

***Khosravan v. Chevron Corp.*, 2021 Cal. App. LEXIS 559**

Code of Civil Procedure Section 998 offer requiring a plaintiff to indemnify a defendant against claims by third parties is not valid because it is difficult to quantify.

FACTS/PROCEDURE

On June 13, 2019, Plaintiffs Ghloam and Malekeh Khosravan brought claims for gross negligence, premises liability, loss of consortium, and related claims against the Chevron and Exxon defendants, alleging Ghloam Khosravan contracted mesothelioma as a result of exposure to asbestos while working at the Abadan refinery from approximately the 1950s to 1970s.

On October 9, 2019, the Chevron defendants served the Khosravans with offers to compromise under California Code of Civil Procedure section 998, offering to mutually waive costs in exchange for: dismissing with prejudice all causes of action against Chevron; release of all future claims based on the complaint's allegations; and indemnity in the event future claims were filed by non-parties to the case. The Khosravans did not respond to the offers.

After the trial court granted Chevron's motion for summary judgment, Chevron filed a memorandum for costs requesting approximately \$33,900 in total costs, including \$19,673 in expert witness fees. The Khosravans moved to strike or tax costs asserting Chevron's Section 998 offers were invalid because they could not be valued. The trial court granted the Khosravans' motion in part and entered judgment, awarding Chevron \$15,564 in total costs. Malekeh Khosravan appealed.

HOLDING/DISCUSSION

The Court of Appeal for the Second District reversed and remanded. "An offer to compromise under section 998 must be sufficiently specific to allow the recipient to evaluate the worth of the offer and make a reasoned decision whether to accept the offer." (*Menges v. Department of Transportation* (2020) 59 Cal.App.5th 13, 20.) The requirement that appellant indemnify and hold respondents harmless against third party claims renders it difficult to accurately value the monetary term of a § 998 offer to compromise. (*Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362, 373.) "[T]o pinpoint the value of the various potential unfiled claims [plaintiff] might have had at the time of the statutory offer or in the future against three different parties, only one of whom was even a party to the instant action, would require the court to engage in wild speculation bordering on psychic prediction." (*Valentino v. Elliott Sav-On Gas, Inc.* (1988) 201 Cal.App.3d 692, 699.) Courts should not engage in pure guess work. (*Id.* at 700.)

Here, the Court found *Valentino* instructive because there was a potentially high price tag on the requirement the Khosravans indemnify the Chevron defendants for claims not yet filed by third parties. Pursuant to Cal. Civ. Code Section 2778(3) & (4), even if nonparties were to bring only meritless claims in the future, the Khosravans would still be liable for the costs of the Chevron defendants' defense against these claims. Thus, both the trial court and the Court of Appeal would have "to engage in wild speculation bordering on psychic prediction" to determine the valuation of the costs of defending against potential future claims—the value of Chevron's Section 998 offer would be difficult, if not impossible to quantify. Therefore, the Court reversed the order denying the Khosravans' motion to strike or tax costs and remanded for the trial court to recalculate the costs awarded to the Chevron defendants.