How Settlement Credits Work: Washington

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In the State of Washington, the statute providing a non-settling defendant the right to a credit for the plaintiff's settlement with other parties has somewhat limited application. This is because in 1986, the Washington legislature established proportionate liability by enacting Revised Code of Washington § 4.22.070.

That statute requires the jury to determine the percentage of fault attributable to "every entity which caused the claimant's damages," and requires that judgment be rendered for each party's proportionate share of the claimant's total damages.[i] In other words, a defendant pays only for the percentage of damages it was held liable for causing. This obviates the need for settlement credits.

The proportionate-liability statute specifies exceptions, however. First, there is an exception for "any cause of action relating to hazardous wastes or substances or solid waste disposal sites." This provision has been held to apply to product-liability claims based on exposure to a defendant's asbestos containing products."[ii] Thus, the proportionate liability statute does not apply in such cases, and the settlement-credit statute governs offsets.

Also, joint and several liability continues to apply where defendants act in concert, a person acts as an agent or servant of a party, or a claimant is not at fault. It is under these exceptions that the settlement credit statute, Revised Code of Washington § 4.22.060, applies.[iii] That is, when held jointly and severally liable for all of the plaintiff's damages, a defendant is entitled to a settlement credit.

As noted, joint and several liability is imposed in cases where the jury assigns no percentage of responsibility to the plaintiff, as is frequently the case in product-liability litigation. In such a case, the defendants against whom judgment is rendered "shall be jointly and severally liable for the

sum of their proportionate shares of the [claimant's] total damages."[iv]

The settlement-credit statute, RCW § 4.22.060, provides:

1. A party prior to entering into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with a claimant shall give five days' written notice of such intent to all other parties and the court. The court may for good cause authorize a shorter notice period. The notice shall contain a copy of the proposed agreement. A hearing shall be held on the issue of the reasonableness of the amount to be paid with all parties afforded an opportunity to present evidence. A determination by the court that the amount to be paid is reasonable must be secured. If an agreement was entered into prior to the filing of the action, a hearing on the issue of the reasonableness of the amount paid at the time it was entered into may be held at any time prior to final judgment upon motion of a party.

   The burden of proof regarding the reasonableness of the settlement offer shall be on the party requesting the settlement.

2. A release, covenant not to sue, covenant not to enforce judgment, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount paid pursuant to the agreement unless the amount paid was unreasonable at the time of the agreement in which case the claim shall be reduced by an amount determined by the court to be reasonable.

3. A determination that the amount paid for a release, covenant not to sue, covenant not to enforce judgment, or similar agreement was unreasonable shall not affect the validity of the agreement between the released and releasing persons nor shall any adjustment be made in the amount paid between the parties to the agreement.

Therefore, when the statute applies, the trial court must—before signing a judgment on a jury verdict—reduce the amount of the verdict to account for any funds previously paid by a settling party, following a hearing on the reasonableness of the settlement amount. If the court finds the settlement amount was not reasonable, "the claim shall be reduced by an amount determined

by the court to be reasonable."[v]

What is a reasonable settlement amount must be determined on a case-by-case basis under factors specified by the Washington Supreme Court.[vi] Those factors are:

- the releasing person's damages;
- the merits of the releasing person's liability theory;
- the merits of the released person's defense theory;
- the released person's relative faults;
- the risks and expenses of continued litigation;
- the released person's ability to pay;
- any evidence of bad faith, collusion, or fraud;
- the extent of the releasing person's investigation and preparation of the case; and
- the interests of the parties not being released.[vii]

The statute speaks in terms of a settlement between a plaintiff and "a person liable." This language does not, however, mean the settling party must have been adjudged liable or even been a party to the litigation. The Washington Supreme Court, applying RCW 4.22.060, has credited defendants in an asbestos case for settlement monies that plaintiffs received from a non-party.[viii]

In joint and several liability situations where the jury does assign fault to the plaintiff (cases where defendants act in concert or a person acts as an agent or servant of a party), the settlement credit must be deducted after the damages award is reduced by the percentage of fault the jury found attributable to the plaintiff.[ix] This is true even if two separate tortious acts are involved, so long as they caused an indivisible injury to the plaintiff.[x]

Presumably, in a case where the jury assigns no percentage of responsibility to the plaintiff—and the defendants are therefore jointly and severally liable for the sum of their proportionate shares of the plaintiff's total damages—each defendant against whom judgment is rendered receives a proportionate share of the available settlement credits. Of course, if only one jointly and severally liable defendant pays all the damages, that defendant would be entitled to an offset in the amount of the entire settlement credit amount.

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ENDNOTES

i *Waite v. Morisette*, 843 P.2d 1121, 1123 (Wash. Ct. App. 1993).

ii *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989).

iii *Id.*

iv R.C.W. § 4.22.070(1)(b).

v R.C.W. § 4.22.060(2).

vi *Glover v. Tacoma Gen. Hosp.*, 658 P.2d 1230 (Wash. 1983), overruled on other grounds, *Crown Controls, Inc. v. Smiley*, 756 P.2d 717 (1988).

vii *Id*. at 1236.

viii *See Brewer v. Fibreboard Corp.*, 901 P.2d 297 (1995) (although the Manville Personal Injury Settlement Trust, with which plaintiffs had settled, was not a party to the suit, judgment against defendants was offset by the amount plaintiffs received from the Manville Trust).

ix *Erdman v. Lower Yakima Valley B.P.O.E. Lodge No. 2112*, 704 P.2d 150, 158-59, (Wash. Ct. App. 1985).

x *Id.*