

## **WORKSHEET: Defendant's Settlement**

Most civil litigation is resolved by some agreement to settle the dispute, and in most civil litigation, the remedy is payment of money representing the value of the claim. As a lawsuit proceeds, the parties learn the strengths and weaknesses of each other's case and develop an idea of how much the case is really worth. This worksheet is designed to help you work with your lawyer toward a settlement.

### **NOTE**

**As you go through this worksheet you must not form any firm expectations about how much you might have to pay to settle the case. Your lawyer will have other information, opinions, and advice about your case for you to consider.**

**Also keep in mind that in settling the case, you are relieved of the time, expense, uncertainty, and stress of trial. That is worth something, too.**

1. Why did the plaintiff sue you?

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2. Is there any merit to the plaintiff's claim?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

3. Did you assert any claims against the plaintiff for your own losses or damage?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

4. Do you have liability insurance covering the plaintiff's claim?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

5. If you answered "yes" to Question 4, what are the policy limits?

Primary policy	\$ _____
Other policy	\$ _____
Umbrella policy	\$ _____
Second umbrella policy	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>

6. What kinds of monetary losses is the plaintiff claiming? Check each one that applies; then note with a second check mark each one that your primary insurance policy covers.

_____	_____ Wages for time lost from work	\$ _____
_____	_____ Travel or lodging expenses	\$ _____
_____	_____ Value of item covered in contract	\$ _____
_____	_____ Cost to repair damage to land or buildings	\$ _____
_____	_____ Damage to personal property, such as equipment, vehicles, furniture, other things that may be bought and sold	\$ _____
_____	_____ Lost profits	\$ _____
_____	_____ Future profits (some states don't allow this item)	\$ _____
_____	_____ Paying someone else to complete contract work	\$ _____
_____	_____ The replacement cost of equipment or a product	\$ _____
_____	_____ Amount of loan plaintiff claims you owe	\$ _____
_____	_____ Costs to repossess or foreclose on loan collateral	\$ _____
_____	_____ Damages or settlement in another lawsuit	\$ _____
_____	_____ Lawyer's fees and costs in another lawsuit	\$ _____
_____	_____ OTHER (Please explain)	\$ _____

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12. If your case arises from a breach of contract, did the contract have a clause requiring payment of lawyer's fees?

\_\_\_\_\_ Yes \_\_\_\_\_ No

13. If you asserted counterclaims against the plaintiff, what are they and what are they worth?

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>TOTAL</b>	\$ _____

14. If the case involves something other than a breach of contract, do you think the plaintiff is partially at fault for what happened?

\_\_\_\_\_ Yes \_\_\_\_\_ No

15. If you answered "Yes" to question 14, to what extent do you believe the plaintiff was at fault? Don't exaggerate, be realistic. The percentages will be use in the next question.

\_\_\_\_\_ Mostly at fault (75%)  
\_\_\_\_\_ About equally at fault (49%)  
\_\_\_\_\_ Less at fault than I am (25%)  
\_\_\_\_\_ Just a little bit at fault (10%)

16. Now adjust the plaintiff's claim by the amount to which you believe the plaintiff is at fault and by the amount of your own claim against the plaintiff.

(a) Amount of plaintiff's claim (Question 6) \$ \_\_\_\_\_

(b) Plaintiff's share of total fault (if applicable)

(i) Multiply the percentage corresponding to your answer in Question 15 by 0.01.

\_\_\_\_\_ x 0.01 = \_\_\_\_\_

- (ii) Multiply the amount from line (b)(i) by the amount on line (a) \$ \_\_\_\_\_
- (c) Subtract line (b)(ii) from line (a) \$ \_\_\_\_\_
- (d) Amount of your claim (Question 13) \$ \_\_\_\_\_
- (e) Subtract line (d) from line (c) \$ \_\_\_\_\_
17. Now make the same adjustments, but start by subtracting out the amount of your claim against the plaintiff.
- (a) Amount of plaintiff's claim (Question 6) \$ \_\_\_\_\_
- (b) Amount of your claim (Question 13) \$ \_\_\_\_\_
- (c) Subtract line (b) from line (a) \$ \_\_\_\_\_
- (d) Plaintiff's share of total fault (if applicable)
- (i) Multiply the percentage corresponding to your answer in Question 15 by 0.01.  
 \_\_\_\_\_ x 0.01 = \_\_\_\_\_
- (ii) Multiply the amount from line (d)(i) by the amount on line (a) \$ \_\_\_\_\_
- (e) Subtract line (d)(ii) from line (c) \$ \_\_\_\_\_
18. What is the smaller of the two results? \$ \_\_\_\_\_

**NOTE:** Your state's law for computing damages may require you to make these two adjustments in the opposite order, which may well change the result. In the settlement analysis, however, you can use the lower amount and negotiate up from there if necessary.

This is the toward the **low-end**. Don't get hung up on it.

19. Add in the amount of interest fees you calculated in Question 11. If there is no contract requiring you to pay the plaintiff's lawyer's fees, skip this question.
- Amount from Question 18 \$ \_\_\_\_\_
- Amount from Question 11 \$ \_\_\_\_\_

**TOTAL**                      \$ \_\_\_\_\_

20. Is the amount you calculated in Question 18 (or Question 19) satisfactory?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

21. Try to place a value on the risk of going to trial and losing. Consider:

- √ trial expenses (ask your lawyer what range they'd be in)
- √ the value of time you would lose if you had to attend trial (e.g., lost wages, child-care expense if you are a stay-at-home parent, and the like)
- √ the emotional cost of being center-stage at trial and the uncertainty of the result (this can be difficult to express as a monetary value, but try)
- √ the cost of stress during trial (also difficult to value)
- √ **Suggestion:** for the emotional cost and stress of trial, use 10% of the amount in Question 19(A) or 19(B).

22. What dollar amount do you place on the risk of trial?

\$ \_\_\_\_\_

23. Add the amount in Question 22 from your amount from Question 18 or 19 to reflect these savings.

Amount set forth in Question 18 or 19                      \$ \_\_\_\_\_

Amount set forth in Question 22                                      \$ \_\_\_\_\_

**TOTAL**                                      \$ \_\_\_\_\_

24. Is this amount satisfactory?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No