Well, That's Settled . . . Or Is It?

Key Issues Every Litigator Should Remember about Settlement Agreements

By Moheeb Murray

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Finally settling a hard-fought case can be one of the great pressure release valves that a trial lawyer can experience, ranking only behind a favorable verdict or winning on a dispositive motion. But if not undertaken with sufficient planning and attention to detail, a settlement agreement can quickly become an excruciating pressure point if things go awry. No one wants to have to make the "Houston-we-have-a-problem" call to their client because the other side claims you agreed to a settlement when you didn't (or vice versa) or after the parties went through a full-day mediation capped with a term sheet, only to fight about whether all the material terms were captured. This article discusses key points every litigator should keep in mind when approaching settlement, including how a settlement agreement is formed, the issues that often cause parties to stumble when finalizing an agreement (and how to avoid them), and the mechanisms to invalidate a settlement, if necessary.

When Does an Enforceable Settlement Agreement Arise?

Oral Settlement Agreements Outside of Mediation

In general, an agreement to settle a claim or lawsuit is considered like any other contract. Therefore, absent any rules or statutes in a jurisdiction, an oral agreement by the parties or their counsel that addresses material terms can be binding if it complies with the statute of frauds. Recall, a statute of frauds typically requires the following to be in writing: an agreement that cannot be performed within one year (e.g., a settlement payout schedule exceeding a year); a promise to answer for another's debt; a promise in consideration of marriage; a promise by a personal representative to answer for damages out of her own estate; an agreement to pay a commission for the sale of real estate; a contract involving the sale of goods over $500; and certain other types of agreements. See e.g., MCL 566.132; UCC §2-201. Of course, the scope of the statute of frauds can vary by state, so be sure to check your jurisdiction.

Even if an oral settlement agreement satisfies an applicable statute of frauds, enforceability of that agreement can vary by jurisdiction. Federal common law does not necessarily require that a settlement be reduced to writing. *See, e.g., Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981) ("Federal law does not require, however, that the settlement be reduced to writing. Absent a factual basis rendering it invalid, an oral agreement to settle a Title VII claim is enforceable against a plaintiff who knowingly and voluntarily agreed to the terms of the settlement or authorized his attorney to settle the dispute.") But irrespective of the statute of frauds, several states (e.g., CA, MI, etc.) expressly prohibit oral agreements settling lawsuits, unless (1) the agreement is put on the record in court, (2) the judge has an opportunity to question the parties about whether they understand the agreement's terms, and (3) the parties expressly acknowledge the terms of the agreement

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to which they will be bound. See, e.g., Cal. Code Civ. Proc. §664.6; MCR 2.507(G) ("Agreements to be in Writing. An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.") Therefore, if, for example, attorneys agree to a settlement number and certain terms over the phone on September 1 but the agreement later falters on September 5, jurisdiction-specific rules and statutes will likely determine if the parties can be forced to settle for the number and terms accepted during the September 1 call.

Settlement Agreements Established by Letters, Emails, or Even Text Messages

Can a party be bound to a settlement just by sending a letter, email, or text? The answer is yes, if the necessary conditions exist. The two sides to a dispute often have settlement negotiations that morph into written exchanges culminating in a settlement when an offer is made and accepted. Under the Uniform Electronic Transactions Act, electronic communications satisfy any statute requiring a contract to be in writing if the required elements of contract formation exist. What it means to "sign" can surprise clients, or sometimes some lawyers; even if there is no "ink" signature on a single settlement agreement document, an enforceable written agreement can be established if the parties' counsel (or the parties themselves) have simply "subscribed" to the written communications establishing the offer and acceptance of the material terms of settlement. This is true even if the parties' communications might state that they plan to enter into a formal settlement agreement later. See., e.g., *Scheinmann v. Dykstra*, No. 16-cv-5446, 2017 WL 1422972 at *6 (S.D.N.Y. Apr. 21, 2017); *Kloian v. Domino's Pizza L.L.C.*, 273 Mich. App. 449; 733 N.W.2d 766 (2006). Generally, a sender of a communication "subscribes" by typing or signing his or her name at the end of the communication. *Kloian*, 273 Mich. App. at 459 (holding one communication was subscribed because the attorney "typed, or appended, his name at the end of the e-mail message" but another was not because the email only had the "attorney's name *at the top* in the email heading.") But specifically typing one's name at the bottom isn't required in some jurisdictions. Some courts have held a sender can subscribe to or authenticate intent in an email by including a pre-affixed email signature block or by virtue of the sender's name appearing in an email "from" box. *See, e.g., Khoury v. Tomlinson*, 518 S.W.3d 568, 576 (2017) ("The 'from' field in the email authenticated the writing in the email to be Tomlinson's. [The] UETA expressly allows for automated transactions to satisfy the requirements of contract formation."); but see *Cunningham v.*

