

1.11 PRELIMINARY CHARGE (Approved 11/1998; Revised 01/2025)

G. Settling Defendants¹

[To be given after the jury is sworn in but before the openings.]

When this case started, plaintiff claimed that _____ was a cause of the accident. Before the trial started, _____ settled with plaintiff and for that reason will no longer be involved in this trial.

The effect of that settlement on the parties still here is of no concern to you at the present time and you should not speculate about that. I will explain the effect that settlement will have on your deliberations at the end of the case.

NOTE TO JUDGE

In *Hernandez v. Chekenian*, 447 N.J. Super. 355 (Law Div. 2016), Judge Rea held that Model Civil Jury Charges 1.11G and 1.17 should only be used in cases where the defendant settles during trial. It should not be given when defendants settle before the trial begins because it is irrelevant and unduly prejudicial. In dicta, he questioned the use of the terms “settlement” and “settled” as being irrelevant as well as prejudicial. This case, while published, has not been the subject of appellate review. *But see Theobald v. Angelos*, 40 N.J. 295 (1963), in which the New Jersey Supreme Court held that jurors have to be told the facts of a settlement in order to avoid juror speculation and that the danger of this speculation arises whenever a jury is asked to make a

¹ See Model Civil Jury Charge 1.17, “Instructions to Jury in Cases in Which One or More Defendants Have Settled With the Plaintiff,” for use in this charge.

liability determination regarding an absent party, regardless of whether that party appeared for any portion of the trial.

As to whether settlements are admissible into evidence, *see Shankman v. State, et al.*, 184 N.J. 187, 207-208 (2005).

Cases:

Theobald v. Angelos, 44 N.J. 228 (1965); *Cartel Capital Corporation v. Fireco of New Jersey*, 81 N.J. 548, 569 (1980); *Kiss v. Jacobs*, 138 N.J. 278, 283 (1994) (fact finder must assess the negligence of the settling defendant as to the non-settling defendant); *Shatz v. TEC Technical Adhesives*, 174 N.J. Super. 135 (App. Div. 1980) (defendant has the burden of proving that a settling defendant was negligent).