When the Appeal Party is Over: Paying the Judgment

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When a defendant appeals from a money judgment and loses, the defendant must confront payment of the judgment, absent a settlement agreement. In this situation, there are steps defense counsel can take to ensure that payment of the judgment fully concludes the matter, stops the accrual of further interest, and protects the defendant from claims by others who may assert an interest in the judgment.

Establishing the Payoff Amount and Logistics

The first step should be to get opposing counsel to provide the figures that counsel believes is the amount necessary to satisfy the judgment. The payoff amount, should include the judgment, any trial court costs, any attorney fees, appellate costs (if the court of appeal ordered the defendant to bear them), and interest. (See Code Civ. Proc., §§ 685.090, 695.220; *Lucky United Property Investments, Inc. v. Lee* (2013) 213 Cal.App.4th 635, 642–643.)

To stop accrual of post-judgment interest as soon as possible, the defense should pin opposing counsel down on their position right away when the opinion issues (in appropriate cases, this can even be discussed while the appeal is pending), and defense counsel should prepare the client to issue a wire or check on the earliest date the client is confident it can tender payment. Picking a date in advance and agreeing with the other side on the payoff amount due as of that date will prevent the plaintiff from taking the position, after the money has been transferred, that the defendant failed to fully satisfy the judgment.

Often, the parties have minor disagreements about the payoff amount that work out to one or two days' interest. If the defendant cannot quickly persuade the plaintiff to adopt the defense calculation, it may be more cost effective (in consultation with the client) to simply pay an extra day's interest rather than to continue the dispute, potentially triggering expensive motion practice. Advancing the payoff date can make up for the payment of additional disputed interest.

The defense should also develop a clear plan for payment logistics, including whether payment will be by check or by wire and who will oversee delivery, and communicate this plan to the plaintiff. Particularly where payment comes from multiple sources via different financial instruments, communicating the plan in advance will avoid misunderstandings.

Figuring Out the Name(s) On the Check

Defense counsel also needs to coordinate with plaintiff's counsel about whose names appear on the checks.

It is permissible to write the check to both plaintiff's counsel and the plaintiff. (See Code Civ. Proc., § 283; *Navrides v. Zurich Ins. Co.* (1971) 5 Cal.3d 698, 705–706.) If multiple plaintiffs are jointly represented by the same counsel, it is permissible to prepare a check for one lump sum made out to their counsel. (See *Bank of America Nat. Trust and Sav. Ass'n v. Allstate Ins. Co.* (C.D.Cal. 1998) 29 F.Supp.2d 1129, 1141; U. Com. Code com., 23A pt. 2 West's Ann. Cal. U. Com. Code (2002 ed.) foll. § 3420.) It is not necessary that the check be made out to the attorney's client trust fund, as opposed to the attorney's firm, and some attorneys will not accept a check written directly to the trust account. Again, as with other payment details, it is best to consult and reach an agreement with plaintiff's counsel in advance.

It is important to identify anyone who may have a lien on the plaintiff's recovery. In a typical personal injury action, for example, lienholders may include prior counsel, healthcare providers, a workers compensation carrier, or a third-party litigation funder (judgment purchase company). (See Code Civ. Proc., § 708.410; Cal. Rules of Court, rule 3.1360.) The defendant has a duty not to interfere with the rights of judgment lienholders of which the defendant has notice. (See *Little v. Amber Hotel Co.* (2011) 202 Cal.App.4th 280, 291; *Siciliano v. Fireman's Fund Ins. Co.* (1976) 62 Cal.App.3d 745, 752–753.) If the defendant has notice of a judgment lien (such as through a lien recorded in the court record) and pays the judgment to the plaintiff without protecting the lienholder's rights, the defendant may be required to compensate the lienholder – double paying on at least part of the judgment. (Code Civ. Proc., § 708.470, subd. (c); see *Pangborn Plumbing Corp. v. Carruthers & Skiffington* (2002) 97 CalApp.4th 1039, 1056–1057; *In re Marriage of Katz* (1991) 234 Cal.App.3d 1711, 1720–1722.) Similarly, a defendant who pays a personal injury plaintiff without paying the treating hospital's properly noticed lien is liable to the hospital for the amount of the lien. (Civ. Code, §§ 3045.4, 3045.5.)

