

Five Things to Take into Consideration When Negotiating and Settling a Case

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Settling a case is hard. Negotiating the terms and coming to an agreement can take weeks or months. But once the parties agree to the general terms of a settlement (e.g., the amount of money changing hands and the timing of the settlement payment), there are a number of other considerations for putting the settlement agreement in writing. Here are five things to know when you are negotiating to settle your case:

You Can Protect Your Privacy

Even though the documents filed in the lawsuit will remain public, the settlement details don't have to be public. One effective tactic is to separate the settlement agreement from the "stipulation of discontinuance." This allows the terms in the settlement agreement to remain private, with the only document being filed with the court simply stating that the parties have agreed to discontinue the case.

You Can Set the Rules for After the Lawsuit

A settlement agreement can also be useful for clarifying what the parties can and cannot do after the lawsuit. Often, parties agree to include a provision in the settlement agreement requiring the parties to keep the settlement terms confidential and not to disclose those terms to anyone. Some parties may even agree to a non-disparagement provision, requiring them to refrain from saying anything negative about each other. Although these are provisions that often can be overlooked when negotiating a settlement, they can help to permanently put the dispute to rest and assist the parties with moving past the lawsuit.

Plan for What Happens if Someone Breaches the Agreement

You may be feeling optimistic that you are finally settling your case. Not so fast. Contemplate what may happen if something still goes wrong: what if the settlement payment doesn't come through? Or what if someone breaches some other part of the agreement? The settlement agreement should provide a roadmap for what happens next. You may want to include whether the breach of the agreement goes back to the court you were in or whether the dispute goes to arbitration. You also may want to have a provision stating that if the other side breaches the agreement, you are entitled to additional damages and that the other side has to compensate you for your attorneys' fees. Including these terms in the agreement can save you resources and avoid the frustration of going back to court if the other side breaches.

Don't Overcomplicate It

Lawsuits are stressful. Don't add to that stress by making the settlement more complicated than it needs to be. Include the terms you need to wrap up the case and exclude those other terms that often don't apply to your case or that you don't need. Prioritize being clear with the terms you include, as sometimes a settlement agreement can go on for dozens of pages when just a fraction of that can suffice.

Once You Sign, the Settlement is Final

Before you sign a settlement agreement, make sure you understand each piece of the agreement. If you don't understand some portion of the agreement, you may be taking on obligations you don't know about or waiving rights that leave you worse off. Settling a case requires careful attention to detail, and drafting a settlement agreement that clearly reflects the parties' intentions is critical to avoiding future disputes. By addressing these key considerations in your negotiations, you can ensure the settlement process is effective and that your interests are protected.