

# How Settlement Credits Work: Indiana

By Kathryn S. Whitlock

Apportionment in Indiana is governed by statute. Before this statute was enacted, the judge, and not a jury, would reduce any verdict by the amount of prior settlements. *Manns v. State Dept. of Highways*, 541 N.E.2d 929 (Ind. 1989). Now, the non-party defense statute states, “in an action based on fault, [a defendant may] assert as a defense that the damages of the claimant were caused in full or in part by a nonparty.” Ind. Code §34-51-2-14. A non-party is defined to be, “a person who caused or contributed to cause the alleged injury, death, or damage to property but who has not been joined in the action as a defendant”. Ind. Code §34-6-2-88. The Indiana courts have said that, under these statutes, the only way for a non-settling defendant to seek credit from another party (settled or not, party or not) is to invoke the Nonparty Defense Statute.

In *Bowles v. Tatom*, 546 N.E.2d 1188 (Ind. 1989), the Indiana Supreme Court held that a defendant’s failure to object to the dismissal of co-defendants or to name dismissed co-defendants as nonparties precluded the trial court from allocating any percentage of fault to them. Following on to that, the Court of Appeals held that non-settling defendants in tort cases can name original defendants as non-parties once those settling defendants settle. *Koziol v. Vojvoda*, 662 N.E.2d 985 (Ind. Ct. App. 1996). Finally, in *Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140 (Ind. 2000), the Supreme Court held that including settling defendants on the verdict form is the only way now to allocate fault to another entity; a set-off is not permitted.

Indiana courts have traditionally followed the “one satisfaction” principle, meaning that remaining defendants got credit for settlements of other defendants sued for the same injury. *Sanders v. Cole Mun. Fin.*, 489 N.E.2d 117 (Ind. Ct. App. 1986). On the other hand, Indiana courts also have encouraged settlement and encouraged negotiation of disputes. *Lafayette Tennis Club, Inc. v. C.W. Ellison Builders, Inc.*, 406 N.E.2d 1211 (Ind. Ct. App. 1980). Explicitly acknowledging that it was making a policy decision, the Indiana Supreme Court considered the policies driving both of these principles and decided that the best way to further them both was to require defendants

to name non-parties under the Comparative Fault Statute and then permit a jury to allocate the damages. *Mendenhall, supra*. Therefore, the Supreme Court held that set-offs and credits are no longer available unless a defendant has named the entity from whom it seeks credit as a non-party and proved its case against that party. The direction from the highest court is clear, so defendants should take heed.

## **ABOUT THE AUTHOR**

**Kate Whitlock** is a partner in the Atlanta office of Hawkins Parnell & Young, LLP. She has over 30 years of experience in a wide variety of litigation, including professional liability, products liability, premises liability, and commercial disputes. She has tried more than 50 cases and represents Fortune 500 companies and individuals in all aspects of litigation from pre-suit negotiation to trial and through appeal.