S280598

IN THE SUPREME COURT OF CALIFORNIA

OSCAR J. MADRIGAL AND AUDREY MADRIGAL,
Plaintiffs and Respondents,

v.

HYUNDAI MOTOR AMERICA,
Defendant and Appellant.

AFTER A DECISION BY THE COURT OF APPEAL
THIRD APPELLATE DISTRICT
CASE NO. C090463

SUPERIOR COURT FOR PLACER COUNTY
HON. MICHAEL JONES
CASE NO. SCV0038395

APPLICATION TO FILE AMICUS CURIAE BRIEF & BRIEF OF AMICUS CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLANT HYUNDAI MOTOR AMERICA

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Application to File Brief of Amicus Curiae by the Chamber of Commerce of the United States of America in Support of Appellant Hyundai Motor America

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Pursuant to rule 8.520(f) of the California Rules of Court, the Chamber of Commerce of the United States of America respectfully applies for leave to file the accompanying amicus curiae brief in support of appellant Hyundai Motor America. Amicus is familiar with the content of the parties' briefs.

The U.S. Chamber is the world's largest business federation. It directly represents approximately 300,000 members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the executive branch, and the courts. To that end, the

U.S. Chamber regularly files amicus briefs and letters in cases that raise issues of concern to the nation's business community.

Amicus offers this brief to emphasize that the cost-shifting provisions of Code of Civil Procedure section 998 were enacted to encourage the parties to civil litigation to settle their cases as early as possible. Plaintiffs benefit because section 998, subdivision (c), gives an incentive to defendants to make reasonable settlement offers. Defendants benefit because plaintiffs are encouraged to seriously consider those offers. Whether businesses are plaintiffs or defendants, they benefit from the reduced litigation costs that section 998 encourages, which businesses can pass along to their consumers in the form of lower prices or to their employees in the form of higher wages. Limiting the scope of section 998 to cases that go to trial, as Plaintiffs propose, would unwisely truncate the benefits of the statute because only a small percentage of civil cases go to trial.

No party or counsel for a party authored the proposed amicus brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than amicus curiae, its members, or its counsel in the pending appeal made any monetary contribution intended to fund the preparation and/or submission of the proposed amicus brief. (Cal. Rules of Court, rule 8.520(f)(4)(A).)

Respectfully Submitted,

July 25, 2024

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Brief of Amicus Curiae by the Chamber of Commerce of the United States of America in Support of Appellant Hyundai Motor America

Introduction

The cost-shifting provisions of Code of Civil Procedure[1] section 998 benefit both parties in a civil suit as well as the court. Section 998, subdivision (c)(1), provides that a plaintiff who does not accept a settlement offer and "fails to obtain a more favorable judgment or award" shall not recover his or her post-offer costs and shall pay the defendant's costs from the time of the offer.[2] This benefits plaintiffs by encouraging defendants to make generous settlement offers early in the litigation. It benefits defendants by encouraging plaintiffs to seriously consider those offers. And it helps the judicial system by encouraging parties to reach fair settlements early in the litigation, reducing burdens on the court from unnecessary litigation. The earlier a case settles, the greater the benefits.

The Court of Appeal in this case understood this, quoting this court's decision in *Bank of San Pedro v. Superior Court* (1992) 3 Cal.4th 797, 804, for the rule that the purpose of section 998 " 'is to encourage settlement by providing a strong financial disincentive to a party—whether it be a plaintiff or a defendant—who fails to achieve a better result than that party could have

[1] Further undesignated statutory references are to this code.

[2] Subdivision (d) of section 998 applies if an offer made by the plaintiff is not accepted by the defendant.

achieved by accepting his or her opponent's settlement offer. (This is the stick. The carrot is that by awarding costs to the putative settler the statute provides a financial incentive to make reasonable settlement offers.)' " (*Madrigal v. Hyundai Motor America* (2023) 90 Cal.App.5th 385, 398.) The Second District recently reached the same conclusion in *Ayers v. FCA US, LLC* (2024) 99 Cal.App.5th 1280, review granted May 15, 2024, S284486.

Plaintiffs in this case ask this court to limit the effectiveness of section 998 by holding that it applies only if the plaintiff goes to trial or arbitration after rejecting an offer. Under their proposed new rule, plaintiffs could reject a reasonable settlement offer with impunity and still recover their costs and avoid paying the defendant's costs—as long as they settle the case prior to trial, even for an amount less than the rejected offer. This argument does not serve the cost-saving purposes of section 998 and ignores the plain language of the statute. Rather, any plaintiff who settles a case for less than the amount of a rejected offer has "fail[ed] to obtain a more favorable judgment or award" through prolonging litigation. (§ 998, subd. (c)(1).)