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When the parties have a settlement agreement, it is possible to include a term requiring the plaintiff to warrant that there are no other lienholders besides the ones already known to the defendant (and named in the settlement agreement), and to require that the plaintiff indemnify the defendant from future lienholder claims. When there is no settlement, the defendant can reduce the risk of postpayoff lienholder claims by getting a written statement from the plaintiff as to how the parties will account for known lienholders and written confirmation that there are no other lienholders.

As a last resort, the defendant can interplead the funds and let the court sort out competing claims, such as where a medical provider or prior counsel claims a right to a lien, and the plaintiff disagrees. (Code Civ. Proc., § 386.) The attorney fees for interpleading funds may be recoverable under certain circumstances. (*Id.*, § 386.6.)

Finally, in wrongful death actions, defense counsel should take steps to protect the defendant from claims by new heirs who do not appear in the judgment and may surface only after the judgment has been satisfied. The general rule, called the "one action rule," is that a defendant cannot be sued after paying a wrongful death judgment by an heir who was not included in the wrongful death action. (*Gonzales v. Southern California Edison Co.* (1999) 77 Cal.App.4th 485, 489.) There is an exception, however, when the defendant "voluntarily elects to settle the case with less than all of the heirs, *having knowledge* of the omitted heir's existence and status as an heir." (*Romero v. Pacific Gas & Electric Co.* (2007) 156 Cal.App.4th 211, 216–217.) It is unclear whether this exception would apply in a case where there is no settlement, but to avoid risk, the best practice would be to review the court file and the discovery and identify and account for any heirs disclosed who do not appear in the judgment.

Tendering the Judgment and Obtaining Acknowledgment of Satisfaction

Tendering the full judgment amount stops the running of postjudgment interest, regardless of whether the plaintiff accepts the tendered funds or cashes the check. (Code Civ. Proc., §§ 685.010, subd. (a), 685.030, subds. (c) & (d)(2); *San Francisco Unified School Dist. v. San Francisco Classroom Teachers Assn.* (1990) 222 Cal.App.3d 146, 150; *General Ins. Co. v. Mammoth Vista Owners' Assn.* (1985) 174 Cal.App.3d 810, 829 810; see also See Code Civ. Proc., § 283 [attorney has authority "to receive money claimed by his client in an action or proceeding during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment"]; *Navrides v. Zurich Ins. Co.* (1971) 5 Cal.3d 698 [tender to counsel is effective even if counsel absconds with the funds].)

Defense counsel may suggest that delivery of funds occur simultaneously with plaintiff's counsel signing and filing acknowledgment of satisfaction of judgment. By statute, if a motion is required to force the plaintiff to enter acknowledgment of satisfaction of judgment after receiving payment, the defendant may be able to recover fees if the motion is successful, assuming appropriate advance notice is provided. (See Code Civ. Prod., § 724.050 [setting forth statutory notice language].) If a check is accepted as payment in full, but the plaintiff later claims some insufficiency, it may be helpful to cite Code of Civil Procedure section 2076: "The person to whom a tender is made must, at the time, specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it." (See also *Noyes v. Habitation Resources, Inc.*(1975) 49 Cal. App.3d 910 [the law "does not permit an offeree to remain silent regarding a tender

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and later surprise the offeror with hidden objections."].)

Canceling the Appeal Bond

Once a judgment is satisfied (or reversed and no longer enforceable), defense counsel should discuss with the client steps for cancellation of any appeal bond that was posted to stay enforcement of the judgment pending appeal. Sureties should be satisfied by a copy of the appellate opinion and the acknowledgment of satisfaction of judgment, but many (arguably, improperly) demand that the bond be cancelled or released by court order to confirm that the sureties have no further liability. Sureties may continue to charge bond premiums until the bond is released. This is most customarily done by stipulation. (See Code Civ. Proc., § 995.430, subd. (b); Cal. Rules of Court, rule 3.1130(c).)

If the plaintiff's counsel unreasonably will not cooperate by stipulating to cancellation of the bond, defense counsel can submit a request to the court. (Code Civ. Proc., §§ 996.110, 996.120, 996.320, 996.330.)

Conclusion

There are many nuances to the basic principles above. However, in most situations, planning ahead to reach agreement on the amount owed, the payees to be paid, the date for payment, and procedures for acknowledgment of satisfaction and release of the bond will help the client avoid undue motion practice and unwelcome surprises. V

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