Zurich Am. Ins. Co., 352 S.W.3d 519, 529-30 (2011) (holding automatic signature block insufficient to show intent to be bound). These cases, of course, don't preclude a party from contesting whether the written communication is authentic or legitimately sent by the person who purportedly subscribed to it. But those would likely be very rare circumstances to challenge a settlement agreement.

As communication becomes increasingly informal, an emerging issue is whether text messages or direct messages (DM or instant message) can create a settlement agreement. So far, in some jurisdictions, the answer seems to be yes, if the prerequisites noted above are met. For instance, in *St. John's Holdings, LLC v. Two Electronics, LLC,* 2016 WL 1460477 (Mass. Land Ct. 2016), the court held that text messages incorporating various other correspondence were enough to create an enforceable agreement when the texts indicated an agreement and the parties' agents concluded the texts with their names as the senders. *Id.* *6-10. The court noted that the parties did not include their names at the end of later text messages about the agreement, but nonetheless held that the texts to which the parties specifically subscribed showed their intent to be bound. *Id.* As noted above, however, some courts take a broader view than others about what indicates a party's "subscription" to an electronic communication, so the mere absence of names at the end of text messages might not defeat an argument that the texts created a binding contract.

Mediated Settlement Agreements

Mediated settlements often result after hours-long shuttle diplomacy between the parties conveying oral offers and counteroffers, and, eventually, an oral acceptance. In practice, most sophisticated parties will then memorialize that settlement through a term sheet before leaving the mediator's office or very shortly thereafter, with contemplation of executing a more formal settlement agreement later. But there are times when the settlement process falls apart between the end of mediation and execution of a final, formal settlement agreement. This breakdown can leave the parties arguing about whether an oral agreement at the mediation or the term sheet (if one exists) is an enforceable settlement agreement.

Consider first whether the Uniform Mediation Act ("UMA") applies; many states have adopted or are in the process of adopting it. (New Jersey, Iowa, Illinois, Nebraska, Hawaii, Idaho, Vermont, Utah, South Dakota, Ohio, Washington, Georgia, and the District of Columbia.) The UMA prohibits disclosing to a court confidential communications during or in furtherance of a mediation, making them inadmissible as evidence in any legal proceeding. UMA §4. It does, however, allow the parties to agree in advance that certain mediation-related communications can be admissible if a disagreement arises later. *Id.* §6. Effectively then, under the UMA, unless the parties have agreed otherwise in writing, a party seeking to enforce a settlement agreement must rely only on the written agreement. But states that have not adopted the UMA, and federal courts presiding over federal-question cases, may have different standards in their court rules or rules of evidence for enforcing oral settlement agreements at mediation or allowing evidence of mediation communications. For instance, Michigan Court Rule 2.412 specifically addresses the issue. First, it defines "mediation communications" to include statements, whether oral or in a record, verbal or nonverbal, that occur during the mediation process or are made for purposes of retaining a mediator or for considering, initiating, preparing for, conducting, participating in, continuing, adjourning, concluding, or reconvening a mediation. Second, it states that "[m]ediation communications are confidential. They are not subject to discovery, are not admissible in a proceeding, and may not be disclosed to anyone other than mediation participants" subject to exceptions stated in a subrule, one of which is if the parties agree in writing to allow the disclosure. MCR 2.412. And for those jurisdictions that haven't adopted the UMA or don't have other similar rules, the admissibility of mediation communications may be less clear.

