

THE ANATOMY OF A SETTLEMENT

How plaintiffs and defendants reach a compromise

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Several studies have shown that 95 percent of lawsuits are settled before trial, so the logical question that I get asked most frequently is *how* these legal cases get settled. There are many factors that lead to settlements, including risk of adverse results, client mindset, legal counsel, types of remedy, costs and legal fees. The following example is a very typical settlement journey.

Case Facts

At the age of 38, plaintiff “George C.” was a healthy, married male employed full-time as a diesel forklift mechanic. George C. was riding alone on a 1968 Harley Davidson motorcycle going southbound on a freeway in the city of Santa Ana. He was traveling above the posted speed limit on a curving freeway exit ramp for a high occupancy vehicle lane, which is separated from the regular freeway lanes by concrete barriers. George C. lost control of his motorcycle near the end of the off-ramp which curves sharply to the left and hit a concrete protective barrier bordering the side of the off-ramp. He managed to stay on the ramp, but his motorcycle flipped over the concrete barrier landing on top of a car traveling in the opposite direction. There were large reflective directional signs posted and safety lighting adjacent to the off-ramp.

George C. sued several defendants, claiming personal injuries and damages caused by a dangerous condition of public property and false arrest. The plaintiff also noted the negligence of the officers in caring for him following the accident and the negligence of the Sheriff’s Department in inadequately caring for him while incarcerated. The State of California, the California Department of Transportation, the California Highway Patrol and the County Sheriff’s Department were all defendants to the lawsuit.

The Plaintiff’s Contentions

George C. contended that the State of California’s freeway design was a dangerous condition of public property. The geometric design of the high occupancy vehicle off-ramp from the southbound Interstate 5 freeway at Main Street was defective and confusing. Moreover, he contended that



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the lane markings and delineation were inadequate, and the highway safety lighting was not designed nor adequately functioning on the date of the accident.

Medical records revealed that George C. had a fractured mid-spine, fractured coccyx, torn ligaments in right ankle, backaches and recurring numbness in both legs. His medical bills included hospital and emergency room procedures, radiologic and orthopedic medical consultations and physical therapy all totaling more than \$8,000. He was also seeking \$10,000 in property damage for the motorcycle and his clothing. George C. was seeking \$300,000 for pain and suffering.

The State's Defense

George C. was proven to be intoxicated and was discovered to be speeding in excess of the posted speed limits. Additionally, he was unnecessarily combative upon being taken into custody by the officers. George C. was the sole and proximate cause of his damage and injury claims.

The State believed that George C. should be held solely responsible for the damage and injuries sustained as a result of the subject accident. Also, the State claimed the defense of "design immunity" that protects the State from liability for reasonably designed roadways.

The Settlement

All parties to the lawsuit attended a prearranged settlement conference with the trial judge. Discovery was substantially completed and the case was 60 days from the scheduled trial date.

During the initial settlement discussions, the defendants noted that George C.'s failure to respond to discovery requests was a significant and highly prejudicial omission impacting their ability to prepare their defense.

After taking a few minutes to deliberate, George C. and his attorney proposed to settle this \$300,000 case for the sum of \$1,500. After careful consideration of the settlement offer, the defendants jointly (and quickly) agreed to settle this matter for \$1,500.

What George C. did not know was that because this segment of freeway was designed and constructed more than 20 years prior to the accident, the State was having difficulty locating someone to testify concerning the original design of this segment of roadway to support the State's defense of design immunity. The State was most likely not going to be able to produce any evidence supporting the design immunity defense. The respective parties in this instance weighed their own risk of adverse results and were able to reach a pre-trial settlement, joining the 95 percent of cases that settle before trial. ★