

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Deborah Jones Day,)	
)	
Plaintiff,)	
)	
v.)	No. 20 L 9071
)	
New Life Covenant Church Southeast, and)	
Marquee Event Group, Inc., d/b/a)	
Marquee Event Rentals,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

For a court to enter a good-faith finding, the settling parties must make a preliminary showing of good faith in reaching a settlement based on a preponderance of the evidence. In this case, the evidentiary record shows either the settlement is not in good faith or there exists no evidence to support a good-faith finding. For those reasons, the parties' motion for a good-faith finding must, at this point, be denied.

Facts

On August 12, 2019, New Life Covenant Church Southeast (NLCCS) entered into an agreement with Marquee Event Group, Inc. for the rental of, among other things, a stage to be set up in the church's parking lot. The agreement called for the stage to be delivered and assembled on August 21, 2019 and for Marquee to disassemble the stage on August 29, 2019. On August 25, 2019, Jones Day, a member of NLCCS, was on the stage when the part beneath her collapsed. Jones Day fell and suffered a ruptured left Achilles tendon requiring surgical repair. Jones Day's medical expenses are currently approximately \$110,000.

On August 24, 2020, Jones Day filed suit against the defendants. On August 3, 2021, Marquee filed its answer to Jones Day's complaint. The parties then exchanged written discovery. Marquee's interrogatories included one seeking the amount of insurance coverage provided to Marquee by its insurer, Philadelphia Insurance Companies. In late October 2021 and before Marquee answered discovery, Jones Day and NLCCS negotiated a settlement agreement. The agreement calls for the dismissal of all disputed

claims between Jones Day and NLCCS for \$5,000 in consideration, the amount of which would be paid Philadelphia Insurance.

On November 12, 2021, NLCCS filed a motion for a good-faith finding as to its agreement with Jones Day. On November 18, 2021, Marquee filed a two-count counterclaim against NLCCS. Count one is for contribution and count two is for breach of contract. On December 23, 2021, Marquee filed a response to NLCCS's motion objecting to the good-faith finding. On January 6, 2022, NLCCS filed its reply brief.

Analysis

Marquee brings its motion for a good-faith finding pursuant to the Joint Tortfeasor Contribution Act. 740 ILCS 100/0.01–5. The statute provides that if two or more parties are subject to liability arising out of the same injury, “there is a right of contribution among them, even though judgment has not been entered against any or all of them.” 740 ILCS 100/2(a). If, however, the plaintiff provides a release “given in good faith” to one of the defendants, that defendant is discharged from all liability for contribution in tort, and any additional recovery the plaintiff may obtain at trial is reduced by the settlement amount. 740 ILCS 100/2(c) & (d). The Contribution Act is recognized for promoting two public policies: (1) encouraging settlement; and (2) apportioning damages equitably among tortfeasors. *Johnson v. United Airlines*, 203 Ill. 2d 121, 133 (2003) (citing *Dubina v. Mesirov Realty Development, Inc.*, 197 Ill. 2d 185, 193-94 (2001), and *In re Guardianship of Babb*, 162 Ill. 2d 153, 171 (1994)). In deciding if a settlement was negotiated in good faith, a court must “strike a balance between these two policy considerations.” *Johnson*, 203 Ill. 2d at 133.

The good-faith requirement limits the right to settle because it is the essential element to extinguish the settling tortfeasor's contribution liability. *Id.* at 128; *Hartley v. North American Polymer Co.*, 2020 IL App (1st) 192619, ¶ 26; *Antonicelli v. Rodriguez*, 2018 IL 121943, ¶ 14. It follows, then, that the settling parties have the burden of making a preliminary showing of good faith by a preponderance of the evidence. *Johnson*, 203 Ill. 2d at 132. If the settling parties meet their burden, the objecting party has the burden of establishing the absence of good faith by a preponderance of the evidence. *Id.* To reach its preliminary decision, a court is to consider the settlement agreement's validity as well as other evidence. *Id.*

The phrase “good faith” is not defined in the Contribution Act, and the Supreme Court has acknowledged there is no single definition applicable to every case. *Id.* at 134. At the same time, “[a] settlement will not be found to be in good faith if it is shown that the settling parties engaged in wrongful

conduct, collusion, or fraud.” *Id.* Further, a settlement runs afoul of the good-faith requirement if it conflicts or is inconsistent with the terms of or policies underlying the Contribution Act. *Johnson*, 203 Ill. 2d at 134. No single factor is determinative, but a court is to consider “[1] whether the settlement amount was reasonable and fair, [2] whether the parties had a close personal relationship, [3] whether the plaintiff sued the settling party, or [4] whether information about the settlement agreement was concealed.” *Palacios v. Mlot*, 2013 IL App (1st) 121416, ¶ 22 (citing *Wreglesworth v. Arctco, Inc.*, 317 Ill. App. 3d 628, 633 (1st Dist. 2000)). See also *Ross v. Illinois Central R.R. Co.*, 2019 IL App (1st) 181579, ¶ 26. “Ultimately, however, whether a settlement satisfies the good-faith requirement as contemplated by the Contribution Act is a matter left to the discretion of the trial court based upon the court’s consideration of the totality of the circumstances.” *Johnson*, 203 Ill. 2d at 135.