To reach their puzzling result, Plaintiffs assert that the sole purpose of section 998 is to avoid trials. (AOB pp. 28, 33; ARB pp. 27-28, 32.) But they do not explain why the Legislature would wish only to avoid trials when only a small percentage of civil cases go to trial; the vast majority are resolved prior to trial. Applying section 998 to cases that settle prior to trial benefits

courts and parties alike by clearing the court's crowded calendar and reducing litigation costs. While one purpose of section 998 is to avoid needless trials, the statute also is designed to avoid years of needless litigation, including costly discovery and pretrial motion practice.

Moreover, far from avoiding trials, the rule advanced by Plaintiffs actually would require a defendant to go to trial to obtain the benefits of section 998. If a plaintiff rejects a reasonable settlement offer and later is willing to settle for a lesser amount, the defendant might have to pay the plaintiff's costs (including attorney fees in some cases) if the defendant agrees to the settlement. To avoid paying these costs, the defendant's best course of action might be to take the case to trial and attempt to obtain a more favorable judgment than the original rejected offer. This is precisely the opposite of what section 998 is designed to encourage. Plaintiffs' novel interpretation of section 998 turns the statute on its head.

Plaintiffs' position is also contrary to the plain text. They assert that a plaintiff who settles for less than an earlier rejected offer has not "failed" to obtain a better result and they suggest that the word "judgment" in the statute somehow allows plaintiffs to evade the statute except when they proceed all the way to an adjudicated judgment. Neither argument withstands scrutiny. Under the plain language, "[i]f an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the

time of the offer." (§ 998, subd. (c)(1).) A plaintiff who settles his claims for less than the earlier offer has plainly failed to obtain a more favorable judgment or award.

Finally, Plaintiffs claim that until the lower court's opinion, "no California court held that section 998 cost-shifting applies to a case resolved by a pre-trial settlement." (AOB p. 11.) While it is true that the opinion below is the first published opinion to address this narrower issue, it is not the first published opinion to have applied relevant provisions of section 998 in a case that was resolved by a pre-trial settlement. (See *Chen v. BMW of North America, LLC* (2022) 87 Cal.App.5th 957, 960, 963; *McKenzie v. Ford Motor Co.* (2015) 238 Cal.App.4th 695, 697-698.) It never occurred to either the parties or the courts in those earlier cases to doubt that section 998 applies in cases that are resolved prior to trial. And, indeed, one published decision (which was relied upon by the court below but neither cited nor discussed by Plaintiffs in their Opening Brief) held that section 998 applies in cases that are voluntarily dismissed prior to trial. (*Mon Chong Loong Trading Corp. v. Superior Court* (2013) 218 Cal.App.4th 87, 91, 93.) Precedent thus contradicts Plaintiffs' argument that section 998 applies only to cases that go to trial.

Thus, the United States Chamber of Commerce respectfully encourages this court to affirm.

Discussion

I. The purpose of section 998 is to avoid unnecessary litigation by encouraging early settlement. Applying the statute to cases that settle prior to trial advances that goal.

The purpose of section 998 is to "encourage the settlement of lawsuits prior to trial." (*Martinez v. Brownco Construction Co.* (2013) 56 Cal.4th 1014, 1017.) "The statute accomplishes this purpose by providing for augmentation and withholding of the costs recoverable at trial when a party fails to achieve a result better than it could have obtained by accepting an offer of compromise or settlement . . . ." (*Ibid.*)

Despite the broad statutory language that the provisions of section 998 apply if "the plaintiff fails to obtain a more favorable judgment or award" than the rejected settlement offer, the centerpiece of Plaintiffs' argument is that the statute applies only to cases that go to trial. (AOB p. 25.) By this reasoning, a defendant whose reasonable settlement offer was rejected would be discouraged from later settling the case on terms more favorable to the defendant and would be forced to go to trial in order to obtain the benefits of section 998. But forcing the parties to go to trial in order to obtain the benefits of section 998 defeats the statutory purpose to encourage pre-trial settlements.

