

If you have questions regarding the Finality of Releases and Dismissal Orders, please email [info@querrey.com](mailto:info@querrey.com). One of our attorneys will contact you.



www.querrey.com®

© 2012 Querrey & Harrow, Ltd. All rights reserved.

## ILLINOIS LAW MANUAL

### CHAPTER X SETTLEMENTS & RELEASES

#### D. FINALITY OF RELEASES/DISMISSAL ORDERS

##### 1. Basic Law - Releases

A release is a contract and, therefore, is governed by contract law. Loberg v. Hallwood Realty Partners, 323 Ill. App. 3d 936 (1st Dist. 2001). Thus, the language of a release is generally controlling. Aqua-Aerobics Systems, Inc. v. Ravitts, 166 Ill. App. 3d 168 (2nd Dist. 1988). As a result, a court may not, on its own accord, alter the terms of a release. Loberg, 323 Ill. App. 3d at 1025.

Because the terms of a release govern its enforcement, the only tortfeasors who are discharged in liability by a release are generally those who bargained for it as well as those who are specifically identified in the release. Guerrero v. Sebastian Contracting, 321 Ill. App. 3d 32 (1st Dist. 2001). For example, where a claimant releases a negligent driver, his parents, and "ALL OTHER PERSONS, FIRMS AND CORPORATIONS, BOTH KNOWN AND UNKNOWN," the claimant is not necessarily prevented from filing the lawsuit against someone else other than the driver and his parents.

However, in some circumstances the designation and identification of a class of persons in a release can discharge other tortfeasors even though they are not named specifically. Polsky v. BDO Seidman, 293 Ill. App. 3d 414 (2nd Dist. 1997). For example, where a claimant releases a corporation and its "past and present officers,

directors, employees, and agents," the claimant is prevented from filing a lawsuit against the corporation's agents. Polsky, 293 Ill. App. 3d at 421; Cummings v. Beaton & Associates, Inc., 249 Ill. App. 3d 287 (1st Dist. 1992). Courts have held that a class designation, such as "agents," satisfies the requirement of specific identification.

##### 2. Analysis

###### a. Release as a Surrender of a Claim

Consider the situation where the claimant suffers property damage caused by a negligent party but agrees to abandon his claim by entering into a Release Agreement which incorporates the following general language:

The undersigned agrees to release and forever discharge yellow cab company, its officers, agents, employees, successors and assigns from all claims and demands whatsoever in law or equity, I ever had, now have, or hereafter may have . . . By reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the signing of this release.

This general release language effectively barred the claimant from later filing a subrogation claim against the cab company to recover workers' compensation payouts the claimant had previously made to an employee. Chicago Transit Authority v. Yellow Cab Co., 110 Ill. App. 3d 379 (1st Dist. 1982).

### **b. Discharge of a Party's Liability**

Next, consider the situation where Party A signs a release "FOR THE EXPRESS PURPOSE OF PRECLUDING FOREVER ANY FURTHER OR ADDITIONAL CLAIMS ARISING OUT OF THE AFORESAID ACCIDENT" in favor of Party B. The next day, Party B and two of his passengers file a lawsuit against Party A for personal injuries they suffered in the accident. Because the Release Agreement worked only to discharge Party B, Party B is permitted to later file a claim or lawsuit against Party A. However, Party A is not permitted to turn around and file a counterclaim for contribution against Party B because Party A had earlier signed the Release Agreement "FOR THE EXPRESS PURPOSE OF PRECLUDING FOREVER ANY FURTHER OR ADDITIONAL CLAIMS ARISING OUT OF THE AFORESAID ACCIDENT." Rakowski v. Lucente, 104 Ill. 2d 317 (1984).

### **3. Finality of Dismissal Orders/Judgments**

A dismissal order with prejudice bars a claimant's right to bring another claim for the same injury. Black's Law Dictionary, 8<sup>th</sup> ed. 2004. A judge's order dismissing a matter with prejudice ordinarily operates as an adjudication upon the merits and has the same effect as if the matter had been tried to a jury verdict. Ill. S.Ct.R. 273; Fulton- Carroll Center, Inc. v. Industrial Council of Northwest Chicago, Inc., 256 Ill. App. 3d 821 (1st Dist. 1993). The defeated party may then bring a notice of appeal within thirty days. Ill. S.Ct.R. 303.

#### **a. Exceptions**

After the entry of a dismissal order with prejudice, the defeated party may bring, within thirty days, a motion to reconsider the judge's order of dismissal. Yang v. Chen, 283 Ill. App. 3d 80 (1st Dist. 1996); Application of County Treasurer v. Phoenix Bond and Indemnity Co., 208 Ill. App. 3d 561 (1st Dist. 1990). In the motion to reconsider, the defeated party may argue:

- (1) that the judge misapplied the law or misunderstood the facts, People v. Doguet, 307 Ill. App. 3d 1 (2nd Dist. 1999);
- (2) that the law has changed since the judgment was entered, Sacramento Crushing v. Correct et al, 318 Ill. App. 3d 571 (2000); or
- (3) the defeated party may present newly discovered evidence that was not yet available when the judge entered the order of dismissal.

