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# Life with Hoyt: Avoiding Misrepresentation Claims in Negotiating Settlement Agreements

**Keywords**

Negotiated settlement, Contracts

# LIFE WITH *HOYT*: AVOIDING MISREPRESENTATION CLAIMS IN NEGOTIATING SETTLEMENT AGREEMENTS

Eric J. Magnuson\* and Daniel J. Supalla+

## I. INTRODUCTION

*"Lies can save trouble now, but may return in thunder and lightning."*<sup>1</sup>—Mason Cooley

When the Minnesota Supreme Court issued its decision in *Hoyt Properties, Inc. v. Production Resource Group, L.L.C. (Hoyt II)*, 736 N.W.2d 313 (Minn. 2007), many in the legal community were concerned that the court's decision would unduly constrain settlement negotiations.<sup>2</sup> Much concern was also directed at an attorney's potential liability for representations made to a client's adversaries.<sup>3</sup> The court's decision, however, is not as radical as many initially perceived it to be. All things considered, *Hoyt* requires no more than telling the truth—and carefully drafting settlement agreements.

## II. THE *HOYT* DECISION

### A. Factual Background

The underlying dispute in *Hoyt* involved a commercial lease.<sup>4</sup> In 2001, Hoyt Properties, Inc.<sup>5</sup> ("Hoyt") agreed to lease office and warehouse space to Haas Multiples Environmental Marketing and Design, Inc. ("Haas")<sup>6</sup> for a ten and one-half-year period.<sup>7</sup> Haas agreed to pay \$10 million

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<sup>1</sup> MASON COOLEY, CITY APHORISMS, TWELFTH SELECTION, (New York 1993).

<sup>2</sup> Brief of Minnesota Defense Lawyers Association as Amicus Curiae Supporting Respondents, *Hoyt Properties, Inc. v. Production Resource Group, L.L.C.*, 736 N.W.2d 313 (2007) (No. A05-1293), 2006 WL 4712209.

<sup>3</sup> *Id.*

<sup>4</sup> *Hoyt Props., Inc. v. Prod. Res. Group, L.L.C. (Hoyt I)*, 716 N.W.2d 366, 369 (Minn. Ct. App. 2006).

<sup>5</sup> Hoyt Properties, Inc. assigned its rights and obligations in the lease to Hoyt/Winnetka, L.L.C. Because that distinction is not critical to the analysis, Hoyt Properties, Inc. and Hoyt/Winnetka, L.L.C. are referred to collectively as "Hoyt." *Hoyt II*, 736 N.W.2d at 316.

<sup>6</sup> Haas was doing business as Entolo-Minneapolis. *Id.* Entolo, Inc. was Haas's corporate successor. *Id.* Production Resources Group, Inc. ("PRG") is Entolo's parent corporation. *Id.*

<sup>7</sup> *Hoyt I*, 716 N.W.2d at 369.

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over the term of the lease.<sup>8</sup> Haas assigned the lease to Entolo, Inc. before it took possession of the property.<sup>9</sup> After Entolo moved in, it defaulted on the lease.<sup>10</sup> Hoyt filed an unlawful detainer action against Entolo, but Hoyt and Entolo were able to reach a settlement.<sup>11</sup> The settlement permitted Entolo to remain on the premises for two months in exchange for paying \$104,000 in rent.<sup>12</sup> Hoyt reserved the right to sue Entolo for any remaining sums under the lease.<sup>13</sup>

Entolo's parent company, PRG, wanted to be released from any liability as part of the Hoyt-Entolo settlement.<sup>14</sup> Hoyt's CEO, Steven Hoyt, asked PRG's attorneys why PRG wanted the release.<sup>15</sup> PRG's attorneys stated that PRG did not want to get sued after the Hoyt-Entolo unlawful detainer matter was settled.<sup>16</sup> Mr. Hoyt then stated, "Well, that would be piercing the veil . . . I don't know of any reason why [PRG] would be liable, do you?"<sup>17</sup> PRG's attorneys allegedly responded, "There isn't anything. PRG and Entolo are totally separate."<sup>18</sup> Based on PRG's attorneys' statements, Mr. Hoyt authorized his attorneys to release PRG as part of the settlement agreement.<sup>19</sup>

Steven Hoyt later learned that in the weeks before the settlement between Hoyt and Entolo, one of Entolo's employees, Bruce Knight, had sued Entolo and PRG in an unrelated matter.<sup>20</sup> Knight asserted a breach-of-contract claim against Entolo and a veilpiercing claim against PRG.<sup>21</sup> Among the facts claimed to support veil piercing was the existence of two loan agreements PRG made with GMAC, which PRG had Entolo sign as guarantor and pledge its assets to secure the loans.<sup>22</sup> PRG then arranged for the transfer of all

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Hoyt II*, 736 N.W.2d at 316.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 316-17; *Hoyt I*, 716 N.W.2d at 370.

<sup>15</sup> *Hoyt II*, 736 N.W.2d at 316-17; *Hoyt I*, 716 N.W.2d at 370.

<sup>16</sup> *Hoyt II*, 736 N.W.2d at 316-17; *Hoyt I*, 716 N.W.2d at 370.

<sup>17</sup> *Hoyt II*, 736 N.W.2d at 317; *Hoyt I*, 716 N.W.2d at 370.

<sup>18</sup> *Hoyt II*, 736 N.W.2d at 317; *Hoyt I*, 716 N.W.2d at 370.

<sup>19</sup> *Hoyt II*, 736 N.W.2d at 317; *Hoyt I*, 716 N.W.2d at 370.

<sup>20</sup> *Hoyt I*, 716 N.W.2d at 370.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Entolo's cash and accounts receivable to PRG."<sup>23</sup> PRG was allegedly operating Entolo as a division of PRG.<sup>24</sup>

When Mr. Hoyt discovered the Knight litigation and the GMAC loans, Hoyt sued Entolo and PRG.<sup>25</sup> Hoyt sought rescission of the settlement agreement on a fraudulent inducement theory, and asserted a breach-of-contract claim against Entolo for breaching the settlement agreement.<sup>26</sup> Hoyt also sought to pierce the corporate veil to hold PRG ultimately liable for Entolo's actions and asserted a claim that Entolo's assets had been fraudulently transferred to PRG as part of the GMAC transaction.<sup>27</sup>

## **B. Procedural History**

### **1. Proceedings in the District Court**

Entolo and PRG moved for summary judgment on Hoyt's breach-of-contract and veil-piercing claims.<sup>28</sup> The district court granted summary judgment for Entolo and PRG concluding that the statements made by PRG's attorney were legal opinions, not factual statements, and could not serve as a basis for rescinding the settlement agreement on a fraudulent-inducement theory.<sup>29</sup> The district court also concluded that Hoyt had not reasonably relied on the attorneys' statements.<sup>30</sup>

