

»Business Alert

February 2010— If a Settlement Offer Is Too Good, Be Careful Of the Non-Settling Parties

There are many situations where the party who wins a lawsuit is allowed to recover attorney's fees. Sometimes this is because there is a clause in the contract between the parties; sometimes it is because of a law. Any time the court evaluates if they should award attorney's fees, the court determines if the party is a "prevailing party."

This gets complicated when a person is forced to sue multiple defendants. When a person sues multiple parties for the same act, some parties may settle while others go to trial. After the lawsuit is over, the court reduces the amount awarded by the amount already paid in settlement. If the settlement amount is greater than or equal to the amount awarded at trial, this results in a "zero judgment."

In *Goodman v. Lozano* (2010) 47 Cal. 4th 1327, the California Supreme Court held that if a party receives a zero judgment because of the settlement of other defendants, they are not the prevailing party at trial. This means that even if a plaintiff wins at trial, by settling with the other parties, they may have precluded themselves from being awarded attorney's fees as the prevailing party. The court is even authorized to award attorney's fees for the non-settling defendant as the "prevailing party", despite the fact that the court also found the defendant to be liable.

In addition, *Goodman* creates a new potential avenue to "game the system." If multiple parties face liability as well as attorney's fees, be wary of one party offering to settle for a high amount. They may be coordinating to prevent an attorney's fees award, or worse, prove themselves to be the prevailing party to get an attorney's fees award against you.

This ruling significantly impacts how attorneys and their clients should proceed in cases where: (1) only some of the parties settle; and (2) the Court will award attorney's fees to the prevailing party. In such cases, the plaintiff should reduce their anticipated recovery at trial (or summary judgment) by the amount of all

settlements to determine whether they will have a net monetary judgment in their favor, or a devastating "zero judgment". In the former case, the plaintiff would likely recover attorney's fees, in the latter, the plaintiff would likely have to pay the remaining defendant's attorney's fees. Therefore, the consequences of *Goodman* can be enormous.



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