

POTENTIAL CHECKLIST FOR DISCUSSING THE SETTLEMENT AGREEMENT

1. Which party will be responsible for drafting the documents?
2. Is it necessary/preferable to have a Court Order that memorializes or approves the Settlement?
 - a. Do the parties want a remedy that is merely breach of contract or defiance of a Court Order in the event of a breach of the settlement?
 - b. Was the cause of action upon which the case was based one that requires Court approval of the Settlement; *e.g.*, a class action.
3. If the Settlement concerns pending litigation, and will result in its termination, **with or without prejudice**, who prepares/files the document that affects such termination?
4. Have all the specific terms of the Settlement been negotiated?
5. If money is to change hands:
 - a. If there are preconditions to one or more payments, are those clearly set forth?
 - b. Is the amount of the payment(s) clearly set forth?
 - c. Is the denomination of the payee(s) spelled-out?
 - d. What is the mechanism of payment(s); that is, paper check, electronic transfer, or something else?
 - e. Is that fact of “payment” or “receipt” of the funds defined; *i.e.*, clearance of a paper check following the payee’s receipt.
 - f. Are there other properties, rights, etc., that will be changing hands and do they require any special/separate documents and events to take place?
 - g. **What is the timing of payment?**
 - h. **Are there multiple payments?**
 - i. **Interest?**
6. **Release language and scope of release**
7. Are there ancillary terms/consideration that go beyond mere payment of funds?
 - a. Restrictive covenants as to future business, particularly in reference to employment disputes or intellectual property disputes.
 - b. Non-disparagement clauses that state clear terms as to what they restrict, how they would be violated.
 - c. Are there specified remedies for violations of the above?
 - d. Confidentiality Agreement?
8. Enforcement Mechanisms.
 - a. Choice of Law.

- b. Jurisdiction/Forum selection.
 - c. Arbitration requirement for disputes concerning breach/enforcement of the Settlement Agreement.
 - d. Parties represented by counsel/*anti-contra proferentem*.
 - e. Integration clause.
 - f. Indemnity for violations
9. Miscellaneous.
- a. Signing in counterparts.
 - b. Use of DocuSign/email or fax signatures
 - c. “Who is Bound” litany.