

NEWS

Think before signing off on settlement

An ICBC settlement follows a predictable pattern, even though the end result is always uncertain. At some point, the "recovery phase" ends with

the injured victim reaching a permanent plateau after pursuing and following all treatment options available and letting "time heal." It is at that point when

it becomes appropriate to enter into settlement negotiations with the ICBC adjuster.

Often, ICBC has already made an offer during the recovery phase. Sometimes, there has been more than one offer.

Those initial offers typically represent a small percentage of the fair level of financial compensation that is eventually negotiated.

Once settlement negotiations commence, the amount of back and forth with offers and counter-offers depends on a number of factors, with both sides feeling out how firm the other side is in their settlement position.

In a previous column, published Aug. 26, 2007, I commented about a negotiating tip I had heard "on the street," that you should not accept ICBC's first offer.

I countered, tongue in cheek, with: "Don't accept the insurance company's fourth offer." Google "ICBC fourth offer" to see that column.

In a real estate transaction, you hire an agent

ACHIEVING JUSTICE



Paul Hergott

to assist you with the negotiation, but you put pen to paper when making offers and counter-offers for the purchase or sale of a home.

It is your signature, not that of your real estate agent, that goes on those offers and counter offers.

By contrast, a personal injury claim settlement is reached through communications between your lawyer and the insurance adjuster.

Your lawyer helps you make the final settlement decisions, and follows your instructions, but the actual communication to reach a settlement could be as unofficial as a telephone message from your lawyer: "Your latest offer is accepted."

After the settlement is reached, ICBC sends over the settlement funds along with a document called a "Release" containing your formal, written acceptance of the offer.

Your lawyer is unable to release the settlement funds until you have signed the Release.

What happens if you change your mind between the time you instruct your lawyer to accept ICBC's last offer and the time you are sitting across your lawyer's desk to sign the Release?

You haven't signed anything yet. Can you just choose to send back the settlement funds and resume negotiations?

A July 2, 2013, court decision, Gaida v. McLeod dealt with a similar issue.

Mr. Gaida had instructed his lawyer to accept a settlement and that acceptance was communicated to the defence.

Later that night, Mr. Gaida changed his mind.

He says that he had felt pressured when deciding to accept the offer.

His lawyer did what he could to re-open the negotiations but the defence applied to the court to enforce the settlement, and the application was successful.

Quoting from the decision: "A solicitor acting for a party in settlement negotiations acts as the agent of the client, and is presumed to have the authority to bind the client unless the client has limited his authority and the opposing side has knowledge of the limitation..."

Once the "trigger has been pulled" on a settlement, the deal is done.

Your signature on the Release is a mere formality. Whether or not you choose to sign that Release, your case was settled by that telephone message.

What is the lesson here? One lesson is to avoid making settlement decisions when you feel pressured.

You should have the opportunity to be fully advised by your lawyer and to carefully consider your options.

If you find yourself feeling pressured, wait.

Have the words of that Meatloaf song in your mind, the song in which the young lady "by the dashboard lights" stops



CONTRIBUTED

AWARD WINNER... At a recent awards luncheon for members of the Catholic Women's League, the Immaculate Conception Council Special Award was presented to Kay Weisbeck, 96, and a church member for the past 75 years.

the action in full swing and sings, "Stop right there," demanding her boyfriend's commitment that he will love her forever. Like the wise boyfriend, respond with "Let me sleep on it." There is always the chance that an offer will be withdrawn before you have the opportunity to fully consider it, but that occurs only very rarely

and I recommend against feeling pressured by that potential. Only once in my practice do I recall an offer being withdrawn before my client had a full opportunity to consider it. The case ended up settling at approximately \$100,000 more than the withdrawn offer. Don't be like the boyfriend in the Meatloaf song who ends up giving into the kind of pressure no man should have to withstand and lives with regret for the rest of his life.

Had I only been there to reassure him that the offer would almost certainly be on the table again the following night. Another lesson is to realize that when you give a thumbs up to your lawyer, the deal is done. There is no turning back.

This column is intended to provide general information about injury claims. It is not a substitute for retaining a lawyer to provide legal advice specifically pertaining to your case. Paul Hergott is a lawyer at Hergott Law in West Kelowna.

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