

**GIBSON DUNN**



**Appellate & Constitutional Law Update**

**March 20, 2025**

## **California Supreme Court Holds That Plaintiffs Who Refuse A Section 998 Settlement Offer Can Be Liable For Costs And Fees When They Later Settle Before Trial**

*Madrigal v. Hyundai Motor Am.*, S280598 – Decided March 20, 2025

**The California Supreme Court today unanimously held that a plaintiff who refuses a settlement offer under Code of Civil Procedure section 998 but later accepts a less favorable offer before trial will generally be liable for statutory cost-shifting that applies to parties who reject settlement offers and end up with less favorable outcomes.**

*“Section 998(c)(1) . . . places the task of obtaining a more favorable judgment on a plaintiff who does not accept a valid 998 offer. It requires cost shifting if the plaintiff does not do so. There is no requirement in the statute that the case be resolved by trial in order to penalize a nonaccepting offeree for continuing the case after a superior offer was properly made.”*

**JUSTICE CORRIGAN, WRITING FOR THE COURT**

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## Background:

Section 1032 of the Code of Civil Procedure generally entitles the prevailing party in a lawsuit to recover its litigation costs, including attorneys' fees when authorized by statute. Section 998 provides an exception to this general framework when a plaintiff rejects or does not timely accept a settlement offer by the defendant under section 998 and then "fails to obtain a more favorable judgment or award." Cal. Code Civ. Pro. § 998(c)(1). In such cases, the plaintiff is not entitled to recover its postoffer litigation costs and must pay some or all of the defendant's postoffer costs.

Oscar and Audrey Madrigal sued Hyundai, alleging that their Elantra suffered from various issues that their local dealership couldn't repair. Hyundai soon offered to settle the case for about \$55,000 plus attorney fees. The Madrigals did not accept the offer. But eventually, on the first day of trial, the parties settled for \$39,000. After the Madrigals moved to recover their attorneys' fees and costs, Hyundai invoked section 998 and argued that they were not entitled to recover fees and costs incurred after the date of the \$55,000 settlement offer because they ultimately agreed to settle the case for less than that.

The trial court ruled that section 998 did not apply because the case was resolved via a pretrial settlement, not a trial. But the Court of Appeal reversed in a divided opinion, holding that the Madrigals were not exempt from section 998's cost-shifting provisions.

## Issue Presented:

Do section 998's cost-shifting provisions apply to a plaintiff who rejects a section 998 settlement offer but later agrees to a lower settlement before trial?

## Court's Holding:

Yes. Whenever a plaintiff rejects a section 998 offer and then "fails to obtain a more favorable judgment or award"—whether at trial or through a pretrial settlement—section 998(c)(1) overrides the general rule that prevailing plaintiffs are entitled to recover their costs.

## What It Means:

- Section 998 appears relatively straightforward but has been difficult in practice for parties and courts to apply. This latest decision from the California Supreme Court removes uncertainty about the scope of the statute and clarifies that it applies equally to pretrial settlements (which are far more common than jury verdicts).
- As the Court observes, its opinion will have the "likely result that parties, knowing that section 998 cost shifting can apply absent a different and agreed-upon allocation, will deal with the issue of costs in their settlement agreements."
- The Court's expansive interpretation of section 998 will likely provide further incentive for plaintiffs to accept reasonable section 998 settlement offers so they are not later punished for obtaining a less favorable result via a pretrial settlement.

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## Gibson Dunn Appellate Honors



The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court. Please feel free to contact the following practice group leaders:

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