

*Madrigal v. Hyundai Motor America*

Supreme Court of California  
March 20, 2025, Opinion Filed  
S280598

**Cost shifting under section 998 is not limited to cases resolved by trial or arbitration.**  
Nothing in the statute's language limits its application to cases that end in trial nor exempts from its application cases that settle.

**FACTS/PROCEDURE**

In 2011, Plaintiffs bought a car from Hyundai Motor America (Defendant) for roughly \$24k. The car allegedly did not operate as warranted, and repeated repair attempts proved unsuccessful. Plaintiffs requested that Defendant buy the car back, relying on remedies available under the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.; the Act or Song-Beverly Act). When defendant refused, plaintiffs sued for violations of the Act.

Less than two months after the complaint was filed, Defendant made its first 998 offer. It offered to pay either the amount plaintiffs paid for the car, plus expenses incurred, or a fixed amount of \$37,396.60. As to attorney fees, it offered to pay either \$5,000 or an amount to be determined by the trial court upon a motion. Plaintiffs did not accept the offer within 30 days, and it was “deemed withdrawn” as the statute provides. (§ 998, subd. (b)(2).)

Six months later, Defendant made a second 998 offer. Plaintiffs let the second offer expire as well.

On the first day set for trial, about 18 months after the second offer had expired, the parties argued pretrial motions. Plaintiffs requested tentative rulings on two defense motions to exclude evidence and preclude recovery of certain types of damages. The court tentatively granted both defense motions and took a recess. Thereafter, the parties reported that they had reached a settlement, which was orally placed on the record pursuant to Section 664.6

**TERMS OF THE SETTLEMENT**

**(1)** Defendant would pay Plaintiffs \$39,000; **(2)** there would be no surrender of the car because Plaintiffs no longer owned it; **(3)** Plaintiffs would release Defendant and the selling dealership from any claims arising from the sale of the car or the repairs done on it; **(4)** Plaintiffs could seek their costs and attorney fees by motion; and **(5)** Plaintiffs would dismiss their complaint with prejudice after payment of the \$39,000 settlement amount, along with any costs awarded by the court. The court confirmed the terms of the agreement, then scheduled a hearing on the costs motion and an order to show cause hearing regarding dismissal.

During the settlement colloquy, there was no mention of section 998 or its possible effect on cost recovery in light of the unaccepted settlement offers. Nor did either party offer or reserve any argument that might be made during the hearing on costs.

Plaintiffs moved to recover their costs as the prevailing party under section 1032 and the Act. They sought \$207,438.75 in attorney fees and \$20,865.83 in other costs. Defendant moved to strike or tax Plaintiffs' claimed costs. Defendant argued that Plaintiffs could not recover any

costs incurred after the date of the second 998 offer because they ultimately agreed to settle for a payment that was \$16,000 less than the fixed amount in the offer. As a result, they had failed to obtain a more favorable judgment.

The trial court rejected defendant's section 998 arguments. It reasoned that “the parties settled the case prior to trial, and as there was no trial, no judgment or award was rendered. Accordingly, Code of Civil Procedure section 998 does not apply.” The court did, however, tax plaintiffs' claimed costs.

The Court of Appeal reversed in a split decision. The majority concluded that section 998 cost shifting applied to the question of recoverable costs and remanded for the court to “consider the parties' arguments regarding the validity of [Defendant's second 998] offer, whether the offer was more favorable than the judgment obtained by Plaintiff, and any other arguments that may flow from the application of section 998.” The dissent would have held that section 998 cost shifting does not apply when the parties enter into a settlement agreement before the case proceeds to trial but after the last section 998 offer is rejected or deemed withdrawn.

### **HOLDING/DISCUSSION**

“The clear policy behind section 998 is to encourage the settlement of lawsuits before trial.” Defendant made two section 998 offers that were deemed withdrawn for nonacceptance. These facts bring section 998, subdivision (c)(1) (section 998(c)(1)) into play.

Under the trial court's analysis, cost shifting is only required if a plaintiff rejects a 998 offer and then takes the case to trial and obtains a less favorable judgment. In other words, cases that settle before trial, but after a section 998 offer is rejected or deemed withdrawn, would not fall within the cost-shifting scheme. The Court of Appeal majority was correct to reject this construction.

Nowhere does section 998(a) require that the case be resolved by trial before it comes into play. Nor does it exclude from its reach cases resolved by a postrejection, but pretrial, settlement. The trial court's construction of section 998 would undermine the statute's policy objectives, which we have repeatedly stated should be considered in its interpretation.

Rewarding the making of reasonable offers, by imposing liability for postoffer costs on a rejecting offeree, is enhanced by an understanding that section 998 applies even to cases that settle before trial but after rejection of an offer. Offerors will be encouraged to make reasonable offers earlier; the better the offer, the more likely it is to be more favorable than the eventual result. There is little incentive to make one's best offer early if there is no cost-shifting benefit unless a case goes to trial.

A plaintiff who has rejected an offer under Code Civ. Proc., § 998, or allowed it to be deemed withdrawn for want of timely acceptance, but later agrees to settle before trial, does not necessarily avoid the postoffer cost-shifting effects of § 998. Rather, § 998 sets out the default rule, imposing cost shifting whenever its terms are met. However, the parties remain free to agree to their own allocation of costs and fees as part of the settlement agreement.