You Settled Your Case and the Other Party is Breaching the Settlement Agreement...Now What?

by Ian D. Meklinsky and Student Author Rachel Karamessinis

In most instances, litigations end with the parties executing a settlement agreement and a stipulation to dismiss the case. Ideally, the execution of these documents brings the matter to full and final closure. However, a second round of disputes may inevitably arise as a result of settlement agreement breaches.

Settlement agreements are contracts in which the parties agree to be bound by certain obligations or refrain from certain actions in exchange for the settlement of the parties' claims. For example, in the employment context, a settlement agreement may require an employer to provide the employee with settlement monies and continuation of benefits, and may conversely require the employee to refrain from working with or soliciting the employer's clients and staff.

Not surprisingly, situations arise where a party fails to abide by its obligations as set forth in the settlement agreement. The non-breaching party is typically faced with two choices: 1) initiate a civil cause of action in connection with the breach (often a time-consuming and expensive process), or 2) seek intervention by the court that had jurisdiction over the original dispute. In order to avail oneself of the latter option, however, the parties must engage in pre-settlement planning and purposeful drafting, and include a provision in the settlement agreement that the court will retain jurisdiction over any disputes that arise regarding the settlement agreement. Where the court of original jurisdiction is a federal court, the parties may be able to consent to such a court retaining jurisdiction, at least for a reasonable time period.

The United States District Court for the District of New Jersey recently weighed in on this option in *Brass Smith, LLC v. RPI Industries, Inc.*,[1] a patent infringement case where, according to the terms of the parties' settlement agreement, the defendant was required to cease "making, selling, offering to sell, or importing" an allegedly infringing device by June 1, 2012, and to stop shipments by Aug. 15, 2012. The settlement agreement called for the district court to retain "subject matter and personal jurisdiction to enforce the agreement and resolve any disputes pertaining to it," including compliance with its terms. In accordance with the settlement agreement, the parties moved for an order of dismissal under F.R.C.P. 41(a)(2). They requested the court incorporate into the dismissal order a provision in which it would retain indefinite enforcement jurisdiction over the settlement agreement. In the court's opinion, this request raised several issues regarding its duty or discretion to retain such jurisdiction, including whether it could alter the terms of the settlement agreement and whether its retention of jurisdiction was subject to any time limits.[2]

The *Brass Smith* panel began by explaining that federal courts are courts of limited jurisdiction, which only draw their jurisdiction power from explicit grants by Congress and from Article III of the United States Constitution.[3] As a result, federal courts may not exercise jurisdiction where none exists, even where parties consent to such jurisdiction.[4] In fact, as it relates to the issue at hand, the United States Supreme Court has held that even where a federal court exercised proper jurisdiction over an underlying dispute, a request to enforce the resulting settlement agreement is more than a mere continuation or renewal of the former litigation, and hence requires its own basis for jurisdiction.[5] This holding does not mean, however, that a federal court can never retain enforcement jurisdiction over a settlement agreement. To the contrary, as the *Brass Smith* court explained, through the doctrine of ancillary jurisdiction, a federal court may assert jurisdiction over a matter that it normally would not have jurisdiction over if the matter is incidental to other matters properly before the court.[6]

As the leading treatise on federal practice and procedure explains:

> Under this concept, a district court acquires jurisdiction of a case or controversy in its entirety, and, as an incident to the full disposition

> of the matter, may hear collateral proceedings when necessary to allow it to vindicate its role as a tribunal. As the [Supreme] Court said in 1994, ancillary jurisdiction of this type is necessary "to enable a court to function successfully, that is, to manage its proceeding, vindicate its authority, and effectuate its decrees."[7]

Thus, if a federal court had jurisdiction over the principal action, it may hear an ancillary proceeding, regardless of the citizenship of the parties, the amount in controversy, or any other factor that normally would determine subject matter jurisdiction.

In *Kokkonen v. Guardian Life Insurance Company*, the Supreme Court made clear, however, that a federal district court may only exercise ancillary jurisdiction to enforce a settlement agreement if the parties' obligations to comply with the settlement agreement have been made part of the order of dismissal either: 1) by an expressed provision in the order, or 2) by explicit incorporation of the settlement agreement into the order.[8] In that case, the parties executed a settlement agreement but the stipulation and order of dismissal made no reference of the parties' settlement agreement or the court's continuing jurisdiction to enforce the settlement agreement. In reversing the district court's ruling that it had the "inherent power" to enforce the terms of the settlement agreement, the Supreme Court held that the district court had neither ancillary jurisdiction nor inherent power to enforce the settlement agreement where it was not mentioned in the order. Thus, it is critically important that parties seeking to retain a federal court's jurisdiction over any settlement agreement disputes make such a provision part of the order, as a judge's awareness and approval of the terms of the settlement agreement will not suffice.[9]

