

1.17 INSTRUCTIONS TO JURY IN CASES IN WHICH ONE OR MORE DEFENDANTS HAVE SETTLED WITH THE PLAINTIFF (Approved 05/1997; Revised 01/2025)

[*Name*] was originally named as a defendant in this case. [*Choose appropriate option: Before the trial started/During the trial,*] plaintiff and [*named defendant(s)*] resolved their differences. As a result, [*name*] will not be present or represented by an attorney during this trial.

You are not to speculate as to the reasons why the plaintiff and [*defendant*] settled their dispute. You should not be concerned about the amount, if any, that may have been paid to resolve the claim against [*defendant*]. You must decide the case based on the evidence you find credible and the law presented at this trial.

Initially you will have to decide whether or not the remaining defendants were negligent, proximately causing the accident. The burden of proof on these issues is on plaintiff [*name*]. If you find that one or more of the remaining defendants were negligent and that such negligence was a proximate cause of the accident, you must next consider the conduct of the settling defendant. You will have to determine whether or not the settling defendant [*name*] was negligent and a proximate cause of the accident. The burden of proving that the settling defendant was at fault is on the remaining defendant(s).

In the event that you find that a settling defendant was negligent and a proximate cause of the accident, you must apportion fault in terms of percentages among/between the settling defendant(s) and the remaining defendant(s).

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

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