Considering it's probable that the parties' oral or written communications during or leading up to mediation won't be usable as evidence, a term sheet could play a bigger role than merely being a placeholder until the parties enter a formal settlement agreement. In fact, it could end up being *the* settlement agreement, because the parties won't be able to submit evidence beyond what the signed term sheet says. Therefore, it is critical to have a term sheet in hand, signed by the attorneys *and* clients, containing all the material terms you absolutely must have to settle the case. If you want finality from the mediation, your term sheet should expressly state entering a subsequent formal settlement agreement is not a precondition of settlement. But if you believe there are material terms still to be considered, you should expressly indicate in the term sheet that settlement is not final until there is a fully executed, formal settlement agreement yet to be completed.

Common Stumbling Blocks That Arise after "Agreeing" to Settle

The terms of settlement agreements are as varied as the cases from which they arise. Lawyers and parties can also have widely varying degrees of experience and sophistication in settling cases. And even among those with relatively equal sophistication and experience, there can be a strategic game of "gotcha" over certain terms by one side to try to gain additional leverage for concessions from the other. Consequently, the parties could have conflicting views on what constitutes a material settlement term. And that could leave one party with an agreement different than the one it thought it had, or both sides without an agreement at all. It is therefore important to expressly raise and memorialize in writing all of the material terms in a term sheet (keeping in mind, too, the points above).

Failure to Negotiate Confidentiality, Nondisparagement, or Similar Terms

Some attorneys consider confidentiality, nondisparagement, or other similar terms to be "standard" agreement terms. Accordingly, they may not expressly negotiate for these terms and not include them in a settlement term sheet, merely expecting them to be included in the "formal" settlement agreement. But this could be problematic for a few reasons. For example, if a plaintiff agreed to a settlement number, but confidentiality and nondisparagement were never raised beforehand in a written offer or a term sheet, he might argue the settlement agreement did not include consider-

ation for those terms. He might then take the position that if the defendant wants confidentiality, it has to pay more than the already-agreed-upon payment.

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Plaintiffs' lawyers are increasingly raising this issue based on the 2003 "Dennis Rodman case," which is a tax court case captioned *Amos v. Commissioner*, T.C. Memo. 2003-329. The case arose after Dennis Rodman allegedly kicked Amos, a sideline photographer, in the groin during a 1997 NBA game. Amos sought medical care, but doctors found no serious injury. Nonetheless, within a week, he pursued a claim against Rodman. Rodman quickly paid Amos $200,000 to settle, but a substantial motivation for the agreement was confidentiality, which the agreement addressed in detail including stating confidentiality was part of the consideration for settling. Amos did not report any portion of the $200,000 as income. He was later audited, and after an appeal to the tax court, ordered to pay tax on $80,000 of the settlement. The tribunal ruled that under I.R.C. §104, only damages for physical injury are non-taxable, so it had to examine the "dominant reason" for the agreement to determine what portion was taxable. It concluded that, since the agreement did not apportion how much of the settlement was for physical injuries, it had to make its own determination of what the apportionment should be. It concluded that, based on the record, 60% was for physical injury and 40% was for confidentiality.

Because of their fear of tax consequences to their clients, plaintiffs' attorneys, even in cases outside of the personal-injury context, are taking various positions: categorically not agreeing to confidentiality or nondisparagement provisions; demanding that the agreement expressly state that none of the settlement proceeds are for confidentiality; demanding that the agreement set a nominal amount as consideration for those terms; or seeking to enter into an entirely separate agreement for confidentiality. If a litigant does not address these issues in settlement negotiations, it runs the risk of confidentiality being excluded from the agreement or, perhaps, a court finding there was no agreement at all.

Release Terms

Sometimes parties exchange correspondence or execute a term sheet memorializing their settlement without specifically addressing release terms. Again, a party might assume a release is a standard term both sides will address later in a "formal" agreement. But in cases with, for example, multiple parties asserting claims, counterclaims, and crossclaims, or if there are non-party indemnitors of a defendant, the release terms might be critically important. If these terms aren't expressly negotiated before the parties indicate their assent to settlement, they could end up fighting about it later. And at least some courts take the view that a release is not necessarily a material settlement term. *See e.g., In re Deepwater Horizon*, 786 F.3d 344, 357 (5th Cir. 2015) ("Release provisions are generally—though not always—material terms of settlement agreements. However, even where the *existence* of a release is material, the *precise terms and specific language* of the release are not necessarily material. Consequently, 'even where the scope of the release is disputed,... courts routinely enforce settlement agreements even where the precise wording of a release has not been finalized.' This remains true even when one of the parties ultimately fails to sign the finalized release.") (internal citations omitted).