Discouraging a defendant from settling a case once a plaintiff has rejected a reasonable settlement offer by restricting the scope of section 998 to cases that go to trial would be contrary to long-established public policy. "This court recognized a century ago that settlement agreements ' "are highly favored as

productive of peace and good will in the community," ' as well as ' "reducing the expense and persistency of litigation." ' " (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 277, superseded by statute on other grounds as recognized in *Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1005; accord *Wolstoncroft v. County of Yolo* (2021) 68 Cal.App.5th 327, 340.) In fact, without settlements, " 'our system of civil adjudication would quickly break down.' " (*Neary*, at p. 277.) *Neary* recognized that the benefit of settlements is not just that they avoid trials. To the contrary: "Settlement is perhaps most efficient the earlier the settlement comes in the litigation continuum." (*Ibid.*)

Limiting the reach of section 998 to cases that go to trial would permit the statute to address only a small portion of the cases that crowd the court's calendar. While avoiding unnecessary trials is important, the vast majority of cases settle. (Galanter & Mia, *"Most Cases Settle": Judicial Promotion and Regulation of Settlements* (1994) 46 Stan. L.Rev. 1339, 1340.) Accepting Plaintiffs' argument would mean that plaintiffs could reject a reasonable settlement offer secure in the knowledge that section 998 will have no effect as long as they settle the case before the trial commences, even if they clog the court's calendar for years.

On the eve of trial, most defendants would be willing to settle on the same terms they had offered earlier and avoid the expense of a trial. Plaintiffs acknowledge this, stating " 'many cases can be settled "on the courthouse steps" . . . .' " (ARB p. 29.)

If agreeing to settle on the eve of trial would avoid the cost-shifting provisions of section 998, there would be little incentive for a plaintiff to accept an early, reasonable settlement offer. Applying section 998 to cases that settle encourages defendants to make generous offers to settle early in the litigation and causes plaintiffs to give such offers serious consideration.

Early settlement likewise benefits the business community by reducing litigation costs, which, in turn, benefits consumers. (See *Ayers*, *supra*, 99 Cal.App.5th at p. 1301 ["The earlier reasonable settlement offers are made and accepted, the less the costs incurred."]; see also *Neary*, *supra*, 3 Cal.4th at p. 277 [benefits of early settlement].) With the advent of electronic discovery, the costs of discovery have become incredibly expensive. (Mazanec, *Capping E-Discovery Costs: A Hybrid Solution to e-Discovery Abuse* (2014) 56 Wm. & Mary L.Rev. 631, 632.) And "[d]iscovery disputes and motion practice consume a significant portion of the dockets of California Superior Court judges." (Raphael, Farhang, and Nowlin, *Just Discovery: Properly Focused Discovery Requests and Responses and Good-Faith Use of the Meet-and-Confer Process Can Help Save Attorneys Time and Clients Money* (Nov. 2015) 38 Los Angeles Lawyer 14, 15.) Early settlement addresses both of these problems.

II. A plaintiff who settles for less than a rejected section 998 offer has "fail[ed] to obtain a more favorable judgment" within the meaning of the statute.

This court granted review to decide whether "section 998's cost-shifting provisions apply if the parties ultimately negotiate a pre-trial settlement." (Order Granting Review [534 P.3d 88, 312 Cal.Rptr.3d 360].) Plaintiffs argue that "[s]ection 998's plain text doesn't explicitly answer the question presented." (AOB p. 25.) Amicus disagrees.

As noted above, the cost-shifting provisions of section 998 apply if "the plaintiff fails to obtain a more favorable judgment or award" than the rejected settlement offer. A plaintiff who settles the case on terms that are less favorable than a rejected settlement offer has failed to obtain a more favorable judgment. Thus, section 998 applies by its plain terms.

Plaintiffs attempt to avoid this syllogism by arguing that "a plaintiff who achieves a compromise settlement doesn't 'fail' to obtain a more favorable judgment or award . . . ." (AOB p. 29.) But one definition of "fail" is "to fall short of achieving something expected or hoped for." (Black's Law Dict. (12th ed. 2024).) The reason a plaintiff rejects a settlement offer is because the plaintiff expects or hopes to obtain more by continuing to litigate. If the plaintiff later settles the case for less than the terms of the earlier settlement offer, the plaintiff has fallen short of achieving what they expected or hoped to achieve.

That is true even though the plaintiff has chosen to settle. Much like the plaintiff who voluntarily dismisses his claims—and is subject to cost-shifting under section 998 (*Mon Chong Loong*

Trading Corp., *supra*, 218 Cal.App.4th at pp. 91, 93)—the plaintiff who chooses to settle has failed to achieve a more favorable judgment or award. The circumstances of the case led the plaintiff to settle, much as the circumstances of the case might have led to an even less favorable result after trial.

