

THE FLORIDA

VOLUME 85, NO. 7 JULY/AUGUST 2011

# BAR JOURNAL

ADVANCING THE COMPETENCE AND PUBLIC RESPONSIBILITY OF LAWYERS



**SCOTT HAWKINS**  
PRESIDENT OF THE FLORIDA BAR

# Enforcement of Settlements

## *A Jurisdictional Perspective*

by Fred O. Goldberg

Settlements are a common, favored method to resolve litigation. The benefits of an agreed resolution to a dispute are many. A settlement eliminates the uncertainty of result presented by a trial on the merits. Though it requires the parties to compromise their positions, it eliminates the expense of continuing litigation. From the perspective of judicial economy, a settlement puts an end to the court's labor and eliminates the case from its docket. In an ideal world, a settlement puts an end to the disputes between the parties. However, as a practical matter, the demands of the business world and economic considerations frequently require settlement agreements to include covenants of future performance, including payments by installment, transfers of property, and promises to undertake or refrain from undertaking particular actions. Settlements to be performed over time present the possibility of future disputes and allegations of default among the parties.

When the provisions of a settlement agreement are not fully performed, the parties often seek to return to court to have the agreement enforced in the same proceeding in which the settlement was reached. Reopening a case for the purpose of enforcing a settlement presents jurisdictional issues that have troubled the courts of Florida and vexed litigants and their attorneys for decades. Recent decisions, most notably the Florida Supreme Court's decision in *Paulucci v. General Dynamics Corporation*, 842 So. 2d 797 (Fla. 2003), have generally clarified a trial court's authority to enforce a settlement in the same proceeding in which the settlement is reached. However, the trial court's continuing jurisdiction to enforce a settlement depends on the procedures employed by the parties with respect to the case at the time of settlement.

Following an agreed resolution of the parties' disputes, litigants typically employ one of four options to halt their litigation: 1) a plaintiff may merely file a notice of voluntary dismissal with prejudice pursuant to Rule 1.420(a)(1)(A), Fla.R.Civ.P.; 2) the parties may enter into a stipulation for dismissal with prejudice pursuant to Rule 1.420(a)(1), and the stipulation of dismissal may contemplate entry of an order of dismissal by the court that may or may not include provisions approving the settlement and retaining jurisdiction to enforce the parties' agreement; 3) the parties may agree to the entry of a judgment that, again, may or may not contain provisions approving the settlement and reserving jurisdiction to enforce the agreement; or 4) the parties may allow the underlying case to remain pending, either via stay of proceedings or by merely allowing the matter to remain dormant, awaiting performance of all obligations owed pursuant to the settlement. This last method, although somewhat rare, is sometimes employed in cases involving commercial or consumer loans, foreclosures or evictions where the parties enter into a forbearance agreement, a restructuring of the indebtedness, or an agreement to allow the obligor to resume payments or cure defaults while reserving to the plaintiff the ability to resume litigation in the event of nonperformance. Which option the parties choose to employ dictates whether the trial court will possess continuing jurisdiction to enforce the settlement. Additionally, even where jurisdiction is reserved, there are circumstances where the trial court will lack authority to enforce such an agreement.

### **The Legal Principles Governing Settlements**

As a general principle, "settlements are highly favored and will be enforced whenever possible."<sup>1</sup> A settlement re-

