

## Can You Depend On That Agreed Order? -- Maybe Not

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By Jay a. Frank

You have an agreed order for fees. Opposing counsel has signed off on it. How solid is it? To be safe, don't spend the money yet.

The issue is whether or not opposing counsel has authority from the client to enter into the agreed order. There is a 100 year old Supreme Court case saying that you're fine. The name of the case is *Chicago & Vicinity Hungarian Benev. Soc. v. Chicago & Suburb Hungarian Aid Soc.*, 283 Ill. 99, 118 N.E.2d 1012 (1918). The case holds that you can depend on the representation of opposing counsel that the client has given the necessary authority for the order "....his agreements [counsel of record] and the conduct and management of [the case] it must be considered the agreements of plaintiff.... If any of his [the lawyer] acts were without sufficient authority as between him and his client, the remedy of the plaintiff.... is against its counsel." (283 Ill. At p. 104, 118 N.E. at p. 1014).

Subsequent case law seems to have changed things. The authority on point is another Supreme Court case, this time from 1995: *Brewer v. National R.R. Passenger Corp.*, 165 Ill. 2d 100, 649 N.E.2d 1331 (1995). In summary, the case holds that an attorney's authority to represent a client in litigation is separate from the attorney's authority to compromise. Express authority to settle is required, and there is no presumption that this authority exists. So, your agreed order is only as good as the authority for it from opposing counsel's client. No authority ---- no valid order. This appears to be the case even if opposing counsel signs off on the order, and the order is entered by the court. The Brewer case is cited six years later by the First District as absolute authority on this issue: *Blutcher v. EHS Trinity Hosp.*, 321 Ill.App.3d 131, 746 N.E.2d 863 (1st Dist. 2001).

The only variable factor seems to be the burden of proof with regard to whether or not there is authority from the client. If the agreement between counsel to settle is on the record or spelled out in the order, then authority is presumed, but may be rebutted by "affirmative evidence" from the party claiming a lack of authority. If not on the record or embodied in an order, then authority is not presumed, and the burden is on the party claiming authority to prove it. So, what steps can be taken to solidify the order and nail down authority? Having both clients sign off on the written order is a good start. A representation in the order by the clients that their respective counsel have express authority for the order would probably be icing on the cake.

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