Indemnity Terms and Liability for Breaches of Warranties in the Agreement

Though indemnity clauses appear in many settlement agreements and might be thought of as "boilerplate," they are often quite the opposite. It is usually important to have precise language about the scope and limits of an indemnity obligation. Waiting to negotiate the specifics until after one or both parties believes there is a settlement agreement either through written correspondence or a mediation term sheet can be a significant stumbling block to finally concluding a case.

Medicare Set-Asides and Other Liens

For injury cases involving plaintiffs who are Medicare beneficiaries or will become eligible within 30 months of settlement, failing to address Medicare's interests in the settlement can substantially delay, or even scuttle, a settlement. Under the Medicare Secondary Payer Act, Medicare is entitled to reimbursement for injury-related medical expenses it paid for the plaintiff or will pay in the future. This may require making a portion of the settlement proceeds payable to Medicare, and might even necessitate creating a "set-aside" for future payments. Obtaining the necessary information from conditional-payment-information letters or a final demand letter from Medicare can take months, and there are stiff penalties for both sides for not complying with the Medicare Secondary Payer Act. So, a failure to address this issue before coming to an agreement on a payment can leave the parties scrambling and might cause them to abandon settlement altogether.

Similarly, parties should be careful to negotiate expressly about the resolution of any other liens, such as attorney liens from plaintiff's prior counsel, tax liens on any property at issue in the settlement, insurance provider liens, and any mechanics liens or construction liens. Again, having negotiated a "settlement" amount without accounting for these issues could leave a party with unexpected liability, causing them to try to renegotiate an agreement or claim there never was a binding agreement in the first place.

Undoing the Terms of a Final Settlement

Bases for Voiding a Settlement Agreement

The general bases for voiding all or part of a settlement agreement are similar to those for other contracts. Broadly, those bases are fraud (or fraud in the inducement), mutual mistake of fact, illegality,

duress, and undue influence. *See e.g., Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1163 (Del. 2010) (release will be set aside where there is fraud, duress, coercion, or mutual mistake concerning the existence of a party's injuries).

Fraud in the Inducement

Fraud in the inducement is an affirmative defense to enforcement of a settlement agreement that can entitle the party asserting it to rescission. *See Jordan v. Knafel*, 378 Ill. App. 3d 219, 229; 880 N.E.2d 1061 (2007). To establish the defense, a party must show: (1) a representation of a material fact; (2) made for the purpose of inducing the other party to act; (3) known to be false by the maker, or not actually believed by him on reasonable grounds to be true, but reasonably believed to be true by the other party; and (4) relied upon by the other party to his detriment. *See e.g., Id.*

In the *Jordan* case, NBA star Michael Jordan brought a declaratory-judgment action against Karla Knafel seeking to, among other things, invalidate an alleged oral agreement to pay Knafel $5 million per year to not file a paternity suit against Jordan. Jordan denied he had made the agreement at all, but argued that even if there had been an agreement, it was induced by Knafel's fraudulent representation that Jordan was her child's father, which was eventually established through DNA testing. The court agreed. It held that the paternity issue was material to Jordan's decision to enter into the agreement, such that it was at least a significant factor in his decision to act. *See id.*at 229-30. It also held that Knafel knew or should have known that her representation to Jordan with certainty that he was the child's father was false because she also had unprotected sex with another man during the relevant timeframe. *Id.* And "when a party claims to know a material fact with certainty, yet knows that she does not have that certainty, the assertion constitutes a fraudulent misrepresentation." *Id.* at 231 (citation omitted). Her "fail[ure] to disclose material information in the process of contract formation" rendered the agreement voidable. *Id.* at 232. Finally, the court noted that, because Knafel did not provide contrary evidence, Jordan's reliance would be presumed because "representations [were] made in regard to a material matter and action [by Jordan] has been taken." *Id.*at 232-33 (citations omitted).