III. Plaintiffs' argument about the word "judgment" is a red herring.

Plaintiffs argue that the statutory terms "judgment" and "award" "refer to dispositions reached *through trial, arbitration, or some other adjudication*." (AOB p. 28, original italics.) They rely on the fact that the term "judgment" is defined as a court's final determination. (AOB p. 27.)

But that is a red herring. By referring to *the failure* to obtain a judgment or award, section 998 sets forth a default rule of cost-shifting after the rejection of a reasonable settlement offer. It is *only* when a party achieves a more favorable judgment or award that the default rule no longer applies. Here, the settlement was plainly *not* more favorable to the plaintiffs than the offer they rejected and it rendered it impossible for the plaintiffs to achieve a more favorable judgment or award in the future. That is because the claims have been resolved. The plaintiffs have thus failed to achieve a more favorable judgment or award, regardless of whether the word "judgment" is intended to refer to an adjudicated judgment or not.

A more difficult question might arise when a party achieves a more favorable settlement after rejecting an initial offer—does such a settlement constitute a more favorable "judgment or

award" that prevents cost-shifting? This hypothetical is not presented here. But even that question can easily be resolved by converting such a settlement into a stipulated judgment, as is often done. "[S]ettlement agreements pursuant to . . . section 998 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.) In those circumstances, section 998 would *not* require cost-shifting because the party that rejected the earlier settlement offer *would* have achieved a more favorable judgment or award.

IV. The fact that section 998 applies to cases that are resolved through arbitration refutes Plaintiffs' argument that the only purpose of section 998 is to avoid trials.

Plaintiffs assert that the Legislature's intent was to avoid trials, claiming that "section 998 has always been aimed at penalizing plaintiffs who *go to trial* after declining a 998 offer, thereby burdening courts' *trial* calendars." (AOB p. 33, original italics.) According to Plaintiffs, the Legislature's focus was limited to "encouraging parties to take *any* offramp that would avoid a *trial*." (AOB p. 37, original italics.)

This artificial narrowing of the text is refuted by the fact that the cost-shifting provisions of section 998 also apply if the parties avoid a trial by submitting the dispute to arbitration. Section 998 applies, by its terms, to settlement offers made "prior to commencement of trial *or arbitration*" (§ 998, subd. (b), italics added) and the cost-shifting provisions of subdivision (c)(1) apply

if "the plaintiff fails to obtain a more favorable judgment *or award*" (italics added), referring to an arbitration award. Like a pre-trial settlement, resolving the case through arbitration avoids a trial and does not burden the court's calendar and yet the cost-shifting provisions of section 998 are triggered if the plaintiff fails to obtain a more favorable arbitration award.

While avoiding needless trials certainly is one purpose of section 998, it is not the sole purpose. The provision reflects the Legislature's purpose to encourage settlements at the earliest possible stage of litigation and avoid years of needless litigation and costs as well as unnecessary trials.

V. This is not the first published decision to apply section 998 to a case resolved prior to trial.

Plaintiffs are mistaken when they claim that, until the lower court's opinion, "*no* California court held that section 998 cost-shifting applies to a case resolved by a pre-trial settlement." (AOB p. 11; ARB pp. 6, 24.) Several decisions apply section 998 in that way, and the absence of more precedent is simply because parties can and often do resolve the issue of cost-shifting as part of their settlement agreements.

Chen, *supra*, 87 Cal.App.5th 957, is an example of section 998's application in the settlement context. That case arose from an action under the Song-Beverly Consumer Warranty Act (Civ. Code, §§ 1790, et seq.) brought by the purchaser of a BMW automobile. The parties settled on the day of trial for the same amount as BMW's earlier section 998 offer: $160,000. (*Chen*, at p. 960.) The plaintiff moved for attorney fees and costs, but the

trial court awarded only fees and costs accrued before the section 998 offer was rejected. (*Ibid.*)

The Court of Appeal affirmed, holding that under section 998, the plaintiff's "failure to achieve a better litigation result than what BMW offered means he is not entitled to post-offer attorney fees." (*Chen*, *supra*, 87 Cal.App.5th at pp. 960-961.) The court explained that the plaintiff was not entitled to fees and costs accrued after the section 998 offer because the plaintiff "did not accept the offer and later *agreed to a settlement* that provided no greater benefit." (*Id.* at p. 963, italics added; see also *Reck v. FCA US LLC* (2021) 64 Cal.App.5th 682, 687 [§ 998 applies when Song-Beverly action settled on second day of trial]; *McKenzie*, *supra*, 238 Cal.App.4th at pp. 697-698 [§ 998 applies when plaintiff in a Song-Beverly action rejected first offer to compromise but accepted the second].)

