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## Introduction Lawyer's Forum - Settlements - New Perspectives - Introduction.

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## LAWYERS' FORUM: SETTLEMENTS— NEW PERSPECTIVES

### INTRODUCTION

L. WAYNE SCOTT\*

The four articles that follow were originally intended to explore the law and problems of settlement, with Texas as the base jurisdiction for discussion purposes. As illustrated by the topics developed, settlement is a multifaceted problem, and the authors have been given broad freedom to explore the problem areas. Matters addressed herein range from selling a settlement<sup>1</sup> to determining the effect of the settlement,<sup>2</sup> with an overview article examining procedural consequences of settlement,<sup>3</sup> to the specific issues relating to the products liability field.<sup>4</sup> It is obvious that settlement as a central topic is extremely broad. As each author has developed the assigned topic, tangential problems have been unveiled to the benefit of the law, at the sacrifice of the limiting title. Yet, the concept of settlement remains as a loose bond for the group of articles, and as the continued title for this Lawyers' Forum.

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1. Branton, *Settlement Strategy, Evaluation, and Brochures*, 12 ST. MARY'S L.J. 407 (1980).

2. Mendelsohn, *Election of Remedies and Settlement - New Lyrics to an Outworn Tune*, 12 ST. MARY'S L.J. 367 (1980).

3. Edgar, *Procedural Aspects of Settlement: An Overview of Texas Law*, 12 ST. MARY'S L.J. 279 (1980).

4. Sales, *Contribution and Indemnity Between Negligent and Strictly Liable Tortfeasors*, 12 ST. MARY'S L.J. 323 (1980).

No one knows exactly what percentage of cases are settled, since many disputes are resolved in that manner before suit is filed. Most would agree that eighty to ninety percent of all disputes are settled, although the percentages drop as to suits instituted.<sup>5</sup> For example, 1979 figures reveal that only thirty-two percent of pending Texas district court cases were disposed of by trial.<sup>6</sup>

Given the significant number of cases affected, the law of settlement is surprisingly undeveloped. A few fundamental principles remain constant, with only minor variations. The doctrine of satisfaction is a good example.<sup>7</sup> Even within the confines of well developed rules of law, questions arise. How does the court submit a case involving joint tortfeasors, one having settled, in light of the comparative negligence statute?<sup>8</sup> When will a settlement on one legal theory preclude a subsequent suit on a second theory advanced by the same plaintiff?<sup>9</sup> Indeed, what is a full satisfaction?<sup>10</sup> The very uncertainty of these areas may make settlements, depending upon the party's point of view, more desirable or more difficult. In the end the article on Settlement Brochures may be the most useful of all, for settlement is an art unto itself involving legal principles of its own.

Realistically, those who pay for settlements are paying to end a

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5. In the instance of personal injury cases alone, 29% of the suits filed in 1979 in the district courts of Texas ended in agreed judgments and 28% were dismissed by the plaintiff (an action usually indicating a settlement). See TEX. JUD. COUNCIL & OFFICE OF COURT AD. ANN. REP. 129 (1980).

6. *Id.* at 128 (1% disposed of by jury trial; 31% by non-jury trial).

7. *Bradshaw v. Baylor Univ.*, 126 Tex. 99, 104, 84 S.W.2d 703, 705 (1935); see, e.g., *T.L. James & Co. v. Statham*, 558 S.W.2d 865, 868 (Tex. 1977) (payment of judgment into registry of court under terms of judgment, in legal contemplation equals full compensation for injuries); *McMillen v. Klingensmith*, 467 S.W.2d 193, 195 (Tex. 1971) (satisfaction equals acceptance of full compensation for injury); *Hodges, Contribution and Indemnity Among Tortfeasors*, 26 TEXAS L. REV. 150, 170-71 (1947) (application of rule of one satisfaction for single wrong to partial settlements).

8. *Deal v. Madison*, 576 S.W.2d 409, 416-17 (Tex. Civ. App.—Dallas 1978, writ ref'd n.r.e.); see *Edgar, Procedural Aspects of Settlement: An Overview of Texas Law*, 12 ST. MARY'S L.J. 279 (1980); *Sales, Contribution and Indemnity Between Negligent and Strictly Liable Tortfeasors*, 12 ST. MARY'S L.J. 323 (1980).

9. *Bocanegra v. Aetna Life Ins. Co.*, 23 Tex. Sup. Ct. J. 502, 506-07 (July 19, 1980); see *Mendelsohn, Election of Remedies and Settlement - New Lyrics to an Outworn Tune*, 12 ST. MARY'S L.J. 367 (1980).

10. See *Knutson v. Morton Foods, Inc.*, 603 S.W.2d 805, 806-07 (Tex. 1980); *Edgar, Procedural Aspects of Settlement: An Overview of Texas Law*, 12 ST. MARY'S L.J. 279 (1980).

dispute. Their usual interest is in foreclosing any future involvement, thus the preclusionary doctrines become the focus of much discussion.<sup>11</sup> Certainty of procedure and the effect of action is absolutely essential to encourage settlement. In many instances the courts and legislature have enunciated broad policy principles which have greatly simplified settlements.<sup>12</sup> In other areas, judicial restraint and legislative inaction have created questions necessitating litigation.<sup>13</sup> The authors explore and highlight these areas. Hopefully, this dialogue will lead to further answers and solutions and will provide a guide to the existing state of the law.

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11. The various preclusionary doctrines are set out in detail in Mendelsohn, *Election of Remedies and Settlement - New Lyrics to an Outworn Tune*, 12 ST. MARY'S L.J. 367 (1980).

12. See *Palestine Contractors v. Perkins*, 386 S.W.2d 764, 767-68 (Tex. 1964); TEX. REV. CIV. STAT. ANN. art. 2212a (Vernon Supp. 1980).

13. See *General Motors v. Simmons*, 558 S.W.2d 885, 862 (Tex. 1977); Sales, *Contribution and Indemnity Between Negligent and Strictly Liable Tortfeasors*, 12 ST. MARY'S L.J. 323 (1980).