

How Settlement Credits Work: New Mexico

By Robert B. Gilbreath

By statute, a tort defendant in New Mexico is entitled to credit for settlements the plaintiff has reached with others:

A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.ⁱ

It is not necessary that the settling party be adjudicated a “tortfeasor” in order for the settlement credit to apply. Rather, “whether or not one who settles and receives a release is judicially determined to be a tortfeasor[,] or clearly admits being one, absent any other countervailing considerations[,] the effect of the release is to be governed by the provisions of the Contribution Among Tortfeasors Act. A release so worded ‘reduces the claim against the other tortfeasors in the amount of the consideration paid for the release’ or in such amount or proportion as the release provides for reduction, if the total claim is greater than the consideration paid.”ⁱⁱ

A credit for amounts paid by others is improper, however, if the verdict is based on principles of comparative fault.ⁱⁱⁱ In New Mexico, “[c]omparative negligence requires a determination of the percentage of negligence of each plaintiff, defendant, beneficiary, and non-party that caused the plaintiff’s total damage.”^{iv} Thus, if the jury determines the percentage of fault for all non-party settlers, in addition to the named defendants, the non-settling defendant will not be entitled to any settlement credits. A credit is not necessary because the defendant is paying only its share of the plaintiff’s damages.

New Mexico law does, however, impose joint and several liability in some circumstances, includ-

ing product strict liability claims:

- (1) to any person or persons who acted with the intention of inflicting injury or damage;
- (2) to any persons whose relationship to each other would make one person vicariously liable for the acts of the other, but only to that portion of the total liability attributed to those persons;
- (3) to any persons strictly liable for the manufacture and sale of a defective product, but only to that portion of the total liability attributed to those persons^v; or
- (4) to situations not covered by any of the foregoing and having a sound basis in public policy.^{vi}

New Mexico courts have not determined how settlement credits are to be applied when a defendant is, under principles of joint and several liability, liable for all of the plaintiff's damages. Arguably, the jointly and severally liable defendant should receive a credit for any settlements so as to prevent a double recovery by the plaintiff. "New Mexico does not allow duplication of damages or double recovery for injuries received."^{vii}

A defendant that is jointly and severally liable is entitled to proportional indemnity, which applies "when the one seeking indemnification has been adjudged liable for full damages on a third-party claim that is not susceptible under law to proration of fault among joint tortfeasors."^{viii} Proportional indemnification, however, applies only when contribution or some other form of proration of fault among tortfeasors is not available. It does not apply when the Uniform Contribution Among Tortfeasors Act provides for proration of damages among joint tortfeasors.^{ix} Thus, a federal court has held that because New Mexico law provides for the right of contribution among joint tortfeasors and is available as a means of proration, "no proportional indemnity cross-claim is available in connection with any claim Plaintiff has for strict products liability."^x

ABOUT THE AUTHOR

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ENDNOTES

i NMSA 1978, § 41-3-4 (1947).

ii *Kirby v. N.M. State Highway Dep't*, 643 P.2d 256, 260 (N.M. Ct. App. 1982).

iii *Atler v. Murphy Enters.*, 104 P.3d 1092, 1100 (N.M. Ct. App. 2004).

iv *Richter v. Presbyterian Healthcare Servs.*, 326 P.3d 50, 65 (N.M. Ct. App. 2014).

v It is unclear what is meant by “but only to that portion of the total liability attributed to those persons.” Joint liability means a defendant is liable for all of the plaintiff’s damages, even if caused in part by another defendant. Yet this language seems to suggest something inconsistent with that principle. Perhaps this provision would be triggered in a case where the jury found one defendant’s negligence was 30% responsible for the plaintiff’s injuries and the remaining defendants were liable, under a strict liability theory, for causing 70% of the plaintiff’s damages. The strict liability defendants would each be jointly and severally liable for 70% of the plaintiff’s damages.

vi NMSA 1978, § 41-3A-1(C).

vii *Hale v. Basin Motor Co.*, 795 P.2d 1006, 1012 (N.M. 1990).

viii *Safeway, Inc. v. Rooter 2000 Plumbing & Drain*, 368 P.3d 389, 397 (N.M. 2016).

ix *Id.*

x *Pinto v. Warn Indus.*, 2015 U.S. Dist. LEXIS 193249, at *12 (D.N.M. 2015).