Hart v. Valspar Corp., 252 Ill. App. 3d 1005 (1st Dist. 1993).

Another exception to the finality of dismissal orders is encompassed in Section 2-1301(e) of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1301. This section ordinarily is invoked in an effort to vacate an entry of a final order after a default judgment. Section 2-1301(e) provides that a judge may set aside any final order within 30 days after entry of the order "upon any terms and conditions that shall be reasonable." The test for vacating a final order of judgment under Section 2-1301(e) is whether "substantial justice is being done between the parties." Jones v. Legatees of Fox, 313 Ill. App. 3d 249 (3rd Dist. 2000).

Courts will not enforce a final order that is entered under unfair circumstances, arbitrary acts without the employment of conscientious judgment, or orders that exceed the bounds of reason and ignore principles of law. Merchants Bank v. Roberts, 292 Ill. App. 3d 925 (2nd Dist. 1997). The court considers the due diligence of the defeated party's failure to present a timely defense, the severity of the penalty as a result of the judgment, and the hardship on the prevailing party if he is required to go to trial. Id. Courts also consider whether the defeated party will be able to present a meritorious defense. Id.

The final exception to the finality of dismissal orders is provided in Section 2-1401 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1401. A 2-1401 Petition to Vacate a Final Order must be filed not less than thirty (30) days and not more

than two (2) years after the entry of the order. The purpose of Section 2-1401 is to bring before the trial court matters that, if known to the court when the final order of dismissal was entered, would have prevented the entry of the order. Johnson v. Valspar Corp., 251 Ill. App. 3d 564 (2nd Dist. 1993).

Section 2-1401 is not intended to relieve the defeated party of his own negligence, his own mistakes, or the negligence of his trial counsel. Universal Outdoor, Inc. v. City of Des Plaines, 236 Ill. App. 3d 75 (1st Dist. 1992); Anest v. Barley, 265 Ill. App. 3d 58 (2nd Dist. 1994). It is also not intended to provide relief to a defeated party for the trial court's misapplication of the law. Universal Outdoor, 236 Ill. App. 3d at 81; Anest, 265 Ill. App. 3d at 68. Rather, the proper avenue with which to challenge the trial court's application of the law is through the filing of a timely appeal as provided for in Supreme Court Rule 303. Universal Outdoor, 236 Ill. App. 3d at 81.

In order for a defeated party to receive relief from a final order of dismissal under Section 2-1401, the party must show that it has a meritorious cause of action or defense, and that it has acted with due diligence in presenting both the cause of action/defense and the Section 2-1401 petition to set aside the final order. Gonzalez v. Profile Sanding Equipment, Inc., 333 Ill App. 3d 680 (2002); Johnson v. Wal-Mart Stores, 324 Ill. App. 3d 543 (5th Dist. 2001).

Illinois courts have held that the purpose of Section 2-1401 is to relieve the diligent party of an unjust decision. The trend in Illinois is to relax

the standard where necessary to prevent the unjust entry of default judgments and to do substantial justice. Gonzalez, 333 Ill. App. 3d at 686. Despite this, a petitioner's lack of due diligence may be excused only under extraordinary circumstances. Illinois courts have interpreted "extraordinary circumstances" as the necessity to prevent an unjust entry of a default judgment or where there is actual fraud or unconscionable conduct by the opposing party, such that the due diligence requirement must be relaxed. Illinois courts have looked to such factors as a litigant's age, disability, and lack of representation as "exceptional circumstances." Sunderland v. Portes, 324 Ill. App. 3d 105 (2nd Dist. 2001).

Evidence discovered by a defeated party more than thirty (30) days and less than two (2) years after the entry of final order of dismissal can be the basis for a Section 2-1401 petition for relief if:

- (1) the defeated party had exercised due diligence at all times to discover the evidence but through no fault of its own was unable to discover the new evidence until more than thirty days after the final order was entered; and
- (2) the newly discovered evidence is important and decisive enough to make it probable that a different outcome would occur if the final order of dismissal were vacated and a new trial or hearing were held.

Physicians Insurance Exchange v. Jennings, 316 Ill. App. 3d 443 (1st Dist. 2000); Ruiz v. Wolf, 250 Ill. App. 3d 121 (1993).

*Querrey*  *Harrow*

Querrey & Harrow, Ltd.  
175 W. Jackson Blvd., Chicago, IL 60604  
312-540-7000  
[www.querrey.com](http://www.querrey.com)