

How Settlement Credits Work: South Carolina

By S. Christopher Collier and Robert B. Gilbreath

In South Carolina a non-settling defendant is entitled to credit for the amount paid by another defendant who settles.¹ South Carolina Code § 15.38-50 provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Therefore, before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant. In multiple-defendant cases, the setoff “shall be applied in proportion to each defendant’s percentage of liability as determined” by subsection C of South Carolina Code § 15-38-15, which governs apportionment of fault.

The reason for allowing a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained that has already been paid to him. In other words, there can be only one satisfaction for an injury or wrong. The reduction in the judgment, however, must be from a settlement for the same cause of action.

When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law. Under this circumstance, § 15-38-50 affords the court no discretion in applying a setoff. But where a settlement involves more than one claim, the allocation of settlement proceeds between the various causes of action affects the amount a nonsettling defendant may be entitled to offset.ⁱⁱ

In a 2015 decision, the South Carolina Supreme Court signaled that a plaintiff may structure a settlement in a manner that will disadvantage a nonsettling defendant:

A plaintiff who enters into a settlement with a defendant gains a position of control and acquires leverage in relation to a nonsettling defendant. This posture is reflected in the plaintiff's ability to apportion the settlement proceeds in the manner most advantageous to it. Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.ⁱⁱⁱ

In that case, the plaintiff's decedent died in a car wreck and sued the other driver and Ford Motor Company. The plaintiff settled with the other driver for \$25,000, allocating \$20,000 to the survival claim and \$5,000 to the wrongful death claim. Shortly before trial of her claims against Ford, she dismissed the survival claim. After verdict, Ford urged the court reallocate the settlement to \$5,000 for the survival claim and \$20,000 for the wrongful death claim. The court refused, but the court of appeals granted that request. The South Carolina Supreme Court reversed, explaining, "Settling parties are naturally going to allocate settlement proceeds in a manner that serves their best interest. That fact alone is insufficient to justify appellate reapportionment for the sole purpose of benefitting Ford."^{iv}

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ENDNOTES

i S.C. Code Ann. § 15-38-50.

ii *Oaks at Rivers Edge Prop. Owners Ass'n v. Daniel Island Riverside Developers, LLC*, 803 S.E.2d 475, (S.C. Ct. App. 2017).

iii *Riley v. Ford Motor Co.*, 777 S.E.2d 824, 831 (S.C. 2015).

iv *Id.* at 831.