3072 AVOIDANCE FOR MUTUAL MISTAKE OF FACT

You are instructed that a mutual mistake of fact exists where both parties to a contract are unaware of the existence of a past or present fact material to their agreement, or where both parties believe a fact exists which is actually non-existent. The unawareness or belief, however, must arise from a lack of knowledge of the possibility that the fact may or may not exist. If the parties are conscious or aware of, or alerted to, the possibility that a fact does or does not exist, and they waive any inquiry or make no investigation with respect to it, they are not legally mistaken with respect to it.

If there was conscious doubt or uncertainty on the part of the parties as to the existence or non-existence of a fact or situation, and the parties reached an agreement under such circumstances, it is considered that it was their intention and contemplation to accept and compromise the consequences of the doubt and uncertainty, and they would not then be acting under mutual mistake of fact.

A mistake to be mutual must involve both parties. A mere mistake on the part of one, in the absence of fraud on the part of the other, will not avoid a contract obligation.

[A mutual mistake of fact exists when both parties believe and rely on medical representation as to the nature and extent of injuries, which later prove to be erroneous, even though such representations were made in good faith. The representations, however, must refer and apply to existing facts and not be mere expressions of opinion as to future events or development.]

COMMENT

This instruction and comment were approved by the Committee in 1975 and revised in 2014.

Mistake of fact: Grand Trunk Western R.R. v. Lahiff, 218 Wis. 457, 261 N.W. 11 (1935); Meeme Mut. Home Protective Fire Ins. Co. v. Lorfeld, 194 Wis. 322, 216 N.W. 507 (1927); Kowalke v. Milwaukee Elec. Ry. & Light Co., 103 Wis. 472, 79 N.W. 762 (1899). See also Ivancevic v. Reagan, 2013 WI App 121, 351 Wis.2d 138, 839 N.W.2d 416.

Reliance on medical representations: Bryan v. Noble, 5 Wis.2d 48, 92 N.W.2d 226 (1958); Schmidtke v. Great Atlantic & Pacific Tea Co. of America, 236 Wis. 283, 294 N.W. 828 (1940), and Granger v. Chicago M. & St. P. Ry., 194 Wis. 51, 215 N.W. 576 (1927).

Misrepresentations of material facts made by physician employed by the releasee, even though innocently made, constitute constructive fraud sufficient to sustain a setting aside of a release where relied on in good faith by the releasor in executing the release. The fact that such a mistake may be unilateral and not mutual is not material, because the basis for setting aside the release is the misrepresentation, not the mistake of fact. Doyle v. Teasdale, 263 Wis. 328, 343, 57 N.W.2d 381 (1953).

Inadequate consideration is given considerable significance if supported by other evidence, in establishing fraud, mistake, etc. Jandrt v. Milwaukee Auto Ins. Co., 244 Wis. 618, 626, 39 N.W.2d 698 (1949); Doyle v. Teasdale, supra at 345.

Even though the release expressly covers unknown injuries, whether the parties intended the release to cover unknown injuries is usually a question of fact. Doyle v. Teasdale, supra at 346.