

Checklist for Settlement of Business Cases

Recitals

- Parties
- Nature of dispute

Payment

- Amount of payment
- Characterization/description of payment
- Timing of payment(s)
- Security, interest for future payments

Release

- Mutual releases or not
- General or specific release

Termination of litigation

- Stipulation of dismissal with prejudice, or
- Entry of stipulated judgment

No admission of liability/disputed claim

Apology or other statement of regret

- Written or oral
- Scope of apology

Confidentiality of agreement

- Liquidated damages for breach
- Scope and exceptions
- Confidentiality agreement for 3rd parties

Joint statement re: termination

- Press release
- Response to press inquiries

Confidentiality of business information

- Scope of coverage
- No past disclosure
- Limits on future disclosure

Non-disparagement

- One-way or mutual

Attorney's fees and costs/mediation fees

- Who pays
- Amount

Dispute resolution

- Negotiation
- Mediation
- Arbitration

Boilerplate

- Binding agreement
- Entire agreement/merger clause
- Modifications in writing
- Authority to execute agreement
- Voluntary execution; opportunity to review with counsel

- No assignment
- Binding on successors
- Severability
- Jurisdiction
- Governing law (place of employment; place of execution)
- Captions
- Counterparts
- Notices
- Notarization

Creativity

- E.g., on-going relationship?
- In-kind payments