The Third Circuit adopted a strict reading of *Kokkonen* in *Phar-Mor, Inc. Securities Litigation*,[10] where it held that incorporation of the phrase "pursuant to the terms of the Settlement" in the dismissal order was insufficient to confer subject matter jurisdiction to enforce the settlement agreement.[11]

While a federal court may retain jurisdiction to enforce a settlement agreement under the doctrine of ancillary jurisdiction,[12] its decision to do so is discretionary.[13] A federal court may, therefore: 1) retain jurisdiction to the extent requested by the parties, 2) decline to exercise ancillary jurisdiction in its entirety, or 3) modify the scope of ancillary jurisdiction requested by the parties.[13] Assuming the court elects to retain jurisdiction over the enforcement of the settlement agreement, it must decide how long that retention of jurisdiction will last.

The maximum length of time over which a court may retain ancillary jurisdiction to enforce a settlement agreement has not been definitively addressed by the courts.[14] A number of court decisions recognize that a length of time greater than the District of New Jersey's 60-day local rule (Local R. 41.1(b)) is acceptable, but do not go so far as to permit a period of indefinite retention. For example, in *Holland v. New Jersey Department of Corrections*,[15] the Third Circuit accepted the district court's consent decree that explicitly retained jurisdiction for four years. Going even further, in *Bronze Shields v. City of Newark*,[16] the District of New Jersey permitted the enforcement of a consent decree for 15 years after entry of the order. On the other hand, in *McCall-Bey v. Franzen*,[17] a decision favorably relied upon by New Jersey courts, the Seventh Circuit noted that federal courts do not have authority to exercise ancillary jurisdiction indefinitely, and reasoned that a 20-year period of enforcement jurisdiction would "impermissibly strain the limits of federal court authority." A period of ancillary authority over a settlement agreement will most likely be considered reasonable if it corresponds to the period of time in which the parties are obligated to comply with the settlement agreement's terms.

In addition to setting forth an explicit retention period, the scope of the district court's ancillary jurisdiction should be addressed in the settlement agreement. For example, is the jurisdiction limited to enforcement of the settlement agreement? Is it to include any disputes relating to the settlement agreement? The narrower the proposed retention of jurisdiction, the more likely a court will be willing to extend that jurisdiction.

Accordingly, as part of the drafting process, employment practitioners should consider including specific language in the settlement agreement, and/or the order of dismissal, setting forth the presiding court's jurisdiction to address any suspected violations of the settlement agreement's terms and conditions, giving thought to the scope and length of such authority. If done properly, the parties may avoid the costs, time and resources associated with commencing a new action to enforce the terms of the settlement agreement. ■

Ian D. Meklinsky is a partner in the labor and employment law department in the Princeton office of Fox Rothschild LLP and represents management in labor and employment matters. Rachel Karamessinis is a third-year law student at Rutgers School of Law—Camden and a law clerk at Marshall Dennehey Warner Coleman & Goggin, P.C. in Philadelphia.

Endnotes

1. 827 F. Supp. 2d 377 (D.N.J. 2011).
2. *Brass Smith*, at 377-80.
3. *Brass Smith* at 380 (*citing Ins. Corp. of Ireland, Ltd. V. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701-02 (1982)).
4. *Brass Smith* at 380 (*citing Samuel-Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 396 (3rd. Cir. 2004)).
5. *Id.*at 380 (*citing Kokkonen* at 378).
6. *Id*. at 380-81 (*citing Kukkonen* at 378).
7. 13 Charles Alan Wright, Arthur R. Miller, Edward H. Cooper and Richard D. Freer, *Federal Practice and Procedure*, § 3523.2 at 213 (3d Ed. 2008).
8. *Kukkonen* at 381.
9. *Id*.
10. 172 F.3d 270 (3d Cir. 1999).
11. *Id*. at 274.
12. *Kukkonen* at 381.
13. *See Wright v. Prudential Insurance Co. of America*, 285 F. Supp. 2d 515 (D.N.J. 2003).
14. *See Glaxo Group Ltd. v. Dr. Reddy's Laboratories, Ltd.*, 325 F. Supp. 2d 502, 509 (D.N.J. 2004).
15. *Brass Smith* at 382.
16. 246 F.3d 267, 270 (3d Cir. 2001).
17. 214 F. Supp. 2d 443, 445 (D.N.J. 2002).
18. 777 F.2d 1178, 1187 (7th Cir. 1985).