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What is a 'good faith' settlement?

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Defendants generally try to avoid fighting among themselves so as to avoid helping the plaintiff. The exception to that rule is when one of the defendants decides to settle and a fight ensues over whether the settlement is in good faith.

For the defendants left behind, the issue is enormous. If the settlement is found to be in good faith, then the amount of the settlement is the amount of the setoff the remaining defendants will get against any judgment against them under the Joint Tortfeasor Contribution Act. 740 ILCS 100/2(c).

As observed by the Illinois Supreme Court in *Johnson v. United Airlines*, 203 Ill.2d 121, 128 (2003), "[t]he 'good faith' of a settlement is the only limitation which the Act places on the right to settle and it is the good-faith nature of a settlement that extinguishes the contribution liability of the settling tortfeasor."

The act does not define the term "good faith," and "there is no single, precise formula for determining what constitutes 'good faith' that would be applicable in every case." *Johnson*, 203 Ill.2d at 134.

The court stated, "A settlement will not be found to be in good faith if it is shown that the settling parties engaged in wrongful conduct, collusion, or fraud."

It has further held that in evaluating good faith the settlement must satisfy the purposes of the act which are "the encouragement of settlements and the equitable apportionment of damages among tortfeasors," and trial courts may also consider "whether the settlement amount was reasonable and fair, whether the parties had a close personal relationship, whether the plaintiff sued the settling party, or whether information about the settlement agreement was concealed." Id. at 133-134; *Palacios v. Mlot*, 2013 IL App (1st) 121416, ¶ 22.

From that amalgam of factors the dispute that resulted in the recent decision from the Illinois Appellate Court, 1st District, in *Hartley v. North American Polymer Co.*, 2020 IL App (1st) 192619 emerged. The *Hartley* case has given another example of the need for a more thorough definition of a good faith settlement from the General Assembly.

In *Hartley*, the plaintiff's decedent died as a result of chemical exposure. The plaintiff sued the manufacturer, which in turn filed a third-party suit against the employer. The plaintiff settled directly with the third-party defendant for $50,000 despite the availability of a $1 million policy. The remaining defendants challenged whether the settlement was in good faith based upon the familial and economic relationships between the plaintiff and third-party defendant (the decedent's father still worked for the third-party defendant), and after originally finding the settlement not in good faith, the trial court reversed itself.

The defendants appealed, arguing the trial court abused its discretion in finding the settlement in good faith.

In reversing the decision, the appellate court held, "The totality of the circumstances leading to the settlement show that the settlement was not entered into in good faith, where the parties had a close personal relationship, where Hartley had considerable potential liability, and where the settlement amount was modest compared to the limits of the insurance policy."

No matter how many times the statute and courts use the term "good faith," it does not give it any more meaning. Good faith should not be only able to be discerned when it is seen, especially when appellate review is on abuse of discretion standard. Something more concrete is needed and that should come from the General Assembly.

Given the high proportion of cases that settled before the pandemic and the need to assist parties in settling cases now, in order to clear the logjam of cases, a clearer definition from the General Assembly as to what constitutes good faith under the act would be helpful. A delineated hierarchy of factors for the courts to consider and specific instructions to courts to consider the value of the claim against the settling defendant, in both the dimensions of liability and damages, is necessary to achieve the goals of equitable apportionment of damages and the encouragement of settlements.

Specifically, the amended statute should include overruling cases like *Cellini v. Village of Gurnee*, 403 Ill.App.3d 26 (1st Dist. 2010), by allowing a trial court to evaluate what the plaintiff is likely to seek at trial and the proportional liability of the settling defendant. This analysis is necessary to determine whether a settlement achieves the goals of the act. Such a change would also encourage settlement of the entire case, not just with some of the parties. If equitable apportionment is the goal, which it should be, advantage in settlement should not be given to those defendants who "get on the bus," which results in driving the cost of settlement of those defendants that remain.

In addition, trial courts should be allowed to consider the allocation of settlements by the plaintiff between wrongful death, Survival Act, and loss of consortium claims. Trial courts should further be empowered to preclude dismissal of claims at a later date as a condition to the allocation of a settlement amongst claims as allocation and dismissal is a tactic often used by plaintiffs to deprive the remaining defendants of the setoff to which they would otherwise be entitled.

Extreme cases like *Hartley* and *Ross v. Illinois Cent. R.R. Co.*, 2019 IL App (1st) 181579, should not be the only ones where the good faith of a settlement can be successfully challenged. True good-faith settlements can be achieved by providing better guidance to litigants, their counsel, and the courts that will allow proper evaluation of cases that encourage settlement.
