

California Court Of Appeal Construes California's Revised Settlement Statute To Include Settlements Orally Agreed Upon By Counsel Before The Court

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As many are aware, California Code of Civil Procedure § 664.6 provides a summary procedure to enforce a settlement that was either reached in writing outside of Court or orally agreed upon before the Court. In that regard, prior to 2021, Code of Civil Procedure § 664.6 provided that a settlement could be enforced, pursuant to the summary procedure of Code of Civil Procedure § 664.6, so long as there is a writing signed by the parties outside of the presence of the Court or the settlement was confirmed orally before the Court. The California Supreme Court, in construing the version Code of Civil Procedure § 664.6 which was in effect prior to 2021, ruled in the case of Levy v. Superior Court (1995) 10 Cal.4<sup>th</sup> 578, that, for purposes of § 664.6, an oral agreement as to a settlement had to be based on what the litigant expressed to the Court - and not the attorneys.

Effective January 1, 2021, the California legislature passed Assembly Bill No. 2723 which amended Code of Civil Procedure § 664.6 to provide that, for purposes of Code of Civil Procedure § 664.6, a writing signed by a party “includes” a writing signed by the party, an attorney who represents the party, or if the party is an insurer, an agent who is authorized in writing by the insurer to sign on the insurer's behalf. One question that then immediately arose is whether an attorney who *orally* agrees on the record to a settlement, can bind his or her client for purposes of the revised version of Code of Civil Procedure § 664.6.

In the matter of Greisman v. FCA US LLC (2024) Westlaw 3648293, the California Court of Appeal construed the revised Settlement Statute to include settlements that were agreed to on the record by counsel, and not just by parties. The Greisman case, insofar as the published portion of that case, dealt with a lawsuit by a Plaintiff who had filed a lawsuit under the Song-Beverly Act in regard to a 2014 Chrysler Town & Country vehicle she had purchased from CarMax Auto Superstores (“CarMax”). The suit was filed against FCA US LLC (manufacturer) and CarMax.

In a settlement conference over Zoom, a settlement was reached for \$100,000. The settlement was then put before the Court and the Plaintiff, her attorneys, and defense counsel (representing FCA US-manufacturer, and CarMax) agreed to the settlement. Disputes later arose in regard to whether a settlement had occurred. Following a lengthy hearing, the trial court ruled that the settlement on the record came within Code of Civil Procedure § 664.6 (as amended). The Plaintiff then appealed.

On appeal, the Court of Appeal (in the published portion of its opinion) reviewed the legislative and case law history of Code of Civil Procedure § 664.6 and concluded that the statute, as revised in 2021, did not specifically address whether a settlement agreed to by counsel for a party could be enforced pursuant to the revised settlement statute. After further considering the legislative history, and the law on point, the Court of Appeal ruled that an oral settlement can be enforced under § 664.6 based on the oral agreement by counsel before the Court.<sup>1</sup>

The Greisman decision is an important Opinion in that it clarifies that not only can an attorney who signs a settlement agreement bind his or her client to a settlement (outside of court), but an attorney who appears before the Court and orally agrees to a settlement may also bind his or her client. With that said, the plaintiff in the Greisman case did agree (along with her legal counsel) to the settlement, and it remains to be seen whether a settlement agreed to by counsel alone on the record (and not any of the parties) will be binding for purposes of Code of Civil Procedure § 664.6.

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<sup>1</sup> Quoting the Court of Appeal: “Here, to promote rather than defeat the legislative purpose to depart from the Levy decision and to streamline the settlement process, we hold that, as applied to oral settlements stipulated before the court, current section 664.6 does not require that the parties themselves orally stipulate, and instead allows counsel for the parties to orally stipulate on their behalf.” Greisman v. FCA US LLC, p. 10