Because the district court held that the settlement agreement would not be rescinded, it dismissed Hoyt's veil-piercing claim because Hoyt had released PRG from all liability.<sup>31</sup> The district court also dismissed Hoyt's breach-of-contract claim and its fraudulent-transfer claim.<sup>31</sup> The remaining claims, agency liability,

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Hoyt II*, 736 N.W.2d at 317.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Hoyt I*, 716 N.W.2d at 371.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>31</sup> *Id.*

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fraud, and negligent misrepresentation, were set for trial.<sup>32</sup> The court entered final judgment on the dismissed claims, and Hoyt appealed the order dismissing those claims.<sup>33</sup>

## 2. Proceedings in the Court of Appeals

The court of appeals reversed the district court's decision on the breach of contract claims because Hoyt had reserved the right to bring claims granting summary judgment against Entolo in the settlement agreement, and PRG had not moved to dismiss the contract claim.<sup>34</sup> The court of appeals also reversed the district court's determination that PRG's attorneys' alleged misrepresentations were not actionable because they were legal opinions.<sup>35</sup> Ultimately, the court of appeals concluded that Hoyt had created a genuine issue of material fact on the fraudulent-inducement claim.<sup>36</sup>

The court of appeals found that the attorneys' statements were more than a legal opinion, and that the statements "implied knowledge of facts."<sup>37</sup> The court then noted that once PRG's attorneys decided to speak, they were under a duty to be truthful in responding to Mr. Hoyt's question.<sup>39</sup> The attorney's statement that he knew of nothing that would lead to an actionable veil-piercing claim was akin to stating that there were no facts that could support a veil-piercing claim.<sup>38</sup>

On the reliance issue, the court of appeals held that Hoyt had created a genuine issue of material fact regarding whether Mr. Hoyt's reliance was reasonable.<sup>41</sup> The court said that under Minnesota law, unless the falsity of a representation is obvious, a person may rely on that representation.<sup>39</sup> It was not material that the representation was made in an adversarial setting, because attorneys can be held liable for misrepresentations made to adversaries in litigation.<sup>40</sup> In the opinion of the court of appeals, even Mr. Hoyt's experience as a business person was not enough to remove all semblance of reasonableness.<sup>41</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Hoyt I*, 716 N.W.2d at 371.

<sup>34</sup> *Id.* at 372.

<sup>35</sup> *Id.* at 373.

<sup>36</sup> *Id.* at 375.

<sup>37</sup> *Id.* at 373.

<sup>38</sup> *Id.* at 375.

<sup>39</sup> *Id.* at 374 (citing *Spieß v. Brandt*, 230 Minn. 246, 253, 41 N.W.2d 561, 566 (1950)).

<sup>40</sup> *Id.* at 374 (citing *L&H Airco, Inc v. Rapistan Corp.*, 446 N.W.2d at 372, 380 (Minn. 1989)).

<sup>41</sup> *Id.* at 375.

The court of appeals reversed the grant of summary judgment on the fraudulent inducement claim.<sup>42</sup> Entolo and PRG successfully sought further review by the Minnesota Supreme Court.<sup>43</sup>

### 3. The Minnesota Supreme Court Decision

Viewing the facts in a light most favorable to Hoyt, the supreme court determined that the court of appeals was correct in reversing the district court's order granting summary judgment against Hoyt.<sup>44</sup> The supreme court agreed with the court of appeals that the statements of PRG's attorneys were actionable because, implied in those statements, were representations to Mr. Hoyt that there were no facts that would support a veil-piercing claim against PRG.<sup>45</sup> The representations were arguably false, because there were actually a number of facts that Hoyt could have alleged in the underlying dispute about the commercial lease that could have supported a claim to pierce PRG's corporate veil.<sup>46</sup>

The court next considered whether PRG's attorneys had made these representations with knowledge that the representations were false.<sup>47</sup> Here too, the court concluded that there was a genuine issue of material fact regarding the attorneys' knowledge of these facts: "In his deposition, the attorney admitted before he made the representations at issue he 'knew what was contained in' the complaint brought by [Knight]."<sup>48</sup> At a minimum, the court concluded that a reasonable fact-finder could conclude that the attorney made these representations without knowing whether they were true or false.<sup>49</sup>

Finally, the supreme court agreed with the court of appeal's analysis on the reasonableness of Hoyt's reliance.<sup>50</sup> The court noted that reliance is reasonable unless the falsity of the representation is known or obvious to the listener.<sup>51</sup> At the time the attorney made the representation, there was no obvious falsity in the statement, and viewing this in a light favorable to Hoyt, the supreme court concluded summary judgment was inappropriate because a fact-finder could reasonably conclude that Hoyt's reliance on these statements

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<sup>42</sup> *Id.*

<sup>43</sup> *Hoyt II*, 736 N.W.2d at 317.

<sup>44</sup> *Id.* at 320.

<sup>45</sup> *Id.* at 318-20.

<sup>46</sup> *Id.* at 319.

<sup>47</sup> *Id.* at 320.

<sup>48</sup> *Id.* at 320.

<sup>49</sup> *Id.* (citing *Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 532 (Minn. 1986)).

<sup>50</sup> *Id.* at 320-21.

<sup>51</sup> *Id.* at 321 (citing *Spiess*, 230 Minn. at 253, 41 N.W.2d at 566)).

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was reasonable.<sup>52</sup> The court declined to reweigh the evidence, noting that a fact-finder should determine whether Hoyt's reliance on the representations was reasonable, and remanded the case to the district court for further proceedings.<sup>53</sup>

*Hoyt* is not as drastic as it might initially seem. Decided in the context of summary judgment, where all facts and inferences are drawn in favor of Hoyt, it simply affirms the principles echoed in the Rules of Professional Conduct and in the common law that truthful answers to direct questions are required in negotiations and other business dealings.<sup>54</sup>

Truthful answers can be given without compromising a client's position in litigation. Attorneys can also protect their clients from attacks on the validity of settlement negotiations with carefully-drafted settlement agreements. The next sections address the basics of settlement agreements and a proposal for drafting settlement agreements to mitigate the risks of an adversary's attack on a settlement agreement by alleging fraud in the inducement.

