

Commercial &amp; Complex Litigation

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# AALRR Alert



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## An Offer to Compromise Under Cal. Civ. Proc. Code Sec. 998 Cannot Be Conditioned on an Overly Broad Release

This is the second in a series of articles addressing the importance of having clear and unambiguous settlement offers in order to take advantage of their pronounced benefits. In the early stages of a lawsuit, it is important for parties to confer with their counsel to determine whether to make a settlement offer and how much they should offer. Generally, the prevailing party in a civil lawsuit is entitled to recover only its costs. A party may not recover attorney's fees unless a contract between the parties or a specific statute authorizes such recovery. California Civil Procedure Code section 998 is such a statute concerning fee shifting. It provides that if a plaintiff rejects a defendant's settlement offer and subsequently fails to obtain a more favorable judgment or award, the plaintiff may not recover costs incurred after the offer was made and will be required to pay the defendant's costs. These costs can include attorney's fees and expert witness fees.

A section 998 settlement offer can be a great way for defendants to reduce the amount of time and money spent in litigation. However, as demonstrated in the August 2016 case of *Ignacio v. Caracciolo*, 2 Cal.App.5th 81 (2016), it must be used carefully. In *Ignacio*, the plaintiff rejected the defendant's settlement offer in a personal injury action. After the plaintiff won a judgment that was less than the settlement offer, the defendant sought to tax the plaintiff's costs and obtain her own costs under section 998. The trial court ruled against the defendant on the basis that the settlement offer was overly broad. The California Court of Appeal affirmed the trial court's decision. After noting that the party who makes a section 998 settlement offer has the burden to demonstrate it is valid, the court held that the defendant had not demonstrated the validity of her settlement offer.

The problem in *Ignacio* was that the release submitted as part of the settlement offer sought to release the defendant from claims

outside the scope of the personal injury action. Under California law, a section 998 offer requiring the release of claims and parties not involved in litigation is invalid. This makes sense because it is difficult to calculate whether a jury award is more or less favorable than a settlement offer when the award encompasses claims that are not the same as those covered by the offer. The offer in *Ignacio* would have released the defendants "from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, damages, judgments,

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orders, and liabilities of whatever kind and nature in law, equity, or otherwise, whether now known or unknown, suspected or unsuspected, that have existed or may have existed or which do exist, or which hereinafter can, shall or may exist.” The appellate court held, “Such an unlimited release goes well beyond the scope of the litigation, and renders the offer invalid under section 998.”

This case demonstrates that in order to enjoy the upsides of section 998 settlement offers—mainly, timely settlements and reduced litigation expenses—parties must use the device carefully. An overly broad release accompanying a section 998 settlement offer may render the offer worthless.