The first factor considers whether the settlement amount is reasonable and fair. Here, NLCCS has offered \$5,000 to settle Jones Day’s claims against the church. Marquee argues the amount is woefully inadequate given Jones Day’s current medical specials are approximately \$110,000. As Marquee indicates, \$5,000 is less than five percent of the existing medical expenses.

The true value of the settlement offer is actually smaller than it appears. Personal injury cases rarely settle, if ever, for the amount of medical expenses only. Rather, a plaintiff at trial typically seeks sums for disfigurement, loss of a normal life, pain and suffering, time off work, increased risk of future harm, and other permissible sources of damages. In other words, the future downside risk for a defendant at trial unquestionably informs a plaintiff’s initial settlement demand and ultimate settlement sum.

The reasonableness and fairness of the settlement offer here also draws into question the potential comparative negligence of NLCCS. True, Marquee set up the stage, but NLCCS held the function; NLCCS determined the use of the stage; and NLCCS allowed Jones Day onto the stage. Certainly, those decisions were outside Marquee’s control. Further, if the stage was overloaded either with people or objects or subject to jumping, dancing, or shaking, those factors would also fall to NLCCS’s comparative negligence, not Marquee’s. These valid considerations have not been explored as this nascent state of the case. For that reason, the settling parties have not met their burden of establishing reasonableness and fairness.

The second factor to be considered is whether the settling parties had a close personal relationship. While the relationship between the settling

parties is not, by itself, a dispositive factor, “it certainly is a relevant factor to consider in determining whether the settlement was made in good faith, despite [any] contention to the contrary.” *Hartley*, 2020 IL App (1st) 192619, ¶ 37. Here, Jones Day was an NLCCS member. She attended the August 25, 2019 function at NLCCS based on her church membership. Unexplored at this point is the closeness of that relationship, for example, whether Jones Day attended church regularly, whether she participated in events and activities other than worship services, and whether she volunteered her time or money to NLCCS. Quite simply, the lack of an evidentiary record at this point does not support a *prima facie* finding of good faith.

The third factor is easily answered; Jones Day sued NLCCS. What is unanswered is Jones Day’s motivation for suing NLCCS. Putting aside the closeness of Jones Day’s relationship with her church, there exists a substantial question as to why Jones Day would sue her church only to settle at such an early stage in the litigation for such a small sum of money, particularly, as noted above, since NLCCS appears to have significant comparative negligence. If Jones Day’s motivation to sue NLCCS was only ever to seek a small settlement early in the litigation, such a finding would certainly go against a good-faith finding. At this point based on the paltry record, this factor also balances against a good-faith finding.

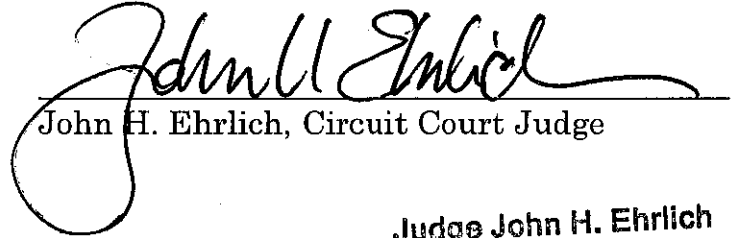
The fourth factor looks to whether the parties concealed information about the settlement agreement. Here, there exists a substantial issue of concealed information. It is uncontested the amount and terms of the agreement between NLCCS and Philadelphia Insurance is currently unknown. Further, it is far more likely a \$5,000 settlement sum would be in good faith had Philadelphia Insurance offered its full policy limits to settle the case. Such a conclusion is, of course, inversely proportional given the available coverage. In other words, had Philadelphia Insurance agreed to pay only \$5,000 under a million-dollar policy, the settlement sum would appear not to be in good faith. Again, at this point in the litigation, this court cannot reach any solid conclusion other than there is missing information necessary to a determination of a good-faith finding. This factor balances against such a finding.

In sum, each of four factors point to the conclusion that Jones Day and NLCCS are seeking to skirt the Contribution Act’s public policy of apportioning damages equitably among tortfeasors. Discovery in this case may ultimately alter that conclusion but, at this point, Jones Day and NLCCS have not met their burden of making a preliminary showing of good faith based on a preponderance of the evidence.

Conclusion

For the reasons presented above, it is ordered that:

The motion for a good-faith finding is denied with leave to re-file based on a more substantial evidentiary record.



John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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