

How Settlement Credits Work: New Jersey

By Roy F. Viola, Jr.

Under New Jersey law, “settlement credits” don’t exist. A plaintiff who settles with any defendant accepts that amount and all claims are extinguished. However, settling parties may be considered for allocation on a verdict sheet. *Young v. Latta*, 123 N.J. 584, 589 (1991).

Once a party settles it falls to the remaining defendants at trial to prove the liability of a settling defendant. *Mort v. Besser Co.*, 287 N.J. Super. 423, 431-32 (App. Div), *certif. denied* 147 N.J. 577 (1996). Plaintiff essentially accepts the risk that a settled defendant is allocated with a larger percentage at trial. Consider this example: Plaintiff sues Corporation A, B and C in a lawsuit. During the pendency of the case, Defendant A settles with plaintiff for \$5,000, leaving Corporation B and C in the case. Those two defendants refuse to settle and go to trial. At trial, Corporations B and C offer proof of Corporation A’s liability and the jury finds that Corporations A, B and C are all liable to plaintiff and a proximate cause of plaintiff’s illness. The allocations are as follows:

Corporation A	70%
Corporation B	15%
Corporation C	15%

Damages of \$100,000 are awarded. The plaintiff’s total recovery in the case is \$35,000, which includes \$15,000 each from Corporation B and C, plus the \$5,000 settlement from Corporation A. Plaintiff assumed the risk that a jury would award a high percentage of fault against the settling party. The corollary is that if the plaintiff accepts a settlement from a party who is later adjudged to have zero liability (or a small percentage), the plaintiff benefits from the windfall of the settlement.

In *Town of Kearny v. Brandt*, 214 N.J. 76, 97 (2013) the New Jersey Supreme Court held that “[t]

he Comparative Negligence Act and the Joint Tortfeasors Contribution Law comprise the statutory framework for the allocation of fault when multiple parties are alleged to have contributed to the plaintiff's harm." It falls to the jury to allocate percentages against any defendant against whom liability is found. It must always add up to 100% and only parties in suit may be adjudged liable.

New Jersey also has a "deep pockets" statute that permits a plaintiff to recover from one party, even if that party has not been adjudged to be 100% liable. A plaintiff can recover the full verdict amount, however apportioned among the parties, from a single party if that party has been determined to be 60% or more responsible for the total damages. That party can recover the amount it has overpaid from the other responsible defendants – if it can. A plaintiff can collect from any party less than 60% responsible for the total damages only that percentage of the damages attributable to that defendant.

By way of example, Corporation A is found 70% liable and Corporations B and C each 15% liable. The allocations total 100%. The verdict is \$100,000. Plaintiff can collect the entire verdict - \$100,000 – from the 70% responsible defendant A or its insurer. After A pays \$100,000, or 100% of the award, A can then seek contribution under another statutory section – N.J.S.A. 2A:53A-1 et seq. – from B and C of their respective 15% shares, namely \$150,000 each. Rather than plaintiff, A now has the burden of collection. If B is bankrupt and uninsured and can't pay, A winds up "out" B's share. If C only has assets to pay \$5,000, A is also "out" the difference between the amount of the available assets and the judgment amount, or \$10,000.

ABOUT THE AUTHOR

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