California Legislature Amends Required Civil Code Section 1542 Language

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California Civil Code Section 1542 precludes the waiver of unknown claims unless the protections of the section are expressly relinquished. In order to effectively waive the protections of California Civil Code Section 1542, the language of the statute must be included in any agreement, and the parties to the agreement must acknowledge that they are waiving the rights and benefits of the statute. These requirements are not new, but the California legislature recently amended the statutory language required to be included in any waiver.

Effective January 1, 2019, Section 1542 now reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.
While the changes are subtle – (1) adding "or releasing party"; (2) replacing "which" with "that"; and (3) changing "must" to "would" – it is imperative that the new language is used in all agreements containing Section 1542 waivers going forward to ensure their enforceability. This means keeping an eye out not just in settlement agreements, but in every document that contains a Section 1542 waiver – from contractual amendments to severance agreements to transactional documents and everything in between. Additionally, to the extent you have template documents containing Section 1542 waivers, they should be updated to include the new statutory language.