

The Common Law Release Rule Meets Its Demise In California

By: Peter S. Bauman, Esq.

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California Code of Civil Procedure Section 877 (CCP 877) modified what is commonly referred to as the common law release rule. Prior to 1957, that rule held that the release of one tortfeasor given by a plaintiff had the effect of releasing all tortfeasors from further liability. The rule was intended to prevent double recoveries and made sense in the days when each tortfeasor was held responsible for all harm done to a plaintiff. But in the age of comparative negligence, where liability is apportioned by percentage to each party based on their actions, the common law release is less relevant.

Thus CCP 877 states that a release or settlement with one or more tortfeasors in good faith does not discharge from liability other tortfeasors who are not named, though it does reduce the claims against them.

For more than 50 years CCP 877 has been in effect, but after decades of operation, a recent case involving a brain damaged infant who sued the doctor and hospital which treated him raised new concerns after a Court of Appeal decision highlighted what some refer to as a “[trap for the unwary](#)” plaintiff.

In *Leung v. Verdugo Hills Hospital* (2011) 193 Cal.App.4th 971, the appellate court held that the hospital was not liable to the infant because a settlement agreement reached between the doctor and the plaintiff had not been in good faith. This occurred because the plaintiff moved forward with the settlement even though the trial court denied the plaintiff’s motion for a determination that the settlement was in good faith. As a result, the Court of Appeal held that the settlement did not qualify under the language of Section 877. Thus the common law release rule applied.

But the California Supreme court reversed the Court of Appeal in *Leung v. Verdugo Hills Hospital*, 55 Cal. 4th 291; 282 P.3d 1250; 145 Cal. Rptr. 3d 553 (August 23, 2012), ruling that the “hospital remains jointly and severally liable for plaintiff’s economic damages” because “[i]n light of the unjust and inequitable results the common law release rule can bring about, as shown in this case, we hold that the rule is no longer to be followed in California.”

Leung serves as an important reminder about the need to analyze and consider all contingent liabilities and risks when entering into a partial settlement. Aside from CCP 877, potential indemnity suits could be lurking to cause an unexpected surprise.

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