

# Timing is Vital in a Release Clause in Any Settlement Agreement



Lawyers – particularly those representing plaintiffs – should give thoughtful attention to the timing of a release clause in any settlement agreement, advises **Lisa B. Markofsky** in a post for **Proskauer Rose LLP**.

Failure to do so, she writes, could result in the plaintiff finding that its “compromise” was nothing more than a unilateral agreement to reduce the value of its claim.

The case could turn on “whether the settlement agreement is construed to be (i) a “substituted contract” wherein Plaintiff accepted the ***promise to perform*** the compromise as satisfaction of its underlying claim or, alternatively, (ii) an ‘executory accord’ wherein Plaintiff accepted actual performance of the compromise as satisfaction of its underlying claim.”

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