

***Meleski v. Estate of Hotlen* (2018) 29 Cal.App.5th 616**
Insurer who denied settlement offer in action against decedent's estate is party within the meaning of Code of Civil Procedure Section 998.

FACTS/PROCEDURE

Amanda Meleski was injured when Albert Hotlen ran a red light and collided with her vehicle. Unfortunately, Hotlen was deceased at the time of the lawsuit, and he had no estate from which she could recover. Hotlen was insured by Allstate at the time of the collision. When Allstate refused to tender the policy limit of \$100,000, Meleski amended the complaint to name the estate of Albert Hotlen as the defendant to the action. This was done pursuant to Probate Code section 550 through 555.

Meleski attempted to settle the matter before going to trial by making an offer pursuant to Section 998 for \$99,999, but Allstate declined the offer. At trial, the jury awarded Meleski \$180,613.86. Since her 998 offer was rejected, she sought to recover costs from Allstate. She reasoned that because Allstate had refused to accept a reasonable settlement offer before trial, she should be able to recover costs. The trial court disagreed, finding Allstate was not a party within the meaning of Section 998.

DISCUSSION

Reversed. Section 998 provides that “any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time.” In determining who is a party to a Section 998 offer, “a person who is not a party to an action but who controls or substantially participates in the control of the presentation on behalf of a party is bound by the determination of issues decided as though he were a party.”¹

Here, not only did Allstate have complete control of the litigation in this matter, it also was the only entity opposing Meleski that risked losing money in the litigation. Allstate was accountable for its own actions in failing to accept a reasonable settlement offer. Additionally, the court found that since Allstate made its own Section 998 offer and if the jury verdict would have been more favorable to defendant, Allstate would have been able to recover its litigation costs. Lastly, the court found that “relieving insurers of the obligation to pay costs would conflict with the Legislative intent behind Section 998, which is to encourage reasonable settlement offers.”

¹ (Rest.2d Judgments, § 39.)