

CARGO UPDATE NEWSLETTER

BEWARE THE “CONDITIONAL” SETTLEMENT CHECK

Many a shipper or subrogated cargo insurer has encountered this situation. You make your claim to the carrier. You present all your claim documents. The claim is disputed. You negotiate back and forth. You finally arrive at a settlement figure that is somewhat less than your loss. You give a written Release of the particular claim. You sit back and wait for the settlement check to arrive thinking you are done. Just when you thought it was over, the check arrives but it is not just a check, it is a check that contains or is accompanied by conditional language such as, “in full payment of all claims,” or “endorsement is acknowledgment of full settlement and release of all claims,” which language may go well beyond what you intended in your written Release.

What happens if you endorse and cash the check? Are you bound by this language? This question has been the subject of much litigation but traditional legal thought has considered this situation to be an offer of accord and satisfaction. The unwitting payee who endorsed and cashed the check could be considered to have accepted the condition, and could be bound thereby. What if the payee crossed out the language or added some supplementary language of its own rejecting the condition? At common law, the payee was generally bound by the payor’s conditional language, and attempts to cross out or modify the language were ineffective.

Article 3 of the Uniform Commercial Code governing negotiable instruments now includes a section devoted entirely to accord and satisfaction, UCC § 3-311. In Florida, this Section is codified at Fla. Stat. § 673.3111. This statutory section follows the common law with certain exceptions. Initially, the debtor must prove that it in good faith tendered the check to the claimant in full satisfaction of the claim, that the amount claimed was unliquidated or subject to a bona fide dispute, and that the claimant obtained payment on the check. The claim is discharged if the check or an accompanying written communication (cover letter) contained a conspicuous statement to the effect that the check was tendered as full satisfaction of the claim. The claim is not discharged under the statute if the claimant is an organization that sends a conspicuous statement to the debtor that communications concerning disputed debts, including checks tendered as full satisfaction of a debt, are to be sent to a particular person, office, or place; and the debtor fails to so comply; or, the claimant, whether or not an organization, within 90 days after payment of the check, tenders repayment to the debtor. (The 90 day safe harbor provision does not apply to organizations that sent the conspicuous statement). Notwithstanding these exceptions, the claim will be discharged if the debtor proves that within a reasonable time before collection of the check was initiated, the claimant or an agent having direct responsibility as to the disputed obligation knew that the check was tendered in full satisfaction of the claim.

To summarize, with certain exceptions, a payee may be at risk of unwittingly discharging claims by endorsing and cashing a “conditional” settlement check even if the payee does so under written protest or reservation of rights. Each State’s rules, decisions, and laws are different, and different States have adopted different portions of the UCC, so professional advice should be sought with regard to which rules, decisions and laws are applicable to your particular State and to your particular circumstances

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