent the harsh effects of this type of unlawful agreement. In *Brigham Young University v. Industrial Commission*,[32] it was held that a provision in the Utah Workmen's Compensation Act, prohibiting a waiver of compensation benefits, did not include the making of a compromise settlement between the employer and the employee.[33] In arriving at this decision, the court looked to the overt actions of the parties in making the lifetime contract as a manifestation of their intent to utilize the recovery rights of the employee and proceed in accordance with the provisions of the act.[34] This is a reasonable interpretation of the law, in relation to compromise settlements, which ultimately results in the purpose of the act being fulfilled.[35] It should be noted that the "no waiver" provision of the Texas and Utah Workmen's Compensation Act are almost identical.[36]

Another theory of recovery was advanced in *Toni v. Kingan & Co.*,[37] where an action was brought by the employee for his employer's breach of a lifetime employment contract. The decision was based on the proposition that because the employer's promise was relied upon in making the compromise settlement, the doctrine of estoppel would be applied to prevent the employer from wrongfully manipulating the provisions of the Workmen's Compensation Act.[38] This doctrine is often invoked to grant relief to the injured worker when the parties are not in *pari delicto* to prevent the party in greater fault from asserting his defense of an illegal contract.[39] Such a compro-

29. *Id.* at 92.

30. Wright v. Wight & Wight, 229 S.W. 881, 882 (Tex. Civ. App.—El Paso 1921, no writ); *see also* Hughes v. Hess, 141 Tex. 511, 172 S.W.2d 301 (1943).

31. Toni v. Kingan & Co., 15 N.E.2d 80, 84 (Ind. 1938); Oklahoma Portland Cement Co. v. Pollock, 73 P.2d 427, 432 (Okla. 1937); Brigham Young Univ. v. Industrial Comm'n, 279 P. 889, 893 (Utah 1929).

32. 279 P. 889 (Utah 1929).

33. *Id.* at 893.

34. *Id.* at 893.

35. *Id.* at 893.

36. *Compare* 4 UTAH CODE ANN. 35-1-90 (1966), which states "No agreement by an employee to waive his rights to compensation under this title shall be valid," *with* TEX. REV. CIV. STAT. ANN. art. 8306, § 14 (1967), which states "No agreement by any employé to waive his rights to compensation under this law shall be valid."

37. 15 N.E.2d 80 (Ind. 1938).

38. *Id.* at 84.

39. Planters' Mutual Ins. Co. v. S. Lyons, Lindenthal & Co., 38 Tex. 253, 274-75 (1873).

mise settlement establishes a contract made *independently* of the Workmen's Compensation Law to settle the claim.[40]

A similar result was reached in *Oklahoma Portland Cement Co. v. Pollock*,[41] wherein the court declared that the illegality of the contract would not serve to defeat the purpose of the statute.[42] In that case a contract, which was essentially similar to the contract in *James*, and being otherwise valid, was treated as being voidable rather than void.[43] The majority in *James* recognized that section 14, which disallows the illegal bargain, was susceptible of construction as either void or voidable but rejected the latter in favor of strict statutory construction.[44] If the law is to be considered only voidable, as in *Pollock*, then the rule, that contracts made in contravention of a statute are unenforceable, need not be applied.

An alternate theory that would provide relief to the injured employee who has entered into an illegal contract such as in *James* involves tolling the statute of limitations. The Texas Workmen's Compensation Law provides that a claim is barred if not filed within 6 months except when good cause is shown for failure to file.[45] What constitutes good cause, however, has been restrictively defined and has not been applied in the situation presented in the *James* case.[46] Other jurisdictions have held that the statute of limitations may be tolled by a compromise settlement between the employer and employee.[47] This rule is usually applied when an employer continues to pay the injured employee his wages in lieu of filing a claim for workmen's compensation benefits,[48] the employer being aware that such an agreement serves as a substitute for compensation.[49] The statute of limitations, however, will not be tolled if the employer denies compensation liability at