### III. THE BASICS OF SETTLEMENT AGREEMENTS

Settlement agreements are contracts.<sup>55</sup> Because the law favors settlement of disputes, settlement agreements are presumed to be valid.<sup>56</sup> But settlement agreements, like any other contract, are subject to the common-law principles of offer and acceptance, definiteness, consideration, and the rules of interpretation and enforcement.<sup>57</sup>

#### A. Capacity

Capacity is required for a valid contract or settlement agreement. The standard to determine whether a party has capacity, or is competent to enter into a contract, is whether the party has "enough capacity to understand to a reasonable extent the nature and effect of what he is doing."<sup>58</sup> Under Minnesota law, mental

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<sup>52</sup> *Id.* at 321.

<sup>53</sup> *Id.* at 321.

<sup>54</sup> See MINN. R. PROF'L CONDUCT 4.1; see also *L & H Airco*, 446 N.W.2d at 380.

<sup>55</sup> *In re Welfare of M.R.H.*, 716 N.W.2d 349, 352 (Minn. Ct. App. 2006).

<sup>56</sup> *Sorensen v. Coast-to-Coast Stores (Central Org.), Inc.*, 353 N.W.2d 666, 669 (Minn. Ct. App. 1984).

<sup>57</sup> *Beach v. Anderson*, 417 N.W.2d 709, 711 (Minn. Ct. App. 1988); see also *Karnes v. Quality Pork Processors*, 532 N.W.2d 560, 562 (Minn. 1995) ("As with any contract, a release requires consideration, voluntariness, and contractual capacity.").

<sup>58</sup> *Parrish v. Peoples*, 214 Minn. 589, 595, 9 N.W.2d 225, 228 (1943); *Fisher v. Schefers*, 656 N.W.2d 592, 595–96 (Minn. Ct. App. 2003) (stating the same test as *Parrish*).



competence is presumed, and that presumption cannot be overcome by "mere mental weakness."<sup>59</sup> Clear and convincing proof of incompetence is generally required,<sup>60</sup> and in cases where it is found, the appointment of a guardian should be made to ensure that any settlement that is reached will be upheld against later challenges.<sup>61</sup>

## B. Authority

Even if an attorney has the authority to settle a client's claim the final decision on whether to accept the settlement lies with the client in all cases except emergency.<sup>62</sup> This being the case, the enforceability of the settlement agreement entered into on behalf of a client depends on whether the client has given the attorney the authority to settle.<sup>63</sup>

There are two types of authority that a client may give an attorney. Express authority arises when the principal gives the agent explicit instructions to perform specific duties.<sup>64</sup> Implied authority arises when the authority necessary to carry out expressly-delegated duties implicitly includes the authority to perform other tasks that are necessary to carrying out those that are expressly-delegated.<sup>65</sup>

*Hoyt* provides an example of express authority: When Mr. Hoyt was informed that there was no reason PRG would be amenable to a veil-piercing claim, he expressly gave his attorneys the authority to release PRG from any liability.<sup>66</sup>

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<sup>59</sup> See *Jasperson v. Jacobson*, 244 Minn. 76, 84; 27 N.W.2d 788, 792 (1947); *Fisher*, 656 N.W.2d at 595.

<sup>60</sup> *In re Guardianship of Mikulanec*, 356 N.W.2d 683, 687 (Minn. 1984).

<sup>61</sup> MINN. R. CIV. P. 17.02 requires the court to appoint a guardian ad litem for any party to an action who is incompetent.

<sup>62</sup> MINN. R. PROF'L CONDUCT 1.2(a) ("A lawyer shall abide by a client's decision whether to settle a matter."); *Aetna Life & Cas., Cas. & Sur. Div. v. Anderson*, 310 N.W.2d 91, 95 (Minn. 1981).

<sup>63</sup> See *Powell v. MVE Holdings, Inc.*, 626 N.W.2d 451, 457 (Minn. Ct. App. 2001).

<sup>64</sup> *Hockemeyer v. Pooler*, 268 Minn. 551, 565, 130 N.W.2d 367, 377 (Minn. 1964); MINN. R. PROF'L CONDUCT 1.2(a).

<sup>65</sup> *Id.*

<sup>66</sup> *Hoyt I*, 716 N.W.2d at 370; see also *Burner Service & Combustion Controls Co. v. City of Minneapolis*, 312 Minn. 104, 112, 250 N.W.2d 224, 229 (Minn. 1977) (express authority to settle); *Ghostley v. Hetland*, 295 Minn. 376, 377, 204 N.W.2d 821, 823 (Minn. 1973).

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**C. Formation**

Because settlement agreements are contracts, they must meet the common law rules on formation: An offer followed by acceptance and supported by consideration.<sup>67</sup> The objective conduct of the parties determines whether there has been an offer made and accepted; the subjective intent of the parties is not controlling.<sup>68</sup> Regarding offers and acceptance, the intent of the party, viewed through the party's objective actions, is determinative.<sup>69</sup> Enforcement of a settlement agreement may be denied where a court is not satisfied that a release was not intentionally executed.<sup>70</sup>

An offer "refers to conduct which has a certain legal effect—it empowers the offeree to create a contract by his or her acceptance."<sup>71</sup> To be effective, an offer must be definite and contain enough of the essential terms for a court to be able to enforce the agreement if the offer is accepted.<sup>72</sup> Failure to include all of the terms will not prevent enforcement, so long as those terms are capable of being supplied or are not essential to the agreement.<sup>73</sup>

Provided there has been a valid offer, acceptance of that offer must be shown before a court will enforce the settlement agreement.<sup>74</sup> Acceptance of an offer may generally be found where "one party by his words or by his conduct, or by both, leads the other party reasonably to assume that he assents to and accepts the terms of the other's offer."<sup>75</sup>

Consideration is the third element of a valid contract. Consideration involves the exchange of something of value or the voluntarily assumption of an obligation by one party, on the condition that the other party

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<sup>67</sup> See Beach, 417 N.W.2d at 711.

<sup>68</sup> Cederstrand v. Lutheran Bhd., 263 Minn. 520, 532, 117 N.W.2d 213, 221 (1962).

<sup>69</sup> See, e.g., New England Mut. Life Ins. Co. v. Manheimer Realty Co., 188 Minn. 511, 513, 247 N.W. 803, 804 (Minn.1933).

<sup>70</sup> Schmitt-Norton Ford, Inc. v. Ford Motor Co., 524 F. Supp. 1099, 1102 (D. Minn. 1981) (stating that a release of liability for unknown injuries is effective only when it is made intentionally (citing Coillard v. Charles T. u Miller Hosp., Inc., 253 Minn. 418, 425, 92 N.W.2d 96, 101 (1958))).

<sup>71</sup> League Gen. Ins. Co. v. Tvedt, 317 N.W.2d 40, 43 (Minn. 1982).

