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SECURING THE COURT'S CONTINUED JURISDICTION OVER SETTLEMENTS WITH FUTURE PAYMENTS

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The payment of settlements in monthly installments over two or more years is common in this economic downturn. A mediator works hard on getting the parties to agree upon the dollar amount to settle the case, but defendant's attorney comes up with a new condition. Payments have to be made over the next two years, because defendant does not have the ready cash to pay plaintiff within 30 days. Plaintiff's amenable to this, but defense counsel understandably wants to have a settlement agreement entered into that provides for immediate dismissal with prejudice of the underlying lawsuit at the time the parties execute the settlement agreement and make the initial payment. Attorneys and mediators make sure that a CCP section 664.6 provision is in the settlement agreement. However, this is not enough for the court to retain jurisdiction in a settlement with future payments. Dismissing the case immediately before all the payments have been received divests the court of jurisdiction even though the settlement agreement contains the CCP section 664.6 provision. What can the plaintiff's attorney do to keep the court's continued jurisdiction?

The mechanism is very simple and cost effective. The parties will serve on the court the Judicial Council form CM-200 'Notice of Settlement of Entire Case' indicating that it is a conditional settlement, that the case will be dismissed with prejudice within 45 days upon the completion of the terms of the settlement, and provide the date the request for dismissal will be filed. If plaintiff forgets to file a dismissal on the date specified, then the court will dismiss the entire action. This allows defense counsel to rest easy that she will not have to follow up on the dismissal of the case. The settlement agreement that the parties entered into will contain the same language and terms of the Notice of Settlement. If defendant refuses these terms and demands an immediate dismissal, plaintiff's attorney can agree to an immediate dismissal but there is a downside. The court will have no jurisdiction and if the defendant defaults, the plaintiff will have to bring a separate action for breach of the settlement agreement. In this scenario it is wise to have an attorney fee provision that if the settlement agreement is breached the breaching party is responsible for attorney fees and costs.

Legal Authority to Secure Court's Jurisdiction

What is the authority to secure the court's continued jurisdiction? CCP section 664.6 provides 'If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.' Attorneys are uncomfortable with the discretionary language 'the court may retain jurisdiction.' So in the last several years, the California court rules have been drafted to relieve the court of case disposition time goals as an incentive for courts to retain jurisdiction. California Rule of Court 3.1385(b) states that except as provided in (c) or (d) each plaintiff must serve and file a request for dismissal of the entire case within 45 days after the date of settlement. However, attorneys do not have to dismiss a case if the terms of the settlement have not been satisfied. CRC 3.1385(c) states that if the settlement agreement conditions dismissal on the

satisfactory completion of specified terms that are not to be performed within 45 days of the settlement, the notice of conditional settlement must specify the date that the dismissal is to be filed. The Judicial Council has made it easy on the parties by creating form (CM-200) Notice of Settlement. In paragraph 1 the attorney has the option to check 'conditional settlement' and indicate the date that the terms of the conditional settlement will be completed. For example, if monthly payments will not be completed until January 1, 2011, the plaintiff will have 45 days after January 1, 2011 to file a request for dismissal. If something happens on January 1, 2011 and the case cannot be dismissed within 45 days, under CRC 3.1385(e) the party must serve and file a notice and supporting declaration showing of good cause advising the court of its inability to file the request for dismissal and an alternative date for dismissal.

Attorneys argue that judges do not like to keep jurisdiction because it is a red mark against their disposition time goals. However, the Standards of Judicial Administration relating to case disposition time goals provide, in rule 2.2(n)(1)(A): "If a case is removed from the court's control, the period of time until the case is restored to court control should be excluded from the case disposition time goals. The matters that remove a case from the court's control for the purposes of this section include: (1) Civil cases: (A) The filing of a notice of conditional settlement under rule 3.1385." If the parties merely inform the court that the case settled and do not use the Judicial Council form indicating a conditional settlement and the date the dismissal will be filed, they run the risk of the court dismissing their action within 45 days after the notice of settlement.

All the bases have been covered to allow settlements to be paid over years during which time the court continues to retain jurisdiction. The conditional settlement rule has satisfied all involved, parties, attorneys and judges. Sometimes it may take extra steps to educate the judge as to the rules because judges cannot possibly know every California statute and rule. But once the court is informed, the unilateral dismissal of a case which was settled on conditions to be performed in the future will be avoided.

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