

**Multi-Defendant Settlements:  
The Impact of Joint and Several Liability**

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Abstract

This article offers a simple model of settlement between a single plaintiff and multiple defendants. In the model, a plaintiff makes take-it-or-leave-it offers to two defendants. Each defendant then decides independently whether to accept the offer or to litigate. These two defendants face a rule of joint and several liability with contribution (proportional to their size). In the event that one defendant settles, the non-settling defendant loses its right to contribution, but its liability is set off by the amount of the settlement. The paper analyzes the settlement game involving the defendants as well as the plaintiff's optimal strategy for the full range of transaction costs and of correlation of the plaintiff's probability of success against the defendants. It shows that the effect of joint and several liability on settlements depends on the extent to which the plaintiff's probabilities of success in litigation are correlated across the defendants. When the plaintiff's probabilities of success are sufficiently independent, joint and several liability discourages settlements; in contrast, when they are highly correlated, joint and several liability encourages settlements.

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