

TEXAS ACCORD AND SATISFACTION
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The issue of accord and satisfaction is one that typically occurs in instances where an insurance professional treats a payment as a partial payment towards the subrogation damages owed, rather than in-full satisfaction of the claim. Unfortunately, Texas law is very specific about how partial settlement payments should be handled to avoid releasing the adverse carrier from further claims for damages still owed.

Pursuant to the Texas Business and Commerce Code, accord and satisfaction through the tender of a check or other negotiable instrument, even though not for the full amount of the underlying claim, is sufficient to discharge the claim against whom the claim is asserted if certain conditions are met. Those conditions are:

1. The instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim (Ex., “Full and Final Settlement of All Claims” or “Release of all property damages”);
2. The person against whom the claim is asserted in good faith tendered the instrument to the claimant in full satisfaction of the claim;
3. The amount of the claim was unliquidated or subject to a bona fide dispute; and,
4. The claimant obtained payment of the instrument.

In order to avoid accord and satisfaction in Texas, the claimant must either refuse the check or accept it subject to the condition set by the tendering party. It is not possible to accept the check under reservations described on the check and then refuse to be bound by the conditions. In other words, adding protest language to the back of the check, striking out the check maker’s restrictive endorsement and/or inserting a notation on the check that it is being accepted as a partial payment does not prevent accord and satisfaction if the check is negotiated. See *Pileco, Inc. v. HCI, Inc.*, 735 S.W.2d 561, 562-563 (Tex. App.-- Houston [1st Dist.] 1987, ref. n.r.e.); *Hixson v. Cox*, 633 S.W.2d 330, 331-332 (Tex. App.-- Dallas 1982, ref’d n.r.e.).

In Texas, if the insurance professional is not willing to accept the lesser sum in satisfaction of the claim, the best practice to avoid accord and satisfaction is to refuse a check that contains restrictive language and return it to the claimant carrier that issued the payment.

This article appeared in the Winter 2005 Issue of the NASP *Subrogator*.
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