

MARY CARTER AGREEMENTS AND GOOD FAITH SETTLEMENTS - ARE THEY BOTH POSSIBLE IN CALIFORNIA?

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INTRODUCTION

A young man approximately twenty-five years of age was working near a truck attached to a crane one day, when he attempted to unhook the crane from the truck. While he was doing that, the crane was started and somehow it contacted electrical wires overhead. The young man was severely injured and suffered extreme burns plus the loss of several limbs.

What do you do if you are asked to represent that injured person? What do you do if you are the attorney representing the primary defendant in that case and your client bears a great deal of liability?

Is there any solution for both of these attorneys other than trial? In this case, the solution created was a Mary Carter Agreement. This type of agreement has become more and more prevalent in many multi-party, complex, comparative tort cases.

This article will evaluate Mary Carter Agreements historically and as they relate to California law. This article will also examine the validity of Mary Carter Agreements. The article will then analyze Mary Carter Agreements and good faith settlements and whether the two are compatibly possible under California law in this author's opinion.

The above factual story was an actual case and it will be used throughout this article as a continuing example.

MARY CARTER AGREEMENTS

The term Mary Carter Agreement originated in the case of *Booth v. Mary Carter Paint Company*.¹ In that case, two college boys were blindfolded near a two-lane highway in Citrus County, Florida, and left there alone as part of an initiation rite. Two southbound trucks belonging to the Mary Carter Paint Company and traveling



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together on the highway stopped as they came upon the boys. The drivers were worried the boys might have been involved in an accident. A northbound truck belonging to Willoughby and being driven by Sutton also stopped on the highway. The three trucks blocked the highway and Elsie Booth was killed when her Volkswagen slammed into the rear of the Willoughby truck.

A wrongful death action was brought by Elsie Booth's husband against Willoughby and the Mary Carter Paint Company. The attorney for the plaintiff and the attorney for Willoughby entered into an agreement. That agreement mainly consisted of the following facts. The maximum exposure of Willoughby would be \$12,500. If there was a joint verdict exceeding \$37,500, then the plaintiff would satisfy that judgment against only Mary Carter. There would be no contribution from Willoughby. Should there be a verdict against both defendants for less than \$37,500, then the plaintiff would satisfy the judgment against Mary Carter only, but Willoughby would supplement the verdict by paying up to \$12,500 to make the total verdict \$37,500. In the event there was a verdict for both defen-

¹202 So2d 8 (Fla 1967).