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Section 998 Includes Settlement “Judgment”

Code of Civil Procedure section 998 is a cost-shifting statute which encourages the settlement of actions, by penalizing parties who fail to accept reasonable pretrial settlement offers. A plaintiff who refuses a reasonable pretrial settlement offer and later fails to obtain a “more favorable judgment” is penalized by a loss of prevailing party costs and an award of costs in the defendant’s favor.

Do the cost-shifting penalty provisions of section 998 apply when a case ends, not with a judgment after trial, but with a settlement that provides for the payment of money by defendant in exchange for a dismissal with prejudice by the plaintiff? The answer is yes, according to *Madrigal v. Hyundai Motor America* (2023) 90 Cal.App.5th 385.

The plaintiffs sued Hyundai under California’s automobile lemon law (Song-Beverly Act). Hyundai made two offers to compromise under section 998, both of which were rejected. The case proceeded to trial. After a jury was sworn in, plaintiffs settled with Hyundai pursuant to a stipulated settlement that was enforceable under section 664.6, for a principal amount that was less than Hyundai’s second section 998 offer. The settlement terms were presented to the trial court.

Plaintiffs filed a motion for costs and attorney fees as prevailing parties under section 1032, subdivision (a)(4), and the Song-Beverly Act (Civ. Code, § 1794, subd. (d)). Hyundai moved to strike plaintiffs’ costs, and opposed Plaintiffs’ attorney fee request. Hyundai argued that because plaintiffs failed to obtain a judgment more favorable than Hyundai’s second section 998 offer, plaintiffs could not recover any costs or fees incurred after May 26, 2017, the date of that offer.

The trial court rejected Hyundai’s section 998 arguments, explaining that “[t]he purpose of the statute is to encourage settlement of lawsuits prior to trial. [Citation.] In this case, the parties settled the case prior to trial, and as there was no trial, no judgment or award was rendered. Accordingly, ... section 998 does not apply.” Hyundai appealed.

The Court of Appeal reversed. First, the terms of the stipulated settlement resulted in a final determination of the parties’ rights within the meaning of section 577, which defines a judgment. Second, the parties’ use of section 664.6 as the vehicle to memorialize their agreement supports the proposition that the settlement was intended to effect a final judgment. “[S]ettlement agreements pursuant to section 664.6 ... result not only in contractual agreements but also in judgments that conclusively resolve the issues between the parties.” (*DeSaulles v. Community Hospital of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1153.)

Third, the stipulated settlement allowed plaintiffs to recover some amount of costs and attorney fees under the Song-Beverly Act “as part of the judgment.” The court found that the settlement resulted in a judgment triggering application of the Song-Beverly Act’s fees provision, which “further evinces the parties’ intent that the settlement function as, or would lead to, a judgment.”

The term “judgment” in section 998 is meant to include its functional equivalents, such as dismissal of a case with prejudice. (*DeSaulles, supra*, at 1155.) Section 998 does not contain the words “after trial” or “at trial” or any such qualifier related to the word “judgment.” The court found that the purpose of conserving judicial resources and encouraging early settlements by imposing a financial disincentive on a party that fails to obtain a judgment more favorable than a rejected offer to compromise would be substantially undercut by reading the phrase “at trial” into section 998, subdivision (c).

The Takeaway: Section 998 does not exclude cases that end in settlement, or limit its cost-shifting provisions to cases that end in a judgment after trial. The term “judgment” in section 998 is meant to include its functional equivalents, such as dismissal of a case with prejudice.