

Think Your Creditor Release is Ironclad? Consider California Civil Code Section 1542

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Settlement agreements often include broad general releases covering claims existing from the “beginning of the world” to the settlement date – whether the claims are known or unknown to the releasing party. And in many states, such broad releases are valid and enforceable. Indeed, it is the peace provided by such releases that often makes settlement possible.

Then there is [California Civil Code § 1542](#). It provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In other words, under California law, a general release – no matter how broadly drafted – may not have the effect of releasing claims that are unknown to the releasor.

The intent of section 1542 is to prevent a releasor from inadvertently waiving unknown claims merely by signing a general release. See [Winet v. Price](#). California case law, however, makes clear that unknown claims can be released, so long as the waiver is conscious. *Id.* Thus, it is possible to obtain an enforceable release of unknown claims notwithstanding section 1542 – but broad release language itself won’t do the trick.

To waive such claims, a settlement agreement must include evidence apart from the words of the release to indicate that the parties specifically intended to release unknown claims. This can usually be achieved by including a provision quoting and waiving all rights under section 1542 (sometimes referred to as a “section 1542 waiver”). For example:

The parties and each of them do hereby assume the above mentioned risks and agree that this agreement shall apply to all unknown or unanticipated results of the transactions and occurrences described above, as well as those known and anticipated, and upon advice of counsel, each party does hereby knowingly waive any and all rights and protections under California Civil Code Section

1542, which section has been duly explained and read as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

(You may also choose to have the releasing party specifically sign or initial next to such language.)

As noted by the California appellate court: “Those engaged in contract law and litigation are in great need of the availability of ironclad and enforceable general releases.” [*Winet v. Price*](#). So if you are settling a case with a nexus to California (whether or not you practice in California), consider whether you need a section 1542 waiver in the settlement agreement to make your general release ironclad.

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