

**Multi-Defendant Settlements Under Joint and Several Liability:
The Problem of Insolvency**

Lewis A. Kornhauser and Richard L. Revesz

Abstract

This article studies the problem of multi-defendant settlements under joint and several liability when a defendant has insufficient solvency to satisfy the plaintiff's claim. It 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. One of the defendants has sufficient solvency to satisfy the plaintiff's claim; the other does not. These two defendants face a rule of joint and several liability with contribution (proportional to their share of the liability). 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 article has three central conclusions about the impact of a defendant's limited solvency on the choice between settlement and litigation: (1) it induces settlements that otherwise would not occur when the plaintiff's probabilities of success are independent; (2) it also induces settlements that otherwise would not occur when the plaintiff's probabilities of success are perfectly correlated and the shares of liability of the two defendants are sufficiently different; and (3) it deters settlements that otherwise would occur when the plaintiff's probabilities of success are perfectly correlated and the shares of liability of the two defendants are sufficiently similar.

Keywords: multi-defendant settlements, contribution, joint and several liability, hazardous waste, insolvency
JEL classifications: K32, K41, Q3, C78