



# Weekly Law Resume

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Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

Issue By: DAVID L. BLINN

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## CCP Section 998 Offer to Compromise – Jointly to Spouses

*Farag v. ArvinMeritor, Inc.* Court of Appeal, Third District (April 24, 2012)

Statutory settlement offers pursuant to California Code of Civil Procedure Section 998 can be an important settlement tool, and a method to recover additional costs, including expert witness fees. In this case, the court had to consider whether an offer made jointly to both plaintiffs as husband and wife was void or enforceable for purposes of obtaining these additional costs.

Naseem Farag was diagnosed with mesothelioma in 2009. He had worked for approximately 30 years in the automotive repair industry. He and his wife, Sanna, sued various defendants alleging that his mesothelioma was caused by exposure to asbestos-containing vehicles and vehicle parts. Defendant ArvinMeritor, Inc.'s predecessor (Rockwell International Corporation) had been a manufacturer and distributor of asbestos-containing brake linings during the relevant years.

Prior to trial, ArvinMeritor served a CCP Section 998 offer to compromise to the Farags jointly offering one cent (\$0.01) in exchange for a dismissal with prejudice and a mutual waiver of costs. The offer was predicated on ArvinMeritor's assertion that there was no evidence Farag had ever been exposed to their product. The Farags did not accept the offer, and the matter proceeded to trial against various defendants including ArvinMeritor. The jury returned a verdict in ArvinMeritor's favor. ArvinMeritor submitted a memorandum of costs, including expert witness fees and other costs, to which it would not otherwise have been entitled but for

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the filing of the section 998 offer. The Farags filed a motion to tax costs, which was partially granted, but denied as to the expert witness fees. The Farags appealed.

On appeal, the Farags argued that an unallocated joint section 998 offer to a husband and wife is void in the absence of a showing that the offer provides fair and reasonable value that can be allocated to each individually. The Court of Appeal first reviewed the history of statutory offers made to joint plaintiffs. In *Meissner v. Paulsen* (1989) 212 Cal.App.3d 785, the Court had held that an offer made jointly to two plaintiffs was void and did not qualify as a valid offer under section 998. Subsequent cases decided by the Seventh District of the Court of Appeal had addressed the issue of a joint offer being made to both spouses as plaintiffs, ultimately culminating in the Court's ruling in *Barnett v. First National Ins. Co. of America* (2010) 184 Cal.App.4th 1454 that under California's community property law (specifically Family Code Sections 760 and 1100), a cause of action to recover money in damages, as well as money recovered in damages, is a form of personal property and thus community property. As such, either spouse could accept such an offer on behalf of the community.

The Court of Appeal also noted that Farag had actually waived any objection to the form of the CCP 998 offer by not raising it properly for the first time in the trial court.

Lastly, the Court of Appeal addressed Farag's contention that the *Barnett* case was wrongly decided and should not be followed. Farag argued that *Barnett* had ignored subdivision b of Family Code Section 1100, which states that a spouse may not dispose of community personal property for less than fair and reasonable value without written consent of the other spouse. The Court of Appeal rejected this argument, noting, as had the *Barnett* court, that one spouse who feels that a second spouse has improperly accepted a settlement offer that affects the rights of both husband and wife to a community asset may have a claim against their spouse for breach of fiduciary duty. On the other hand, a third party such as *ArvinMeritor* had no duty to enforce a managing spouse's compliance with his or her fiduciary duties.

The Court of Appeal thus held that consistent with the *Barnett* decision, *Nasseem's* cause of action for personal injury and *Sanna's* cause of action for loss of consortium arose during the

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marriage and constituted community property. Therefore, ArvinMeritor's section 998 offer, made jointly to both of them, was valid and could be accepted or rejected by either of them or both of them. The order granting the award of costs following the defense verdict was affirmed.

## COMMENT

It is interesting that the Court of Appeal first ruled that it would follow the principles of Barnett and find that a joint offer was valid as involving community property, when it could have simply stated that the Farags had waived this argument. Clearly, the Court of Appeal for the Third District wanted to affirm the ruling of the Seventh District on this point. Regardless of the nature of the action, if a husband and wife are suing jointly for money damages or money recovery, a joint CCP 998 offer will be considered valid.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B233137.PDF](http://www.courtinfo.ca.gov/opinions/documents/B233137.pdf)

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