The *Jordan* case did not include a written agreement and therefore did not address the effects of a merger/integration clause or a "no-reliance" provision on Jordan's fraud theory about Knafel's pre-settlement representations. Had there been a written agreement with such clauses, it would be necessary to understand whether and to what extent Jordan could have affected the fraud argument. As an initial matter for discussion, the distinction between integration/merger clauses and no-reliance clauses is often overlooked. Judge Posner, in the Seventh Circuit, has provided one of the better explanations of the important difference:

> By virtue of the parol evidence rule, an integration clause prevents a party to a contract from basing a claim of breach of contract on agreements or understandings, whether oral or written, that the parties had reached during the negotiations that eventuated in the signing of a contract but that they had not written into the contract itself. But fraud is a tort, and the parol evidence rule is not a doctrine of tort law and so an integration clause does not bar a claim of fraud based on statements not contained in the contract. Doctrine aside, all an integration clause does is limit the evidence available to the parties should a dispute arise over the meaning of the contract. It has nothing to do with whether the contract was induced, or its price jacked up, by fraud.

Vigortone AG Prod., Inc. v. PM AG Prod., Inc., 316 F.3d 641, 644 (7th Cir. 2002). After noting "the majority rule is that an integration clause does not bar a fraud claim," he observed that "[o]ne consequence of the rule is that parties to contracts who do want to head off the possibility of a fraud suit will sometimes insert a 'no-reliance' clause into their contract, stating that neither party has relied on any representations made by the other." *Id.* And "[s]ince reliance is an element of fraud, the clause, if upheld—and why should it not be upheld, at least when the contract is between sophisticated commercial enterprises—precludes a fraud suit." *Id.* at 645. In sum, the general rule is that an integration/merger clause does not bar seeking to rescind a settlement based on fraud, but a no-reliance provision will bar fraud-based rescission.

Some courts, however, take a different view, holding that even a "no-reliance" clause may not preclude a fraud claim. For example, one panel of the Florida Court of Appeals held that the only way to preclude rescission based on fraud is to explicitly say so:

> [Defendant] cites numerous authorities from other jurisdictions in an attempt to persuade us there is a distinction between a "merger and integration" clause and a "no-reliance" clause, and we should follow the precedents of other jurisdictions that a "no-reliance" clause precludes rescission based on fraud in the inducement. However, we conclude our supreme court has spoken clearly that no contract provision can preclude rescission on the basis of fraud in the inducement unless the contract provision explicitly states that fraud is not a ground for rescission.

Lower Fees, Inc. v. Bankrate, Inc., 74 So. 3d 517, 520 (Fla. Dist. Ct. App. 2011). But even Florida courts disagree on this point. *See, Billington v. Ginn-La Pine Island, Ltd.*, 192 So.3d 77, 84 (Fla. Dist. Ct. App. 2016) ("[W]e hold that the 'non-reliance' clauses in this case negate a claim for fraud in the inducement because Appellant cannot recant his contractual promises that he did not rely upon extrinsic representations.")

The distinction between a merger/integration clause and a no-reliance clause is important, because if a party wants to avoid the effect of a merger clause to bring in evidence of the parties' obligations based on agreements or terms not included in the settlement, it must have the ability to viably assert fraud. "[W]hen a contract contains a valid merger clause, the only fraud that could vitiate the contract is fraud that would invalidate the merger clause itself, i.e., fraud relating to the merger clause or fraud that invalidates the entire contract including the merger clause." *LIAC, Inc. v. Founders Ins. Co.*, 222 F. App'x 488, 493 (6th Cir. 2007) (quoting, *UAW-GM Human Resource center v. KSL Recreation Corp.*, 228 Mich. App. 486, 503; 579 N.W.2d 411 (1998)). If the agreement does not include a no-reliance clause, a party might be able

to overcome the merger/integration provision. But if the agreement has no-reliance language, a party's attempts to overcome the merger/integration clause will not be successful, at least in most jurisdictions.

Mutual Mistake of Fact

The *Jordan* case discussed above also addresses when a mutual mistake of fact renders a settlement agreement voidable. If a mistake by both parties "as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake." *See e.g., Jordan v. Knafel*, 378 Ill. App. 3d 219, 234, 880 N.E.2d 1061 (2007) (quoting, Restatement (Second) of Contracts § 152, at 385 (1981)). As an alternative to Jordan's fraud-in-the-inducement argument, the court also determined the contract would be voidable because, at minimum, Jordan and Knafel were mutually mistaken about the fact of the child's true paternity. *Id*. It found the issue of paternity went to a basic assumption on which the contract was made because it was consideration for Jordan to settle and Jordan did not bear the risk of mistake regarding the child's paternity, because he "had no duty to attempt independent verification of the information especially where... ascertainment of the true fact was more readily available to Knafel than it was to Jordan." *Id*. at 234-35.