40. Toni v. Kingan & Co., 15 N.E.2d 80, 84 (Ind. 1938).
41. 73 P.2d 427 (Okla. 1937).
42. *Id.* at 430.
43. *Id.* at 429.
44. James v. Vernon Calhoun Packing Co., 498 S.W.2d 160, 162-63 (Tex. Sup. 1973). The court in *James*, in applying a strict statutory construction, stated that if the decision in *Woolsey* was incorrect, the legislature has not seen fit to change it in the 18 sessions since the decision was handed down. *Id.* at 163.
45. TEX. REV. CIV. STAT. ANN. art. 8307, § 4a (1967).
46. An application of the statute was found in King v. Texas Employers' Ins. Ass'n, 416 S.W.2d 533 (Tex. Civ. App.—Amarillo 1967, writ ref'd n.r.e.). *See* Hawkins v. Safety Cas. Co., 146 Tex. 381, 384, 207 S.W.2d 370, 372 (1948) wherein it was stated: "[Good cause] may be determined against the claimant as a matter of law only when the evidence . . . admits no other reasonable conclusion." The statute of limitations will not be tolled when the delay in filing is due to a lack of diligence by the claimant. Texas Cas. Ins. Co. v. Beasley, 391 S.W.2d 33, 35 (Tex. Sup. 1965); Bray v. Texas Employers' Ins. Ass'n, 483 S.W.2d 907, 910-11 (Tex. Civ. App.—Houston [1st Dist.] 1972, writ ref'd n.r.e.).
47. *E.g.*, Little v. Persun Constr. Co., 332 S.W.2d 647, 649 (Ky. 1960).
48. Kentucky W. Va. Gas. Co. v. Spurlock, 415 S.W.2d 849, 851 (Ky. 1967); 3 A. LARSON, WORKMEN'S COMPENSATION LAW § 78.43(c) (1971).
49. 3 A. LARSON, WORKMEN'S COMPENSATION LAW § 78.43(c) (1971).

the same time he is making wage payments.[50]

Unlike other states which seek to provide some form of recovery when an employee has entered into a compromise settlement, Texas continues to deny such relief unless, of course, the prior approval of the Industrial Accident Board has been obtained.[51] This rule, as established in *Woolsey* and reiterated in *James*, is unconscionable when strictly enforced. Its application, without mitigation, may actually provoke an employer to apostasy by inducing an employee to make an illegal contract so as to waive his rights to file a claim under the Texas Workmen's Compensation Law. The present law allows the employer to breach such a contract with impunity with the impending loss of compensation falling entirely upon the employee —the specific person for whose benefit the law was initially enacted. These points are emphasized by the strong dissent by four Texas Supreme Court Justices in *James*.[52]

It should be noted that in *Woolsey* the decision of the court was unanimous, whereas in *James* the decision was 5-4 in favor of the established rule. This division indicates that the court may soon choose to follow the path taken in other jurisdictions by providing recovery for an injured employee in order to better effectuate the basic purpose of the workmen's compensation laws. It is within the power of the court to liberally construe statutory provisions[53] and to reexamine previous decisions so as not to deny an injured workman adequate compensation as provided by Workmen's Compensation Law. It is submitted that, until the decision in *James* is overruled or guidelines are established to mitigate the harshness of the rule, the purpose of the Workmen's Compensation Law will, in fact, be frustrated.

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50. Diamond T. Motor Car Co. v. Industrial Comm'n, 37 N.E.2d 782, 785 (Ill. 1941).

51. American Employer's Ins. Co. v. Due, 166 S.W.2d 160, 162 (Tex. Civ. App.—Beaumont 1942, writ ref'd w.o.m.).

52. James v. Vernon Calhoun Packing Co., 498 S.W.2d 160, 165 (Tex. Sup. 1973) (dissenting opinion).

53. Reeves v. Liberty Mut. Ins. Co., 50 F. Supp. 772, 773 (N.D. Tex. 1943); Texas Employers Ins. Ass'n v. Harrison, 207 S.W.2d 168, 171 (Tex. Civ. App.—Fort Worth 1947, writ ref'd n.r.e.), *quoting* American Mut. Liab. Ins. Co. v. Parker, 144 Tex. 453, 458, 191 S.W.2d 844, 847 (1945).