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Ensuring Peace in Multiparty Cases

Certain settlements are protected by statute if they are made in good faith.

by Gilda R. Turitz | September 2014

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When one defendant in a multiparty case settles for a low amount, an issue often arises as to whether the settlement has been entered in "good faith." The issue is important because a key California statute enables a party who settles in good faith to leave the litigation and exempts them from certain cross-claims asserted by the other defendants.

Statutory Procedure

Settlements are supposed to bring warring litigants peace and finality, but that goal may be jeopardized when non-settling defendants challenge a pre-verdict or pre-judgment settlement between the plaintiff and some - but not all - joint tortfeasor or co-obligor defendants. The challenge usually comes in the form of an objection that the settlement lacks the requisite good faith to qualify for the protective statutory cloak that would shield the settling party from the cross-claims asserted by other defendants for equitable comparative contribution or indemnity based on comparative negligence or comparative fault. Moreover, a good faith settlement will reduce the plaintiff's claims against the non-settlors by the amount stipulated in the release, dismissal, or covenant not to sue or enforce judgment, or by the amount of consideration paid to the plaintiff, whichever is greater. (See Cal. Civ. Proc. Code §§ 877 and 877.6.)

Any party can apply to the superior court for a good faith determination under alternative procedures of section 877.6(a) by a formal motion or a simple notice served by certified mail. A party asserting the lack of good faith (which is a question of fact) bears the burden of proof. (§ 877.6(d).) The battle regarding a disputed good faith claim usually focuses on the factors explained in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (38 Cal. 3d 488 (1985)) and its progeny. The issue is whether the settlement is so far "out of the ballpark" that it is inconsistent with the statute's dual goals of encouraging settlements and equitably allocating costs among multiple tortfeasors.

Proportionate Liability

The predominant factor under *Tech-Bilt* is that the settlement amount cannot be "grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be." (38 Cal. 3d at 499.) Although a monetary sum is easily quantified, total settlement value must factor in any nonmonetary considerations. Admissible evidence is required to prove value and the settlor's proportionate liability, and expert affidavits in support may be necessary on both issues.

Financial Reality

Courts recognize that a settlor may pay less in settlement than it would be found liable for at trial, especially if its financial resources are limited. The good faith determination requires adequate and admissible evidence of the settling defendant's net worth and any insurance or claimed noncoverage. An objecting party may properly seek a continuance of the good faith hearing to marshal evidence, including taking discovery, to support its burden of proof on the financial issues. If discovery is sought, the settlor may seek a protective order to limit financial disclosures.

Although courts are quite flexible in applying the good faith analysis, a settlement will not qualify as valid under section 877.6 if the evidence demonstrates that the settling parties engaged in conduct aimed at injuring the non-settlors' interests. A collusion finding may be supported by a disproportionately low settlement figure entered into solely to immunize the settlors from a cross-complaint. (See *Mattco Forge, Inc. v. Arthur Young & Co.*, 38 Cal. App. 4th 1337 (1995).) However, if the settlement resulted from a mediation or judicially hosted settlement conference, there is a much better chance that it will meet the good faith standard.

Make It Conditional

If settling parties anticipate a challenge, they should consider conditioning the settlement upon the court's approval. Otherwise, if the court finds lack of good faith, the settling defendants will still be bound to pay, and they will face continuing potential exposure to indemnify non-settlors.

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Dismissing Cross-Complaints
A good faith settlement order does not by itself dismiss indemnity and contribution cross-complaints. The settling defendant must move for that relief, and the motion can be made concurrently with or immediately following the good faith hearing.

Appellate Relief
Any aggrieved party may file a petition for writ of mandate within 20 days after written notice of the good faith ruling. (Cal. Civ. Proc. Code § 877.6(e).) Because there is no right to appeal from a good faith settlement order, to contest the trial court's ruling, a party should promptly file a writ. Waiting to pursue appellate relief until after a judgment is entered will usually be too late.

The rules governing settlement are designed to be efficient and user-friendly. And any lawyer in a multiparty case is well advised to not only be aware of them, but also to understand both their potency and their limitations.

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