

EDVA Judge Denies Motion to Vacate Ruling After Settlement

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In significant and hard-fought litigation, it is not uncommon for parties to reach a settlement that includes an agreement to jointly move the court to vacate earlier rulings on key motions in the case. For a settling plaintiff that lost the earlier ruling, vacatur can be important to preserve potential claims against other defendants. Likewise, vacatur of an adverse ruling against a defendant allows that defendant to contest the issue in future cases. For the party that prevailed on the motion, there is often little incentive to oppose an agreement to request vacatur if it is part of an otherwise favorable settlement agreement.

Judicial reaction to such motions to vacate can vary a great deal. In a recent ruling, Judge Ellis brought some clarity to the standards governing a request for vacatur after a settlement. [Brunswick Corp. v. Volvo Penta of the Americas, LLC](#), Civil Action No. 1:22CV108 (E.D.Va. July 7, 2023). *Brunswick Corp.* is a patent infringement case in which the defendant successfully moved to dismiss on the grounds that each of the five allegedly infringed patents was invalid under 35 U.S.C. § 101. After extensive briefing, Judge Ellis granted the motion to dismiss; the plaintiff appealed, and the parties settled while the case was pending on appeal. The parties then moved to vacate the court's ruling on the motion to dismiss.

When a district court is asked to vacate an order under Fed. R. Civ. P. 69(b)(6), Judge Ellis stated that it may do so only under exceptional circumstances. Citing caselaw from the First, Second and Eleventh Circuits, Judge Ellis held that vacatur depends on a case-specific balance between the benefits of settlement to the parties and the judicial system against the harm to the public in the form of lost precedent.

In *Brunswick*, Judge Ellis found that this “exceptional-circumstances test” pointed persuasively to the conclusion that vacatur should be denied. First, the parties had not conditioned settlement on vacatur of the earlier order. The parties argued that denial of vacatur would discourage settlements in the future, but Judge Ellis rejected that view, noting that denial of vacatur would encourage parties to settle *before* a court rules on a key motion, rather than after. On the other side of the balance, Judge Ellis found that vacatur would result in significant harm due to the loss of precedent on an important issue and would harm the public by allowing the plaintiff to continue to enforce invalid patents, which could even lead to antitrust violations.

Brunswick provides important guidance to litigants in the EDVA seeking to vacate interlocutory or final orders after settlement. First, a significant factor in Judge Ellis' decision was that the settlement was not contingent upon the court granting vacatur. Thus, parties who wish to seek vacatur should be careful to ensure that a joint request for

vacatur is a requirement for settlement. Second, parties should emphasize the benefits of settlement to the judicial system and the parties. Finally, parties should work to structure the settlement to lessen any harm to the public due to the loss of precedent. While “no two cases are the same,” as Judge Ellis notes, these principles provide a clear roadmap to satisfying the “exceptional-circumstances test.”

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