<sup>72</sup> TNT Props., Ltd. v. Tri-Star Dev. LLC, 677 N.W.2d 94, 101 (Minn. Ct. App. 2004).

<sup>73</sup> *Id.*

<sup>74</sup> Peppin v. W.H. Brady Co., 372 N.W.2d 369, 373 (Minn. Ct. App. 1985) ("[There must be] a meeting of the minds on the essential terms of the agreement . . . a necessary prerequisite to a settlement is an agreement as to what was in fact settled." (citing City of Columbia Heights v. John H. Glover Houses, Inc., 300 Minn. 31, 35, 217 N.W.2d 764, 767 (1974))).

<sup>75</sup> Western Insulation Servs., Inc. v. Central Nat'l Ins. Co. of Omaha, 460 N.W.2d 355, 358 (Minn. Ct. App. 1990) (citing Holt v. Swenson, 252 Minn. 510, 516, 90 N.W.2d 724, 728 (1958)).

act or engage in an act of forbearance.<sup>76</sup> In the context of a settlement agreement, the payment of money in exchange for an unliquidated claim is sufficient consideration to support the validity of a settlement agreement.<sup>77</sup>

Courts will not look at the adequacy of consideration in determining whether consideration has been provided.<sup>78</sup> One rare exception, however, arises when the consideration that passes between the parties is unconscionable.<sup>79</sup>

## D. Defenses

There are a number of grounds that allow a party to avoid complying with a settlement agreement, including mistake, unconscionability, duress, undue influences, and fraud.<sup>80</sup> In *Hoyt*, because PRG's attorneys had allegedly misrepresented the susceptibility of PRG to veil-piercing claims, the basis asserted for rescission was fraud.<sup>81</sup> Although the existence of a contract is proven by a preponderance of the evidence, rescinding a contract requires clear and convincing evidence.<sup>82</sup>

Although *Hoyt* dealt with fraud, there are a number of other grounds for setting aside a settlement agreement. While this article focuses on negotiating and drafting settlements specifically to avoid successful claims of fraud, the discussion of those points applies to other defenses as well. It is worth a brief review of these other defenses.

### 1. Mistake

Whether a mistake will result in the rescission of a contract depends on the facts of the case, including whether the mistake was mutual or unilateral, whether the basis for the mistake was legal or factual, and whether equitable considerations justify relieving one party of the burden of performing its obligations

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<sup>76</sup> U.S. Sprint Commc'ns Co., Ltd. v. Comm'r of Revenue, 578 N.W.2d 752, 754 (Minn. 1998) (citing *Cady v. Coleman*, 315 N.W.2d 593, 596 (Minn. 1982)).

<sup>77</sup> See, e.g., M.R.H., 716 N.W.2d at 352 (finding that a payment of \$50,000 in exchange for a release of claims was consideration).

<sup>78</sup> *Kielley v. Kielley*, 674 N.W.2d 770, 777-78 (Minn. Ct. App. 2004).

<sup>79</sup> See *Jacobs v. Farmland Mut. Ins. Co.*, 377 N.W.2d 441, 444 (Minn. 1985) (holding that the court's equitable powers permitted it to set aside settlement of wrongful-death action where the insurer valued the case at \$15,000 but paid only \$4,000).

<sup>80</sup> See, e.g., *Keller v. Wolf*, 239 Minn. 397, 399, 58 N.W.2d 891, 894 (1953).

<sup>81</sup> *Hoyt II*, 736 N.W.2d at 317.

<sup>82</sup> *Bolander v. Bolander*, 703 N.W.2d 529, 541 (Minn. Ct. App. 2005).

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under the agreement.<sup>83</sup> Generally, a unilateral mistake is not sufficient to rescind a contract.<sup>84</sup> But where there is some concealment of facts underlying a contract or settlement agreement, rescission would be appropriate.<sup>85</sup> A mutual mistake, on the other hand, justifies rescission of the settlement agreement if the party seeking to rescind can show "a misunderstanding, reciprocal and common to both parties, with respect to the terms and subject matter of the contract, or some substantial part thereof."<sup>86</sup> The mistake must be of a kind that, had the parties known the true nature of the underlying facts, they would not have entered into the bargain that they did.<sup>90</sup> The mistake must also have been material to the transaction.<sup>87</sup>

A mistake of law will generally not be sufficient to set aside a settlement agreement.<sup>88</sup> But a mistake of fact may be grounds for rescission.<sup>89</sup> A mistake of fact occurs when there is a mistake that "goes to the very nature" of the subject matter of the contract.<sup>90</sup>

### 2. Unconscionability

Settlement agreements may be set aside if a court find the terms improvident or unconscionable.<sup>91</sup> A contract will be held unconscionable where "no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other."<sup>92</sup> Because parties in commercial settings, dealing at arm's length, generally have equal bargaining power, rarely will courts set aside a commercial contract based on the unconscionability doctrine.<sup>93</sup>

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<sup>83</sup> See generally *Gethsemane Lutheran Church v. Zacho*, 258 Minn. 438, 443-45, 104 N.W.2d 645, (Minn. 1960) (explaining some of the grounds under which a contract may be rescinded.)

<sup>84</sup> *Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 737 (Minn. Ct. App. 1995) ("Unilateral mistake as to the scope of a release will not avoid its plain language; appellants must come forward with evidence that there was a **mutual** mistake regarding the intended scope of the releases or that respondents induced the mistake in some way." (emphasis in original)).

<sup>85</sup> *Eggleston v. Keller Drug Co.*, 265 Minn. 78, 82 120 N.W.2d 305, 307 (1963).

<sup>86</sup> *Carpenter v. Vreeman*, 409 N.W.2d 258, 261 (Minn. Ct. App. 1987). <sup>90</sup> *Winter v. Skoglund*, 404 N.W.2d 786, 793 (Minn. 1987).

<sup>87</sup> *Id.*

<sup>88</sup> *Johnson v. St. Paul Ins. Co.*, 305 N.W.2d 571, 574 (Minn. 1981); *N. States Power Co. v. City of Sunfish Lake*, 659 N.W.2d 271, 274 (Minn. Ct. App. 2003).

<sup>89</sup> *Winter*, 404 N.W.2d at 793.

<sup>90</sup> *Beasley v. Medin*, 479 N.W.2d 95, 98 (Minn. Ct. App. 1992).

<sup>91</sup> *Jacobs*, 377 N.W.2d at 444.

<sup>92</sup> *Matter of Estate of Hoffbeck*, 415 N.W.2d 447, 449 (Minn. Ct. App. 1987) (citing *Hume v. United States*, 132 U.S. 406 (1889)).