Recently, the Court of Appeal in *Ayers*, *supra*, 99 Cal.App.5th at p. 1297, agreed with the court below that section 998 applies "where the litigation is terminated by settlement." *Ayers* arose from a Song-Beverly complaint. The defendant made several offers to compromise under section 998, one of which offered $143,498. The parties later settled the case prior to trial for $125,000. (*Id.* at pp. 1290-1291.)

Ayers argued, as do Plaintiffs here, that he did not "fail" to obtain a more favorable judgment because a "settlement cannot be a 'failure.' " (*Ayers*, *supra*, 99 Cal.App.5th at p. 1298.) The Court of Appeal disagreed, explaining that Ayers rejected the previous settlement offer because "he was holding out for more

. . . he did not get more. This is a failure under any common understanding of the word 'fail.' " (*Id.* at p. 1299.)

Although outside the settlement context, the Court of Appeal's decision in *Mon Chong Loong Trading Corp.*, *supra*, 218 Cal.App.4th at page 94, provides further support for the proposition that section 998 is not limited to resolution after a trial. There, the defendant made an offer under section 998 that was not accepted and the plaintiff later voluntarily dismissed her case without prejudice. The defendant sought costs, including expert witness fees under section 998. (*Id.* at pp. 90-91.) The trial court awarded costs but ruled that the defendant " 'is not entitled to recover its expert fees pursuant to C.C.P. Section 998 because this case did not result in any "Judgment or Award" more favorable than its offer.' " (*Id.* at p. 91, fn. 3.) The Court of Appeal disagreed, reasoning that "[a] plaintiff may fail to obtain a more favorable judgment or award by failing to obtain any award at all, as in the case of voluntary dismissal." (*Mon Chong Loong Trading Corp.*, *supra*, 218 Cal.App.4th at p. 94.) The court held that "the trial court erred to the extent it required defendant, who had made a valid section 998 offer, to first obtain a judgment in the case before the trial court would consider its claim for recovery of expert witness fees." (*Ibid.*)

In sum, several courts have recognized that a party need not have proceeded to trial for a court to determine that the party failed to achieve a more favorable judgment or award than a section 998 offer. That failure is the trigger for cost-shifting provisions under the statute. Plaintiffs' contrary assertions

about the body of precedent interpreting section 998 are simply inaccurate.

Conclusion

Needless litigation that could be avoided by an early, reasonable settlement of the dispute clogs the trial courts' calendars, is a significant expense for many businesses, and blocks deserving plaintiffs from receiving prompt compensation for their injuries. The Legislature enacted section 998 to discourage such litigation. Limiting the scope of section 998 to cases that go to trial, as Plaintiffs ask, would hamper the utility of the statute to serve its purpose of encouraging settlement at the earliest possible stage.

No published case has held or assumed that the cost-shifting provisions of section 998 apply only if the case results in a judgment following a trial or an award following arbitration. The United States Chamber of Commerce hopes that Plaintiffs' efforts to have this court be the first to do so will be unavailing.

Respectfully Submitted,

July 25, 2024

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United States of America

Certificate of Word Count

(Cal. Rules of Court, rule 8.520(c)(1))

The text of this brief consists of 3,496 words as counted by the Microsoft Word program used to generate this brief.

Dated: July 25, 2024

/s/ Greg Wolff
Greg Wolff

Proof of Service

I, Stacey Schiager, declare as follows:

I am employed in the County of San Francisco, State of California, am over the age of eighteen years, and am not a party to this action. My business address is 96 Jessie Street, San Francisco, CA 94105. On July 25, 2024, I served the following document:

Application to File Amicus Curiae Brief & Brief of Amicus Curiae the Chamber of Commerce of the United States of America in Support of Appellant

On July 25, 2024, I caused the above-identified document to be electronically served on all parties and the California Court of Appeal via TrueFiling, which will submit a separate proof of service.

Additionally, on July 25, 2024, I served the above-identified document by mail. I enclosed a copy of the document in an envelope and deposited the sealed envelope with the U.S. Postal Service, with the postage fully prepaid. The envelope was addressed as follows:

Hon. Michael Jones
Placer County Superior Court
10820 Justice Center Drive
Roseville, CA 95678

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 25, 2024.

/s/ Stacey Schiager
Stacey Schiager