matter of public policy. The disclaimer itself therefore did not violate public policy, because it did not attempt to deprive her of the rights granted by the Act.[5] The Superior Court found no precedent to support applying §204(a) to waivers benefiting third parties.

II. The Pennsylvania Supreme Court's Ruling

Plaintiff appealed to the Pennsylvania Supreme Court. She reasserted her claim that the disclaimer violated Pennsylvania public policy since it was clearly contrary to the plain language of §204(a) of the Pennsylvania Workers' Compensation Act.[6] Since the language of §204(a) is unambiguous, she argued, the court must apply the statute as written, without "interpreting" it as had done the Superior Court. Plaintiff also argued that the disclaimer conflicted with the subrogation clause of §319 of the Act, which allows a liable employer to be subrogated to the right of the employee when the latter's injury is caused in whole or in part by the act or omission of a third party.[7] Finally, plaintiff asserted that the disclaimer is incompatible with the common law of contract, as it purports to waive a cause of action not yet accrued.

Sunoco reiterated that, properly understood, §204(a) does not apply to releases benefiting third parties, but only to an employer's attempt to reduce its own liability.[8] It supported its argument by citing a Pennsylvania case holding that §204(a) only prohibited agreements to hold *the employer* harmless for future injury.[9] Since plaintiff did recover Workers' Compensation for her injuries, the disclaimer did not contravene the public policy behind the Act.

The Pennsylvania Supreme Court rejected plaintiff's plain language argument after looking at §204(a) as a whole, noting that the majority of §204(a) addresses the employer's obligation under the act, not third party duties.[10] Therefore the court found the section ambiguous as to the issue of third party liability.[11] The court believed that the legislature likely intended the "agreements" and "release of damages" exclusions in §204(a) to refer to employer obligations, though it conceded that the statute does not make this conclusion inevitable. In light of this ambiguity, the

... continued page 7

Louisiana Supreme Court Strikes Down Statewide Voucher Program

*by Leslie Davis Hiner**

On May 7, 2013, the Supreme Court of Louisiana ruled that its state's statewide voucher program, an expansion of the New Orleans/Jefferson Parish voucher adopted in 2008, violated the Minimum Foundation Program (MFP) of the Louisiana Constitution.[1] Article 8, Section 13(B) of the Louisiana Constitution specifies that:

> [MFP] funds appropriated shall be equitably allocated to parish and city school systems according to the formula as adopted by the State Board of Elementary and Secondary Education, or its successor, and approved by the legislature prior to making the appropriation.[2]

The Supreme Court held that once funds are dedicated to the MFP, they cannot be used for any purpose other than to support public school systems. The court also rejected defendant's claim that funds appropriated in excess of necessary public school funding could be used for vouchers. The court determined that using the MFP process for vouchers was also constitutionally impermissible.

The court also rejected the argument that voucher students are public students entitled to state funding under MFP, citing the constitution's specific language requiring the funding of public schools, not school children.

Finally, the Supreme Court clearly stated that this ruling did not address the merits of the voucher program, only the funding mechanism. Subsequent to this decision, the Louisiana Legislature funded the voucher program through a line item appropriation; no child's education has been interrupted as a result of this decision.

**Leslie Hiner is a vice president at the Friedman Foundation for Educational Choice. She has been a member of the Indiana State Bar since 1985 and is a former president of the Federalist Society Indianapolis Lawyers Chapter.*

Endnotes

1. Louisiana Federation of Teachers v State, Nos. 2013–CA–0120, 2013–CA–0232, 2013–CA–0350, (La. May 7, 2013).

2. LA. Const. art. 8, § 13(B).