

SETTLEMENT/GOOD FAITH

BURDEN OF SHOWING A LACK OF GOOD FAITH

Party asserting lack of good faith has the burden of proof on the issue of good faith. *Code of Civil Procedure* § 877.6(d). That party the burden of demonstrating that settlement is "so far 'out of the ballpark' in relation to [the Tech-Bilt] factors as to be inconsistent with the equitable objectives of the statute." *Tech-Bilt, Inc. v. Woodward-Clyde*, 38 Cal.3d 488, 499-500 (1985).



The Tech-Bilt Factors

The determination of the good faith of a settlement is made through an analysis of a number of factors and practical considerations. "At a minimum, a party seeking confirmation of a settlement must explain to the court and to all other parties: who has settled with whom, the dollar amount of each settlement, if any settlement is allocated, how it is allocated between issues and/or parties, what non-monetary consideration has been included, and how the parties to the settlement value the nonmonetary consideration." *Alcal Roofing & Insulation v. Superior Court*, 8 Cal.App.4th 1121, 1129 (1992).



The Tech-Bilt Factors

Ultimately, the “settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant’s liability to be.” *Tech-Bilt, Inc. v. Woodward Clyde*, 38 Cal.3d 488, 499; quoting *Torres v. Union Pacific Railroad Co.*, 157 Cal.App.3d 499, 509 (1984). The factors to be taken into consideration include:

- (i) A rough approximation of plaintiff’s total recovery, and the settlor’s proportionate liability;
- (ii) The amount paid in settlement;
- (iii) The allocation of settlement proceeds among plaintiffs;
- (iv) A recognition that the settlor should pay less in settlement than if found liable at trial;



The Tech-Bilt Factors

- (v) Financial conditions and insurance policies limits;
- (vi) The existence of collusion, fraud or tortuous conduct intended to injure the interests of non-settling defendants.

Tech-Bilt, supra, 38 Cal.3d at 499.



MORE ON GOOD FAITH SETTLEMENTS

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BASIC RULES

- “Good faith” settlements must fit “reasonable range” of the parties’ proportional share of “comparative liability” (*Tech Belt Inc. v. Woodward Clyde & Associates*, 38 Cal.3d 488 (1985)).
- CCP §877.6 procedure for “good faith” analysis.
- If settlement is in good faith, it bars claims for equitable, contribution or comparative indemnity; and implied contractual indemnity.
- Non-settling defendants off set money to plaintiff against their potential liability.



BASIC RULES

- Two cases discuss complexities of documenting good faith settlement plus allocations in multi-party, complex construction defect case. See *Regan Roofing Company v. Superior Court*, 21 Cal.App.4th 1685 (1994) and *Erreca's v. Superior Court*, 19 Cal.App.4th 1475 (1993).
- Party seeking confirmation of settlement must explain: who has settled with whom, the dollar amount of each settlement, if any settlement was "allocated", how it was allocated between issues and/or parties, what non-monetary consideration has been included and how the settlement parties value the non-monetary consideration. (*Regan Roofing Company v. Superior Court*, 21 Cal.App.4th 1685 (1995)).



BASIC RULES

- Party seeking to confirm settlement must explain evidentiary basis for any allocations and valuations and must demonstrate that allocation was "reached in a sufficiently adversarial manner" to justify a presumption that valuation was reasonable. No collusion.
- Nonparticipating insurer bound by stipulated judgment as long as there is adequate protection from collusion. *Pruyn v. Agricultural Ins.*, 36 Cal.4th 500, 519 (1995).



MORE SETTLEMENT DEVELOPMENTS

- Allocation rules require settling parties to explain “evidentiary basis”. (See *L.C. Rudd & Sons v. Superior Court*, 52 Cal.App.4th 742 (1997)).
- *Rudd* found Judge cannot consider irrelevant matters in reducing allocation. Evidence must show that the allocation is in the proper “ballpark”.
- “Good faith” can’t cut off contractual indemnity rights. (*Bobrow/Thomas & Associates v. Superior Court*, 50 Cal.App.4th 1654 (1996))



MORE SETTLEMENT DEVELOPMENTS

- *Bobrow* held settlement in bad faith; its “intended effect” was to cut off cost contractual indemnity rights.
- Settlement can’t “intend” to harm a non-settling defendant.
- Non-cash consideration must normally be assigned cash value; it is not required in all cases (*Aero-Crete v. Superior Court*, 21 Cal.App.4th 203).
- *Aero-Crete* not require cash value for assignment of indemnification rights at the good faith hearing.
- Good faith settlement order not need to allocate liability between subcontractors where there are 21 different trades on condo case. (*Gouvis Engineering v. Superior Court*, 37 Cal.App.4th 462).



MORE SETTLEMENT DEVELOPMENTS

- Settling parties need to show the "rational basis" for establishing "ballpark" of good faith settlements.
- Trial court should not have permitted developer's attorney to give his "understanding" of the proper settlement allocation in subsequent indemnity action against the non-settling architect. (*Dillingham Construction v. Nadel Partnership*, 64 Cal.App.4th 264 (1998))
- *Dillingham* said attorney had "motivation to exaggerate amount" of settlement that went to 13 architectural defects.



MORE SETTLEMENT DEVELOPMENTS

- Dillingham required that for allocation to have “presumptive effect” against non-settling defendant, it must result from “true adversary proceeding”, where non-settling parties are heard.
- *Heppler v. J.M. Peters Company*, 73 Cal.App.4th 1265 (1999), held that in determining effect given to allocations by settling parties, issue is “reasonableness” and not good faith.
- *Norco v. Owens*, 64 Cal.App.4th 955 (1988): Courts have “broad discretion” in determining good faith and in allocating potential liability among joint tortfeasors.



MORE SETTLEMENT DEVELOPMENTS

- Court of Appeal function is to assess whether such determinations is "buttressed by any substantial evidence" (See *Norco, supra*).
- Plaintiff's general release agreement must be sure general release does not excuse "everyone in the world" thereby barring claims against other tortfeasors. See *Neverkobec v. Fredericks*, 74 Cal.App.4th 337 (1999)).
- *Hamilton v. Maryland Casualty*, 78 Cal.App.4th 640 (2000) (review granted) addressed rights of insured, after insured, without insurer okay, settled and assigned to plaintiff his contract rights against the insurer.



MORE SETTLEMENT DEVELOPMENTS

- Settlement is not binding on non-consenting insurer actively involved in defending its insured. (Hamilton, supra).
- Where the insurer “plays ball” and defends, it cannot be “set up” by its insured’s settlement which assigns contractual rights against the insurer.
- Just think of the numerous circumstances where plaintiffs achieve settlement with subcontractor cross-defendants with no express indemnity duties.

