



Alerts

Attorney Who Signed Settlement Agreement Not Liable for Its Breach

January 11, 2012

Lawyers for the Profession® Alert

RSUI Indemnity Company v. Bacon, ___N.W.2d___, 2011 WL 4502296 (Neb. 2011)

Brief Summary

The Nebraska Supreme Court held that an attorney who signed a settlement agreement under the legend, “Agreed to in Form & Substance,” was not liable for breach of the payment terms because the language and circumstances surrounding the agreement did not indicate an intent to be bound for that purpose.

Complete Summary

A construction worker sustained injuries as a result of a construction site injury. He subsequently sued, among others, the construction company’s insurance company to recover. The construction worker and the insurer entered into a settlement agreement. The construction worker’s attorney also signed that agreement under a legend stating “Agreed to in Form & Substance.” When a dispute arose about payment terms under the agreement, the insurer sued the construction worker and his lawyer for breach of contract.

The trial court held that both the construction worker and the attorney were liable for breach. The lawyer appealed, arguing that even if the contract was breached, he could not be held liable as a matter of law.

The Nebraska Supreme Court agreed, holding that the attorney was not bound by the agreement for purposes of the claim for breach of the payment terms. The Court first looked at the substantive contractual language, which did refer to the lawyer as well as another attorney from the same firm who had not signed the agreement. The Court noted that the language was ambiguous as to whether it indicated an intent to be bound, and because the insurer conceded that the latter lawyer was not bound by the agreement, the Court focused on the question of whether the other attorney’s signature indicated an intent to be bound. The Court held that nothing about the signature indicated an intent to incur personal liability, noting that the insurer’s lawyer also had signed the agreement even though nothing in the contractual language could be construed to impose liability on that attorney.

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Significance of Opinion

The result in this case should provide some comfort to lawyers who may routinely approve settlement agreements as “Agreed to in Form & Substance” or the equivalent. The opinion nonetheless also highlights risks attorneys may incur by signing settlement agreements. Although the lawyer here ultimately escaped liability on appeal, the fact-specific nature of the Court’s inquiry demonstrates how a lawyer potentially could be bound to and liable under such an agreement despite no such express intent in the agreement itself.

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