<sup>93</sup> See *Int'l Fin. Servs., Inc. v. Franz*, 534 N.W.2d 261, 267 (Minn. 1995).

### 3. Duress

A settlement agreement may be avoided because one party was under duress when the agreement was reached.<sup>94</sup> Duress requires proof of objective "coercion by means of physical force or unlawful threats which destroys the victim's free will."<sup>95</sup> Economic coercion may be grounds for denying enforcement of a settlement agreement, as long as the plaintiff can show that the terms were involuntarily accepted, there was no other alternative, and compelling circumstances were created by the other party's coercion.<sup>96</sup>

### 4. Undue Influence

Undue influence arises in situations where a person's will is overpowered, and they do something they would not have done if left to act freely.<sup>97</sup> The standard for showing undue influence requires proof that: (1) actual influence was exerted; (2) the influence was dominant and controlling; and (3) in making the contract, the party "ceased to act of his own free volition and became a mere puppet of the wielder of that influence."<sup>98</sup> A confidential relationship, alone, is not sufficient to allow a court to find a party was unduly influenced.<sup>99</sup>

### 5. Fraud and Misrepresentation

Fraud may be grounds to rescind a settlement agreement only if the fraud concerns the execution of the settlement agreement.<sup>100</sup> Iterations of the elements of a fraud claim vary slightly. In *Hoyt*, the supreme court applied a five-part test to determine whether PRG's attorneys had made a fraudulent misrepresentation to Hoyt:

(1) there was a false representation by a party of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made as of the party's own knowledge without knowing whether it was true or false; (3) with the intention to induce another to act in reliance thereon; (4) that the representation caused the

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<sup>94</sup> *Sorensen*, 353 N.W.2d at 670.

<sup>95</sup> *Wise v. Midtown Motors*, 231 Minn. 46, 51–52, 42 N.W.2d 404, 407 (1950).

<sup>96</sup> *Oskey Gasoline & Oil Co. v. Continental Oil Co.*, 534 F.2d 1281, 1286 (8<sup>th</sup> Cir. 1976).

<sup>97</sup> *People's Bank & Trust Co. of Cedar Rapids v. Lala*, 392 N.W.2d 179, 184 (Iowa App.1986).

<sup>98</sup> *Fisher*, 656 N.W.2d at 598.

<sup>99</sup> *Brecht v. Schramm*, 266 N.W.2d 514, 520 (Minn. 1978).

<sup>100</sup> *Sorensen*, 353 N.W.2d at 670.

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other party to act in reliance thereon; and (5) that the party suffer pecuniary damage as a result of the reliance.<sup>101</sup>

Whether there are five elements or eleven elements, reliance is always required.<sup>102</sup>

A misrepresentation can be made either affirmatively, or by failing to disclose facts that would render disclosed facts misleading.<sup>103</sup> A duty to disclose facts may arise from a fiduciary relationship or to clarify already-disclosed information.<sup>104</sup>

Some statements, as a matter of law, may not form the basis for a fraud claim. Statements regarding events in the future, opinions, and "general and indefinite" statements cannot form the basis for a fraud claim.<sup>105</sup> In addition, abstract legal statements or pure legal opinions are not actionable.<sup>110</sup> But if statement of law implies a that certain facts are (or are not) present, then such a statement may form the basis for a fraudulent misrepresentation claim.<sup>106</sup>

### E. The Requirement of a Writing

Unless a settlement agreement falls within one of the categories covered by the statute of frauds, there is no requirement that the agreement be written.<sup>107</sup> Two circumstances may require a writing: (1) if the performance under the settlement agreement cannot be completed within one year, for example, in a structured settlement; and (2) where, as part of the settlement, a third party "promise[d] to answer for the debt, default or doings of another."<sup>108</sup>

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<sup>101</sup> *Hoyt II*, 736 N.W.2d at 318 (citing *Specialized Tours*, 392 N.W.2d at 532); see also *Heidbreder v. Carton*, 645 N.W.2d 355, 367 (Minn. 2002) (breaking the claim into eleven elements: "(1) a representation; (2) that was false; (3) regarding a past or present fact; (4) that is material; (5) capable of being known; (6) that the maker knows is false or makes without knowing whether the fact is true or false; (7) and the maker intends to induce reliance thereon; (8) and the person is induced to act; (9) and in doing so has relied on the representation; (10) that the person suffers damages; (11) which can be attributed to the misrepresentation." (citing *M.H. v. Caritas Family Servs.*, 488 N.W.2d 282, 289 (Minn.1992))).

<sup>102</sup> *Specialized Tours*, 392 N.W.2d at 532; *Heidbreder*, 645 N.W.2d at 367.

<sup>103</sup> *Heidbreder*, 645 N.W.2d at 367.

<sup>104</sup> *L & H Airco*, 446 N.W.2d at 380.

<sup>105</sup> *Martens v. Minn. Min. & Mfg. Co.*, 616 N.W.2d 732, 747 (Minn. 2000). <sup>110</sup> *Miller v. Osterlund*, 154 Minn. 495, 496, 191 N.W. 919, 919 (1923).

<sup>106</sup> *Id.*

<sup>107</sup> *Johnson*, 413 N.W.2d at 544; see also *Theis v. Theis*, 271 Minn. 199, 205, 135 N.W.2d 740, 745 (1965).

<sup>108</sup> MINN. STAT. § 513.01(1), (2) (2006).

But even if a settlement agreement need not be written, a clear and comprehensive statement of agreement's terms greatly assists the parties, and the court, in understanding each party's obligations under the agreement. Written agreements also make it more difficult for a party attacking a settlement to successfully claim fraud, mistake, etc.

Where a settlement agreement is written, Minnesota courts have admonished practitioners to keep the terms of the agreement simple and straightforward.<sup>109</sup> In *Sorensen*, the court stated that "the more complicated, confusing or misleading the language the more weight a court will give to a claim of no intent."<sup>110</sup> The more convoluted the language of the settlement agreement, the more difficult it will be for a court to determine each party's rights and obligations under the contract.

#### IV. LAWYERS' DUTIES TO OTHER LITIGANTS AND THEIR ATTORNEYS

The relationship between lawyers and their clients' adversaries is a notable part of the concern that comes out of the *Hoyt* decision. *Hoyt* did not create an affirmative duty on the part of a lawyer, running to the benefit of the adversary of a client, to disclose confidences, trial strategies, or negotiation strategies. The court of appeals briefly addressed this issue, stating that when an attorney makes an affirmative representation of fact to an adversary, and assuming all other elements of a fraudulent misrepresentation claim are present, the attorney may be liable for fraud.<sup>111</sup> Citing the RESTATEMENT (SECOND) OF TORTS § 541A, the court observed that as long as the representation is not patently false, reliance on a representation by an adverse party may be reasonable.<sup>112</sup> Not only would factual admissions or affirmations be admissible against the attorney's client, but those affirmations could also be the basis for fraud claims against the attorney, and result in professional conduct violations.<sup>113</sup>

In *L & H Airco*, the appellate court considered whether claims for negligent misrepresentation and fraud could be brought against an adversary's attorney for representations made in the course of litigation.<sup>114</sup> The court held that negligent misrepresentation claims were not appropriate because, as a matter of law, the attorney owes no duty to his client's adversary for failing to disclose material information.<sup>115</sup> No duty is imposed to make such disclosures because it "would necessarily conflict with the duty owed by the attorney

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<sup>109</sup> See, e.g., *Sorensen*, 353 N.W.2d at 669.

<sup>110</sup> *Id.* (citing *Schmidt v. Smith*, 299 Minn. 103, 110–11, 216 N.W.2d 669, 673 (1974)); *Hanson v. N. States Power Co.*, 198 Minn. 24, 268 N.W. 642 (1936)).

<sup>111</sup> 716 N.W.2d at 374 (citing *L & H Airco*, 446 N.W.2d at 380).

<sup>112</sup> 716 N.W.2d at 374.

<sup>113</sup> MINN. R. PROF'L CONDUCT R. 4.1 ("In the course of representing a client a lawyer shall not knowingly make a false statement of fact or law."); *Wenner v. Gulf Oil Corp.*, 264 N.W.2d 374, 380 (Minn. 1978); *L & H Airco*, 446 N.W.2d at 380.

<sup>114</sup> *L & H Airco*, 446 N.W.2d at 374.

<sup>115</sup> *Id.* at 379.

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to his or her client."<sup>116</sup> The *L & H Airco* court reached a different conclusion, however, when it considered whether an attorney may be liable for fraud or an intentional misrepresentation.

Although the *L & H Airco* case involved non-disclosures, and not affirmative representations, the court made three basic determinations regarding fraud claims against attorneys for conduct in litigation: (1) non-disclosure alone will not support a fraud claim (the issue in *L & H Airco*); (2) non-disclosure will support a fraud claim if the attorney is under a duty to disclose information, such as a confidential or fiduciary relationship; and (3) an affirmative representation to an adversary, or other active steps to conceal fraud, may form the basis for a fraud claim.<sup>117</sup> In *Hoyt*, it was the attorney's affirmative statement that there were no facts that would support a veil-piercing claim that formed the basis for the intentional-misrepresentation allegations and rescission claim.<sup>118</sup>

In sum, although there is no affirmative duty to disclose material facts to a client's adversary, where there is a duty imposed (because of a special relationship) and concealment of some fact or where an affirmative misrepresentation is made, liability may follow. Whether it is a direct suit against the attorney, as in *L & H Airco* or *Baker*, a suit against the attorney's client to rescind a settlement agreement as in *Hoyt*, or professional-discipline proceedings for a violation of the Rules of Professional Conduct, these consequences can be avoided by being careful what you say, and telling the truth. With those concepts in mind, carefully drafting settlement agreements also plays a critical role in limiting the risk to clients whose adversaries rely on statements not contained in the settlement agreement.

### V. DRAFTING SETTLEMENT AGREEMENTS TO AVOID *HOYT*

To avoid problems like those in *Hoyt*, carefully drafting settlement agreements is crucial. By use of integration and representation clauses, the risk of extra-contractual statements forming the basis for a rescission claim largely can be avoided.

#### A. Integration Clauses

An integration clause expressly states that the parties' entire agreement has been reduced to a writing, and that there are no other collateral agreements or separate oral agreements included in the bargain.<sup>119</sup> A contract can be integrated in two ways, with an express integration clause or, if under the facts and circumstances, the writing can be considered complete and accurate. The most common method is with an integration clause, placed directly in the contract.<sup>120</sup> In *Alpha Real Estate*, the parties' integration clause,

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<sup>116</sup> *Id.*; see also *Hoppe v. Klapperich*, 224 Minn. 224, 241, 28 N.W.2d 780, 791–92 (1947); *Farmer v. Crosby*, 43 Minn. 459, 461, 45 N.W. 866, 866 (1890), *overruled in part on other grounds by Erickson v. Minn. & Ontario Power Co.*, 134 Minn. 209, 215, 158 N.W. 979, 981 (1916).

<sup>117</sup> *Id.* at 380.

<sup>118</sup> *Hoyt I*, 736 N.W.2d at 317.

<sup>119</sup> See *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003).

<sup>120</sup> See *id.* at 307 n.3.



which was included in a lease, merged all of the parties' prior dealings into the contract, which contained the entire agreement:

All preliminary and contemporaneous negotiations are merged into and incorporated in this Lease Agreement. This Lease Agreement contains the entire agreement between the parties and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.<sup>121</sup>

The integration clause in the *Alpha Real Estate* lease agreement is fairly standard. It performs the key function of an integration clause: It excludes both parties from using parol evidence to prove the existence of a collateral agreement.<sup>122</sup> For example, neither Alpha nor Delta should be able to run into court and offer evidence that, along with the lease agreement for the real estate, Alpha agreed to pay an additional fee as part of the deal if that additional fee was not included in the written lease agreement.

Even if a contract does not contain an explicit integration clause, parol evidence may be excluded if, after reading the contract "in light of the situation of the parties, the subject matter and purposes of the transaction, and like attendant circumstances," the writing can be considered a complete and accurate integration of all its terms.<sup>123</sup>

Where a contract has an integration clause, or is deemed to be integrated, parol evidence that would vary or contradict the terms of the agreement is inadmissible.<sup>129</sup> But even where a contract has an integration clause, there are exceptions to the parolevidence rule.<sup>124</sup> Among those exceptions is parol evidence of "fraudulent oral representations" that induced one party to enter into the agreement.<sup>125</sup> The exception to offering evidence of fraudulent oral misrepresentations is not considered by Minnesota courts to violate the prohibition on admitting parol evidence because of the reason for which the evidence is offered.<sup>126</sup> The parol-evidence rule precludes representations that vary or contradict the plain terms of a contract; evidence of fraudulent representations is offered to show that "no enforceable contract was made."<sup>127</sup>

In *Johnson Building*, the Minnesota Court of Appeals addressed this very issue. Coon Rapids Properties ("CRP") and River Bluff Development Company ("River Bluff") were negotiating a deal to develop property near St. Anthony Falls in Minneapolis.<sup>128</sup> At the closing, River Bluff refused to complete the deal with CRP because it claimed that JBC's bank letter and the proposed partnership agreement were

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<sup>121</sup> *Id.*

<sup>122</sup> *See id.* at 312; *Triple B & G, Inc. v. City of Fairmont*, 494 N.W.2d 49, 53 (Minn. Ct. App. 1992); *Johnson Bldg. Co. v. River Bluff Dev. Co.*, 374 N.W.2d 187, 193 (Minn. Ct. App. 1985).

<sup>123</sup> *Bussard v. College of St. Thomas, Inc.*, 294 Minn. 215, 224, 200 N.W.2d 155, 161 (Minn. 1972).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*; *see also Hoyt I*, 716 N.W.2d at 375; *Martin v. Guar. Reserve Life Ins. Co.*, 279 Minn. 129, 136, 155 N.W.2d 744, 748 (Minn. 1968).

<sup>126</sup> *Johnson Bldg. Co.*, 374 N.W.2d at 193 (citing 3 CORBIN ON CONTRACTS § 580 (1960)).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 189–90.

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inadequate.<sup>129</sup> CRP and JBC sued River Bluff for specific performance; River Bluff counter-claimed that CRP fraudulently induced it to enter into the purchase agreement.<sup>130</sup> At trial, River Bluff proved that CRP made several misrepresentations to River Bluff and that River Bluff relied on these representations.<sup>131</sup> The court concluded that the purchase agreement was void because of CRP's misrepresentations.<sup>138</sup>

The River Bluff/CPR purchase agreement included the following integration clause:

This written Purchase Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties hereto with respect to [the property] including that certain Agreement dated January 10.<sup>132</sup>

Despite the integration clause, the court permitted River Bluff to offer evidence of CRP's representations.<sup>133</sup> The appellate court stated "The fact that the purchase agreement contained a 'full integration' clause does not alter our conclusion that the trial court properly admitted parol evidence. A 'full integration' clause does not prevent proof of fraudulent representations by a party to the contract."<sup>134</sup>

So, even with a full integration clause, how then, can parties avoid the problem in *Hoyt*? The answer requires more than an integration clause; it requires that the contract address, and negate, at least one of the elements of a fraudulent-representation claim. Warranty and disclaimer clauses are one way that parties may avoid the traps in *Hoyt*—by eliminating the element of reasonable reliance.

## B. Representation and Warranty Clauses

At its most basic, a warranty is "an assurance that one party to a contract gives regarding the existence of a fact, upon which the other party to the contract can rely."<sup>135</sup> Warranties are often discussed in terms of express and implied warranties. Examples of express and implied warranties are warranties under Article 2 of the Uniform Commercial Code.<sup>136</sup>

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 192.

<sup>132</sup> *Id.* at 191.

<sup>133</sup> *Id.* at 193.

<sup>134</sup> *Id.* (citing 3 CORBIN ON CONTRACTS § 578, at 405 (1960)).

<sup>135</sup> *Sterling Capital Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 127 (Minn. Ct. App. 1998) (citing *Schmitt v. Ornes Esswein & Co.*, 149 Minn. 370, 371, 183 N.W. 840, 841 (1921) (stating the same proposition in terms of representation in a fraud claim)).

<sup>136</sup> See MINN. STAT. § 336.2-313 (2006) (express warranties created by affirmations of fact, product descriptions, or models); MINN. STAT. § 336.2-314 (2006) (implied warranty of merchantability); MINN. STAT. § 336.2-315 (2006) (implied warranty of fitness for a particular purpose).

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But where warranties are found, disclaimers are sure to follow. A warranty disclaimer must be specific.<sup>137</sup> In *Dakota Bank v. Eiesland*, an accountant provided unaudited financial statements to a bank.<sup>138</sup> The bank then lent money to the accountant's client, ETT, based on the information in the financial statements.<sup>139</sup> When ETT defaulted on the note, the bank discovered that ETT's value was substantially less than the stated value in the financial statements and sued the accountant for negligent misrepresentation and intentional misrepresentation.<sup>140</sup> The financial statements, however, contained the following disclaimer on a cover letter: "A compilation is limited to presenting the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statement and, accordingly do not express an opinion or any other form of assurance on them."<sup>141</sup>

The court of appeals held that the disclaimer made the bank's reliance on the statements unjustified for purposes of the negligent misrepresentation claim, but that the disclaimer was not effective to disclaim liability for an intentional misrepresentation.<sup>142</sup> Regarding the negligent misrepresentation claim, the appellate court held that, as a matter of law, the bank was not justified in relying on the compiled financial statements because "the language in the disclaimer [was] specific and warned the bank of the very problem of which it complains."<sup>143</sup> The court remanded the intentional misrepresentation claim for further consideration because, it held, a disclaimer alone is not sufficient to preclude liability on an intentional misrepresentation claim.<sup>144</sup> To hold otherwise would be "distortion in the law" if fraud could not be asserted because of warranty disclaimers in the contract and misrepresentation claims.<sup>145</sup>

Thus, avoiding liability on an intentional misrepresentation claim by simply including a disclaimer in the settlement agreement may not be enough, even though the law on warranties and disclaimers would seem to suggest, at least initially, that a disclaimer would be sufficient. For example, in the *Hydra-Mac* case, the seller had disclaimed liability on any express or implied warranties regarding the operation of engines it produced.<sup>146</sup> The buyer, however, had relied on representations by the seller that the engines it purchased could and would be repaired when, in fact, there was evidence that showed the seller had concealed its

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<sup>137</sup> See MINN. STAT. § 336.2-316(2) (2006) (requiring that exclusion of the implied warranty of merchantability must be in writing and conspicuous).

<sup>138</sup> *Dakota Bank v. Eiesland*, 645 N.W.2d 177, 179 (Minn. Ct. App. 2002).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 179–80.

<sup>141</sup> *Id.* at 179.

<sup>142</sup> *Id.* at 182, 184.

<sup>143</sup> *Id.* at 182.

<sup>144</sup> *Id.* at 184–85 (citing *Hydra-Mac, Inc. v. Onan Corp.*, 430 N.W.2d 846, 852 (Minn. Ct. App. 1988), *aff'd in part and rev'd in part on other grounds*, 450 N.W.2d 913 (Minn. 1990); *St. Croix Printing Equip., Inc. v. Rockwell Int'l Corp.*, 428 N.W.2d 877, 881 (Minn. Ct. App. 1988)).

<sup>145</sup> *Hydra-Mac*, 430 N.W.2d at 852.

<sup>146</sup> *Hydra-Mac*, 430 N.W.2d at 849.

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engineers' opinions that identified the engine problems as unresolvable.<sup>147</sup> The disclaimer and the warranty were held to be separate from each other: Warranties related to whether the contract was breached, while the fraud allegations related to whether the contract was even formed.<sup>148</sup>

### C. Putting It All Together

Shifting the focus from a disclaimer clause to a representation clause, however, would go a long way in addressing the issues in *Hydra-Mac* and in *Hoyt*. Instead of the representing party disclaiming liability for any damage resulting from the other party's reliance on a representation, the party on the receiving end of the representation expressly affirms in the settlement agreement that he, she, or it has not relied on any representations made by the other party in entering in to the settlement agreement. Thus, in the settlement agreement there would be a clause that states something like:

Each party agrees that this Settlement Agreement is the sole source of any representations or warranties between the parties. Representations or warranties made, but not expressly included in this Settlement Agreement, may not be relied upon, and each party agrees that reliance on any representations or warranties that are not expressly included in this Settlement Agreement is, as a matter of law, unreasonable and unjustified.

Even though the court said in *Hydra-Mac* that disclaimers and fraudulent representations were separate issues, a clause that requires both parties to affirm that they have not relied on representations outside of the settlement agreement, and that any such reliance would be unreasonable, merges these concepts.<sup>149</sup> Essentially, the parties are now able to prevent another party's unjustified reliance and avoid the *Hydra-Mac* holding, which would otherwise render a disclaimer ineffective.<sup>150</sup> The distinction is a fine one: One party is not unilaterally disclaiming liability. Rather, both parties are affirming exactly what they have relied on in entering into the agreement. The focus of the clause is narrow. It does not disclaim liability for misrepresentations (which could appear as *carte blanche* to lie)-it confirms the representations that the parties have agreed may be relied upon, and simultaneously undercuts the reasonable-reliance element of a fraudulent-inducement claim.

The law in Minnesota supports the use of a representation clause in settlement agreements. In *Beer Wholesalers, Inc. v. Miller Brewing Co.*, the court of appeals held that reliance on a statement that directly conflicts with a term in an express written agreement is not justified.<sup>150</sup> The federal court in Minnesota has made the same determination relying on the *Beer Wholesalers* case: "There cannot be reasonable reliance where allegedly fraudulent promises directly contradict the terms of a contract."<sup>151</sup> In *Carlock*, the district

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<sup>147</sup> *Id.* at 850.

<sup>148</sup> *Id.* at 852; *see also Martin*, 155 N.W.2d at 748.

<sup>149</sup> *Hydra-Mac*, 430 N.W.2d at 852,

<sup>150</sup> *See supra*, note 154.

<sup>151</sup> *Beer Wholesalers, Inc. v. Miller Brewing Co.*, 426 N.W.2d 438, 442 (Minn. Ct. App. 1988).

<sup>152</sup> *Carlock v. Pillsbury Co.*, 719 F. Supp. 791, 830 (D. Minn. 1989) (citing *Kennedy v. Josephthal & Co.*, 814 F.2d 798, 805 (1st Cir. 1987)); *see also Grumman Allied Indus., Inc. v. Rohr Indus., Inc.*, 748 F.2d 729, 735-36 (2d Cir. 1984); *Jackvony v. RIHT Fin. Corp.*, 873 F.2d 411, 416 (1st Cir. 1989); *Zobrist v. Coal-X, Inc.*, 708 F.2d 1511,

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court dismissed claims of fraudulent inducement because the plaintiff could not have justifiably relied on the statements that allegedly formed the basis for the claim as they were directly contradicted by the written franchise offering statement.<sup>152</sup> A representation clause has a similar purpose. By stating what representation can be relied upon in the settlement agreement, arguing that a party relied on other representations would directly contradict the terms of the settlement agreement and would be unreasonable.

*Hydra-Mac* and *Beer Wholesalers* bring the Hoyt discussion full circle and underscore the value of an express integration clause in the settlement agreement. Because fraudulent inducement claims permit parties to reach outside the terms of contracts even if there is an integration clause,<sup>153</sup> a representation clause should stipulate that neither party may reasonably rely on representations and statements not in the contracts. Ideally, a party or attorney should refrain from making a representation that they do not intend the other to rely upon. If there is such a representation (*i.e.*, regarding a corporation's amenity to a veil-piercing claim), however, the attorney should include a statement in the settlement agreement that (1) all of the terms, conditions, and representations are included in the writing; (2) the parties represent that they have not relied on any other terms that are not contained within the four corners of the settlement agreement; and (3) any reliance on a representation not contained in the agreement is deemed unreasonable or unjustified.

If the settlement agreement is carefully drafted, a party seeking to rescind the settlement agreement because of a claimed fraudulent representation will be unable to do so because the parties have agreed that reliance on a statement or representation not included in the contract would be unreasonable or unjustified.

In tandem, an integration clause and representation clause addresses the issue that concerned so many after the *Hoyt* decision. Representations made outside the terms of the written settlement agreement—essentially that a veil-piercing claim was not feasible—were sufficient grounds to bring a fraudulent inducement claim and, on remand, may be enough to rescind the settlement agreement, pending a determination of whether Mr. Hoyt's reliance was reasonable.<sup>154</sup> In addition to refraining from making statements of fact in the settlement negotiations that might be later claimed to be false, careful drafting that expressly includes all of the representations that the parties intend the other to rely on, and the exclusion of all others, with a proviso that makes such reliance unreasonable, can protect parties from rescission of settlement agreements and fraudulent-inducement claims.

## VI. CONCLUSION

*Hoyt* did not announce any fundamental change in the law, but it does underscore the need for well-considered statements in settlement negotiations and careful drafting of settlement agreements. When the facts of the *Hoyt* case were applied to the law, the appellate courts simply determined that summary judgment was not appropriate because there was a fact question about whether reliance on the veil-piercing statements was reasonable. Perhaps some of the unease with the *Hoyt* decision rests in the fact that clients can be put at risk because of what their attorney says when it is the attorney's job to protect the client from

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1518 (10th Cir. 1983); *One-O-One Enters, Inc. v. Caruso*, 668 F. Supp. 693, 699 (D.D.C. 1987), *aff'd*, 848 F.2d 1283 (D.C. Cir. 1988).

<sup>152</sup> *Carlock*, 719 F. Supp. at 830.

<sup>153</sup> *Hydra-Mac*, 430 N.W.2d at 850,

<sup>154</sup> *Hoyt II*, 736 N.W.2d at 375.

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those kinds of situations. Again, caution in making statements to opposing parties and their attorneys, and carefully drafting settlement agreements takes some of the sting out of *Hoyt*.