Impossibility of Performance, Duress, Illegality, and Undue Influence

There are other, though less frequently litigated, legal principles that a party might rely on to escape a settlement agreement, including impossibility, duress, illegality, and undue influence. For instance, after coming to a settlement agreement, a party might assert a right to rescind the agreement because certain unanticipated or changed circumstances make it impossible for that party to perform the settlement agreement. But impossibility arises only when a party is unable to perform because of unanticipated and unforeseeable circumstances beyond that party's control. *See Freedman v. Hason,* 155 A.D.3d 831, 833; 65 N.Y.S.3d 59 (2017) (rejecting claim of impossibility to performing settlement agreement where bank seized escrow funds to be used for settlement when the bank's seizure of those particular funds was foreseeable.)

A party might also try to argue that it entered into the settlement agreement only because it had no other choice. But the standard for proving duress is extremely high. Duress cannot vitiate a contract absent extreme conditions such as threats of physical or economic harm, criminal prosecution, or unjustified civil proceedings. The party asserting duress must also establish the other party acted with intent to cause it to act to its own detriment by taking a certain action or refraining from action. Mere fear is insufficient. The acts or threats must have been to a degree that the party claiming duress was deprived of its freewill by agreeing to settle. And, in some jurisdictions, a party claiming duress must prove that the other party was doing an act it "had no legal right to do" and "some illegal exaction or some fraud or deception." *See e.g., Lockwood Int'l, Inc. v. Wells Fargo Bank, N.A*., 459 F. Supp. 3d 827 (S.D. Tex. 2020).

To set aside a settlement agreement based on undue influence, a party asserting it must show by clear and convincing evidence it "was subject to undue influence, that there was an opportunity to exercise undue influence, that there was a disposition to exercise undue influence for an improper purpose, and that the result was... the effect of such undue influence." *Pawnee Cty. Bank v. Droge*, 226 Neb. 314, 321; 411 N.W.2d 324 (1987).

If a party can demonstrate that performance of a settlement agreement or parts of it will constitute an illegal act, it could have the agreement voided in whole or in part. "A contract to do a thing which cannot be performed without violation of the law" violates public policy and is void. *In re Kasschau*, 11 S.W.3d 305, 312 (Tex. App. 1999) (voiding a settlement agreement where a provision "illegally required the parties to destroy evidence in a potential criminal proceeding brought at the instance of non-parties to the settlement agreement.") "As a general rule, where part of the consideration for an agreement is illegal, the entire agreement is void if the contract is entire and indivisible." *Id*. "The doctrine of severability is an exception that applies in circumstances in which the original consideration for the contract is legal, but incidental promises within the contract are found to be illegal." *Id*. "In such a case, the court may sever the invalid provision and uphold the valid portion, provided the invalid provision does not constitute the main or essential purpose of the agreement." *Id*.

Practical Tips for an Effective Settlement Agreement

Whether parties have an enforceable settlement agreement can, at times, be uncertain. It's often not so simple as pointing to an agreement with "signatures on the dotted lines." Depending on the circumstances, an agreement could also arise, sometimes unexpectedly, from a conversation, email, text message, term sheet. To alleviate some of the uncertainty, counsel should keep in mind the following tips:

- Written negotiation communications (including emails and text messages) that are not intended to create an agreement should state that they are subject to further discussion, subject to agreement, or similar terms.
- Have a draft term sheet or a template with you at the mediation to ease the process.
    - o Have a preplanned list of all desired material terms before the mediation, and add or subtract from it as the mediation progresses.
    - o The term sheet should state that it contains all of the material terms.
- A term sheet should state that a formal written settlement agreement is not a precondition to settlement, unless that's what you want.
- Don't rely on any oral statements. Include a comprehensive integration clause and no-reliance language preferably including a specific waiver of any claims that the agreement was induced by fraud.
- Consider making the mediator the arbitrator of disputes over settlement agreement and make that decision unappealable. In the alternative, include a provision stating that the same court will retain jurisdiction to enforce the agreement, and include that language in an order.