

# The Professional Liability Law Blog

BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS,  
INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



## [Summary Judgment Granted for Attorney Accused of Failing to Stop His Client From Settling Her Case](#)

Tuesday, January 4th, 2011

In a November 30, 2010 [unpublished decision](#) issued by the California Court of Appeal (Third Appellate District), the court had harsh words for the attorneys who brought a series of lawsuits arising out of a repudiated settlement:

This appeal manifests another agonizing and protracted chapter in a series of “sour grapes” lawsuits that do nothing except clog up the court system. The prosecution of pointless malpractice actions such as this one benefits no one except the attorneys, who appear to have exploited it for its maximum pecuniary potential. We hope the filing of this opinion will sound the closing bell to this saga of futility.

The case is *Lewellen v. Phillips*, 2010 Cal.App.Unpub.LEXIS 9495.

The client had settled a property dispute with her granddaughter at a mandatory settlement conference presided over by a referee. After deciding that she did not like the settlement and making an unsuccessful effort to block its enforcement, the client brought a malpractice action against the attorney who represented her at the MSC. She claimed the attorney failed to obtain her consent to the settlement, failed to adequately explain its terms to her and pressured her to sign the agreement while she was in a medicated and fragile emotional state.

The trial court granted the attorney’s motion for summary judgment and the Court of Appeal affirmed. Although the claim appeared to be fact intensive, the Court of Appeal explained that the client’s evidence did not create a triable issue of fact. Point by point, the Court of Appeal described the problems with the client’s averments. For example, her declaration contradicted prior testimony on key points. There was no description of specific words or actions of how the attorney “badgered” the client to accept the settlement. Nor was there admissible evidence of how the attorney “harassed” or “bullied” the client at the MSC. Further, the client did not clearly deny the attorney’s declaration that he recommended against acceptance of the settlement. Finally, the client did not submit the declaration of an expert as to whether the attorney’s conduct met the standard of care in communicating with the client concerning the settlement.

Ultimately, the court said that the attorney did not “commit[] malpractice by [allegedly] failing to stop [the client] from settling the case.” The court also rejected the argument that an attorney breaches a standard of care if he fails to tell the client that a settlement may not later be canceled or revoked: “The concept that a settlement agreement signed by all parties and entered into before a judicial officer truly concludes the case is self-evident and requires no explanation.”

In addition to these fatal defects with respect to the elements of duty and breach, the Court of Appeal also held that the client failed to show causation because she did not “provide nonspeculative evidence that, had she not settled, she would have come out better financially.” This causation argument is commonly raised by the

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defense in legal malpractice cases involving alleged inadequate settlements. See *Marshak v. Ballesteros* (1999) 72 Cal.App.4th 1514, 1519.