



Settle and Sue: Settlements as Preludes to Malpractice Claims

Westlaw Journal Professional Liability published an Expert Analysis by Louie Castoria on settlements as preludes to malpractice claims in May 2017.

Finality is a powerful incentive for parties to settle civil cases. Settlements end the drain of valuable time and resources that routinely occurs in litigation — a process that often has uncertain outcomes and, potentially, open-ended expenses.

Some settlements are the last act in the judicial battle between the litigants, but become Act I in a new lawsuit — a lawsuit by a settling party against his or her lawyer.

Such "settle and sue" cases — settler's remorse, if you will — typically plead that counsel concealed from, or failed to explain to, the client one or more material terms of the underlying settlement agreement, or made an error earlier in the case that made an unpalatable settlement the only option.

In some cases clients also allege their counsel exerted undue influence or outright coercion in "forcing" the client to sign the agreement.

Settle and sue lawsuits raise thorny legal and ethical issues: