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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JANET STEWART, Plaintiff and Appellant, v. UNION CARBIDE CORPORATION, Defendant and Respondent.	B267405 (Los Angeles County Super. Ct. No. BC484471)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Amy D. Hogue and Emilie H. Elias, Judges. Affirmed.

The Arkin Law Firm, Sharon J. Arkin, Farrise Firm, Simona A. Farrise, for Plaintiff and Appellant.

Polsinelli, Stephen M. Nichols, Farah S. Nicol, and David K. Schulz, for Defendant and Respondent.

Janet Stewart appeals from a judgment in favor of Union Carbide Corporation (Union Carbide or respondent) in this wrongful death case. We find no error in the summary adjudication that appellant's loss of consortium claim was barred by res judicata. We also find there was no miscarriage of justice in the setoff of her deceased husband's settlement with two asbestos bankruptcy trusts against her entire economic damage award in this case. The judgment is affirmed.

FACTUAL AND PROCEDURAL SUMMARY

We borrow some of the relevant facts and procedural history from *Stewart v. Union Carbide Corp.* (2010) 190 Cal.App.4th 23 (*Stewart I*).[1] "Larry Stewart worked as a plumber, or plumber's apprentice, from 1968 until his diagnosis with mesothelioma in 2007. After his diagnosis, he sued Union Carbide (and others, who settled prior to trial) for fraud, negligence, and strict products liability on failure to warn and design defect theories. Janet Stewart, Larry Stewart's wife, sued for loss of consortium. Plaintiffs sought punitive damages." (*Id.* at p. 25.)

After a trial, respondent won a directed verdict on the fraud cause of action, but the jury found it liable for negligence and strict products liability. Asked to allocate fault among a number of tortfeasors, the jury found respondent "accounted for 85 percent of the fault, and Hamilton Materials for 15 percent." (*Stewart I*, *supra*, 190 Cal.App.4th at p. 27.) "The jury awarded Larry Stewart $2.2 million for past and future economic damages, and $500,000 for past and future noneconomic

[1] *Stewart I* was disapproved on an unrelated point in *Webb v. Special Elec. Co., Inc.* (2016) 63 Cal.4th 167, 188.

damages, and awarded Janet Stewart past noneconomic damages of $250,000 and future noneconomic damages of $250,000." (*Ibid.*) The jury also awarded $6 million in punitive damages. (*Ibid.*) "After applying $1,782,375 in credits based on the preverdict settlements with other defendants and making appropriate calculations based on Union Carbide's 85 percent share of fault, the court entered judgment in favor of Larry Stewart in the amounts of $417,625 in economic damages and $425,000 in noneconomic damages and $6 million in punitive damages, and in favor of Janet Stewart in the amount of $425,000 in noneconomic damages." (*Ibid.,* fn. omitted.) The judgment was affirmed on appeal. (*Id.* at p. 25.)

In October 2010, while the appeal in *Stewart I* was still pending, Larry Stewart settled his claim against the United States Gypsum Asbestos Personal Injury Settlement Trust (Gypsum Trust) for 35 percent of the liquidated value of $249,390.68, or $87,286.74. In April 2011, he settled his claim against the Manville Personal Injury Settlement Trust (Manville Trust) for 7.5 percent of the liquidated value of $350,000, or $26,250. As part of the settlements, Larry Stewart released future claims by his heirs, including wrongful death claims, and promised to hold the trusts harmless. Appellant received the money from these settlements.

Larry Stewart died in May 2011. A year later, appellant and her two adult stepchildren filed this wrongful death action against respondent and other defendants.[2] Respondent settled with the stepchildren, but moved for summary adjudication of several of appellant's claims, including her claim for loss of consortium. Based on *Boeken v. Philip Morris USA, Inc.* (2010)

[2] Some defendants were dismissed with a waiver of costs.

48 Cal.4th 788 (*Boeken*), respondent argued the loss of consortium claim was necessarily resolved in *Stewart I* and, hence, barred by the res judicata rule. The trial court, Judge Amy Hogue, agreed with respondent and granted summary adjudication of the claim.

Afterwards, the parties stipulated to an award of $5,409.02 in economic damages to appellant for funeral and burial expenses. The court, Judge Emilie Elias, allowed respondent to set off that award against Larry Stewart's settlements with the Manville and Gypsum trusts, reducing appellant's recovery to zero. Respondent was declared the prevailing party, and judgment was entered against appellant. This appeal followed.

DISCUSSION

I

Appellant argues that her claim for loss of consortium should not have been summarily adjudicated based on *Boeken*, *supra*, 48 Cal.4th 788 because that case was incorrectly decided, should be limited to its facts, and should not be applied retroactively. We review an order granting a motion for summary adjudication de novo, resolving factual disputes in favor of the opposing party. (*Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463, 1471.)

In *Boeken*, the wife of a smoker who developed lung cancer sued cigarette manufacturer Philip Morris for loss of consortium. For some unknown reason, she quickly dismissed the lawsuit with prejudice, but after her husband's death claimed loss of consortium in a wrongful death action. (*Boeken*, *supra*, 48 Cal.4th at pp. 792-793.) In a split decision, the California Supreme Court held that the wrongful death action was barred

by the doctrine of res judicata, which "prohibits a second suit between the same parties on the same cause of action." (*Id*. at p. 792.) The majority defined "cause of action" as consisting of "a primary right and a breach of the corresponding duty." (*Ibid*.) It concluded the widow's wrongful death action involved "the same primary right and breach as her former loss of consortium action" (*ibid*.) and sought the same "postdeath loss of consortium" damages. (*Id*. at p. 804.)

As appellant recognizes, we are bound by decisions of our state's highest court that remain good law and may not reexamine their correctness. (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455.) Nor are we convinced that *Boeken* is distinguishable on its facts. The majority in that case interpreted the allegation in the plaintiff's common law loss of consortium cause of action "that Phillip Morris's wrongful conduct 'permanently deprived' her of her husband's companionship and affection" to mean that she sought both pre- and postdeath loss of consortium damages (*Boeken*, *supra*, 48 Cal.4th at pp. 798, 800-801.) The majority rejected the plaintiff's argument that under existing law she could not seek postdeath damages during her husband's lifetime. (*Id*. at p. 799-802.) The majority cited the general rule that a tort plaintiff may recover future damages that are "sufficiently certain" to occur (*id*. at p. 803), and presumed that the plaintiff's allegation of permanent deprivation of her husband's consortium was based on the incurable nature of his illness and the high likelihood of his premature death. (*Id*. at pp. 800-801.)

Appellant argues that, unlike the plaintiff in *Boeken*, she neither alleged nor proved postdeath loss of consortium damages in *Stewart I*. The argument is partially flawed since the

complaint in *Stewart I* includes the same allegation of permanent deprivation of her husband's consortium that the majority in *Boeken* considered sufficient for postdeath loss of consortium damages.

The parties disagree whether appellant actually proved and was awarded postdeath loss of consortium damages in *Stewart I*. Appellant cites to her attorney's closing argument in that case, in which he stated that her claim "goes through the end of Larry Stewart's life." She notes that the jury awarded the same amount of past and future noneconomic damages to both husband and wife, based on evidence that he had been taken ill a year before trial and was expected to live for up to a year after trial. On the other hand, respondent contends that neither the jury instructions nor the special verdict form limited appellant to predeath damages. The jury was instructed that appellant could recover damages for harm "she is reasonably certain to suffer in the future." However, appellant disputes that the instruction on the average life expectancy of a man of Larry Stewart's age was relevant to her loss of consortium claim, rather than limited to his claim for future economic damages.

We agree with appellant that, at trial in *Stewart I*, she did not ask for and was not awarded postdeath loss of consortium damages. The jury's award of matching amounts of noneconomic damages to both husband and wife, as well as matching amounts of past and future noneconomic damages, suggest that the jury relied on Larry Stewart's year-long illness at the time of trial and his projected year-long life span after trial.

Respondent's reliance on the jury instruction regarding the statistical life expectancy of a man of Larry Stewart's age is flawed because that is not the only instruction relevant to

postdeath loss of consortium damages. As the majority in *Boeken* explained, such damages are limited as much by the wife's statistical life expectancy as by the husband's, and here respondent does not show that the jury in *Stewart I* was instructed as to appellant's own statistical life expectancy. (See *Boeken*, *supra*, 48 Cal.4th at p. 800.) The jury instruction on the certainty of appellant's future damages did not advise the jury that loss of consortium damages could be recovered for the period after her husband's death, and her attorney told the jury she was not seeking such damages.

Nevertheless, the fact that appellant did not seek postdeath loss of consortium damages at trial in *Stewart I* does not distinguish this case from *Boeken*. As the majority in *Boeken* explained, such damages could be recovered in a common law loss of consortium action filed during the injured spouse's lifetime. (See *Boeken*, *supra*, 48 Cal.4th at pp. 803-804.) The established rule is that res judicata bars claims that were "or could have been litigated in [the] prior proceeding." (*Federal Home Loan Bank of San Francisco v. Countrywide Financial Corp.* (2013) 214 Cal.App.4th 1520, 1527.) That is because ""[r]es judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief."" (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897, citation omitted.) Hence, "all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date." (*Ibid.*) Like the plaintiff in *Boeken*, in *Stewart I* appellant alleged permanent deprivation of her husband's consortium and could have sought all her loss of consortium damages in that

case. Res judicata precludes her from splitting her cause of action.

Appellant seeks to distinguish *Boeken* on other grounds as well. She assumes that, unlike this case, *Boeken* did not involve other heirs who could claim under the wrongful death statute. (Code Civ. Proc., § 377.60.) That assumption is incorrect. As the majority in *Boeken* noted, the claims of the other plaintiffs in the wrongful death action were not before the court. (See *Boeken*, *supra*, 48 Cal.4th at p. 793, fn. 2.)

Appellant assumes that wrongful death claims are indivisible for all purposes, but that assumption is not correct either. "A wrongful death action is considered joint, single and indivisible, meaning that all heirs should join in a single action and there cannot be a series of suits by heirs against the tortfeasor for their individual damages. [Citation.] 'The action is joint only insofar as it is subject to the requirement that all heirs should join in the action and that the damages awarded should be in a lump sum.' [Citation.] As explained by our high court, the wrongful death statute 'is a procedural statute establishing compulsory joinder and not a statute creating a joint cause of action.' [Citation.] Accordingly, each heir has a 'personal and separate cause of action'" and the wrongful death claims of some heirs may proceed even where the claims of other heirs are barred. (*San Diego Gas & Electric Co. v. Superior Court* (2007) 146 Cal.App.4th 1545, 1551–1552.) The requirement that heirs be joined in a wrongful death action does not preclude the assertion of defenses against individual heirs. (See *ibid.*) Because the heirs' causes of action are personal and separate, appellant's claim for loss of consortium, like the widow's claim for

loss of consortium in *Boeken*, is barred by res judicata regardless of the claims of other heirs.

Appellant argues that *Boeken* should not apply retroactively to this case because there were no other heirs in that case. But appellant could not have reasonably relied on a misinterpretation of the wrongful death statute as creating an indivisible cause of action for all heirs when existing law was to the contrary. (See *San Diego Gas & Electric Co. v. Superior Court*, *supra*, 146 Cal.App.4th at pp. 1551-1552.) The majority in *Boeken* expressly rejected the plaintiff's argument that the case should apply only prospectively. (See *Boeken*, *supra*, 48 Cal.4th at pp. 804-805, fn. 6.) It held that *Boeken* did not change the law since, under existing law, the plaintiff could have recovered postdeath loss of consortium damages in her common law action. (*Ibid*.) Appellant takes issue with the majority's conclusion that *Boeken* did not change the law, but we are bound by that conclusion. (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County*, *supra*, 57 Cal.2d at p. 455.)

Appellant argues that the holding in *Boeken* should be limited to voluntary dismissals with prejudice because the dissent envisioned that its "sole practical effect" would be to discourage such dismissals in loss of consortium cases. (See *Boeken*, *supra*, 48 Cal.4th at pp. 810-811 (dis. opn. of Moreno, J.).) But the majority stated that a voluntary dismissal is "the equivalent of a final judgment on the merits." (*Id*. at p. 804.) There is no principled reason to forego applying *Boeken*, or the rule against splitting causes of action, in a case where there is a final judgment on the merits. (See *Mycogen Corp. v. Monsanto Co.*, *supra*, 28 Cal.4th at p. 897.)

In sum, appellant could have sought postdeath damages at trial in *Stewart I*. She may not split her cause of action for loss of consortium, regardless of whether she or other heirs may have other valid claims under the wrongful death statute.[3]

Summary adjudication of the cause of action for loss of consortium was proper.

II

Appellant challenges the settlement credit the trial court applied against her award for economic damages under Code of Civil Procedure section 877.

A release "given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort," reduces "the claims against the others in the amount stipulated by the release . . . , or in the amount of the consideration paid for it, whichever is the greater." (Code Civ. Proc., § 877, subd. (a).) "[T]he offset provided for in section 877 assures that a plaintiff will not be enriched unjustly by a double recovery, collecting part of his total claim from one joint tortfeasor and all of his claim from another." (*Reed v. Wilson* (1999) 73 Cal.App.4th 439, 444.) When the settlement amount

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[3] The majority in *Boeken* noted that the plaintiff in that case had failed to separately challenge on appeal the dismissal of her claim for funeral and burial expenses and considered the appeal of that claim forfeited. (See *Boeken*, *supra*, 48 Cal.4th at p. 793, fn. 2.) The dissent took that to mean that the majority did not bar such a claim. The dissent criticized the majority for, in effect, "parsing a wrongful death claim . . . into separate primary rights"—such as, a right to consortium and a right to funeral expenses. (*Id*. at p. 808 (dis. opn. of Moreno, J.).) Here, appellant was allowed to proceed on her claim for funeral and burial expenses, and nothing in *Boeken* bars that claim.

exceeds the damage award, the award is entirely offset, and the plaintiff recovers nothing. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1330, 1334.)

"In general, 'a ruling granting or denying a section 877 settlement credit' is reviewed for an abuse of discretion. [Citation.] 'To the extent that we must decide whether the trial court's ruling was consistent with statutory requirements, we apply the independent standard of review.' [Citation.]" (*Hellam v. Crane Co.* (2015) 239 Cal.App.4th 851, 863 (*Hellam*).)

Appellant does not dispute that Johns-Manville and United States Gypsum were joint tortfeasors.[4] Nor does she dispute that Larry Stewart's settlements with the Gypsum and Manville trusts released wrongful death claims. But she contends that those settlements cannot be applied to her award in this case since she did not sign the releases. Similar arguments were rejected in *Hackett v. John Crane, Inc.* (2002) 98 Cal.App.4th 1233, 1241 (*Hackett*) and *Wilson v. John Crane, Inc.* (2000) 81 Cal.App.4th 847, 863 (*Wilson*). There, as here, the settlements included hold harmless provisions, which the courts interpreted to mean that "the settling defendants believed and expected there would be no future claims by the heirs." (*Hackett*, at p. 1241.) And if "the heirs were shown to have actually received the sums earlier paid in settlement, then of course those sums would be

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[4] The companies were named as joint tortfeasors in the special verdict in *Stewart I*, but their liabilities had long been assumed by special asbestos bankruptcy trusts as part of their bankruptcy reorganizations. (See 11 U.S.C. § 524(g); *In re Grossman's Inc.* (3d Cir. 2010) 607 F.3d 114, 126-127, citing *In the Matter of Johns-Manville Corp.* (Bankr. S.D.N.Y. 1986) 68 B.R. 618; *In re National Gypsum Co.* (5th Cir. 2000) 219 F.3d 478, 486.)

available for treatment as a settlement credit." (*Wilson*, at pp. 862-863.) We see no reason to conclude otherwise.[5]

In the trial court, appellant conceded she received the full amount of each settlement. Nevertheless, on appeal, she argues that she did not receive the money in her personal capacity, but as a trustee of the Stewarts' trust. However, it is undisputed that the spouses were the only beneficiaries of that trust during their joint lives and that the trust expressly disinherited their children. Appellant continued to be the beneficiary of a survivor's trust after her husband's death. It is reasonable to conclude that appellant personally received the settlement payments since those payments were made to a trust from which she directly benefitted to the exclusion of the other heirs.

Appellant complains that the court's allocation of the entire settlement amounts to her $5,409.02 stipulated economic damage award in this case failed to distinguish among Larry Stewart's personal injury claim, appellant's loss of consortium claims, and

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[5] Appellant's assumption that neither release is binding on her is questionable for another reason as well. California appears to be among a minority of states in which an agreement by the decedent to release liability for his or her death does not necessarily bar a subsequent wrongful death cause of action by his or her heirs. (See *Eriksson v. Nunnink* (2015) 233 Cal.App.4th 708, 725; see generally *Spangler v. McQuitty* (2016) 449 Md. 33, 61-62 [collecting cases].) Yet the releases do not appear to be governed by California law. The release given to the Gypsum Trust is governed by Delaware law. The release given to the Manville Trust is governed by New York law. In both states, a decedent's release appears to bar a wrongful death cause of action. (See *Deuley v. DynCorp Intern., Inc.* (Del. 2010) 8 A.3d 1156, 1165; *Langhorne v. Amchem Prods, Inc.* (N.Y. App. Div. 2005) 23 A.D.3d 208.)

the heirs' wrongful death claims, which were all covered by the settlements. We agree.

Settlement credits under Code of Civil Procedure section 877 can be applied only to economic damages because under Civil Code section 1431.2, subdivision (a), each defendant is severally, not jointly, liable for noneconomic damages. Therefore, where a pretrial settlement does not distinguish between economic and noneconomic losses, "the amount of the settlement attributable to each type of loss must be determined 'because "only the amount attributable to the joint responsibility for economic damages may be used as an offset"' against the damages for which a nonsettling defendant is responsible. [Citation.]" (*Hellam*, *supra*, 239 Cal.App.4th at p. 862.)

"[W]here the settling parties have failed to allocate, the trial court must allocate in the manner which is most advantageous to the nonsettling party." (*Dillingham Construction, N.A., Inc. v. Nadel Partnership, Inc.* (1998) 64 Cal.App.4th 264, 287 (*Dillingham*).) Generally, any offset of an unallocated settlement against a later judgment "is calculated in proportion to the ratio of economic to noneconomic damages awarded" at trial. (*Wilson*, *supra,* 81 Cal.App.4th at p. 864, citing *Espinoza v. Machonga* (1992) 9 Cal.App.4th 268, 277.) This formula is "easy to apply when the claims that are settled and the claims that proceed to trial against the nonsettling defendants are identical personal injury claims." (*Hackett*, *supra*, 98 Cal.App.4th at p. 1240.) However, where a settlement also covers wrongful death and loss of consortium claims that were not asserted at trial, the court must subtract from the settlement amount those portions allocable to the unadjudicated claims. (*Id.* at p. 1241, citing *Wilson*, *supra*, 81 Cal.App.4th at p. 864, fn. 18.)

Which party has the burden of showing the amount of such allocation appears to be unsettled. (See *Wilson, supra*, 81 Cal.App.4th at p. 865 [burden was on defendant to establish its entitlement to settlement credit], but see *Jones v. John Crane, Inc.* (2005) 132 Cal.App.4th 990, 1009 [plaintiff had burden of showing nonsettling defendant is not entitled "to a credit in the full amount of the settlements because some portion of the recovery should be allocated to other claims"].) Nevertheless, the court "has wide discretion in allocating portions of a prior settlement to claims not adjudicated at trial. [Citation.]" (*Hackett*, *supra*, 98 Cal.App.4th at p. 1242.) In *Hackett*, the appellate court affirmed the trial court's 34-percent allocation to wrongful death claims in the case of a 50-year-old man diagnosed with mesothelioma, who had a minor child. (*Id.* at pp. 1237, 1241.) The court noted that "allocations of 50 to 70 percent of prior settlements to wrongful death claims were not uncommon in cases brought by much older plaintiffs and by plaintiffs with no minor children. [Citation.]" (*Id.* at p. 1241-1242; see also *Wilson*, at pp. 859-860, 866-867 [affirming 20 percent settlement allocation to wrongful death claim].)

This case does not present the usual situation in which the court is asked to offset a prior settlement in a personal injury case tried to a jury and the settlement either releases only personal injury claims or both those and future wrongful death claims. (See *Hackett*, *supra*, 98 Cal.App.4th at p. 1241; *Wilson*, *supra*, 81 Cal.App.4th at p. 864, fn. 18.) Rather, it presents the reverse situation because the trial court was asked to determine what offset should apply to a damage award in a wrongful death case from settlements that released not only wrongful death claims, but also personal injury and loss of consortium claims.

Because the Manville and Gypsum Trust settlements did not allocate between economic and noneconomic damages, respondent argued, and the trial court agreed, that the damages awarded in the stipulated judgment in the wrongful death case should govern the allocation, which should be done in a manner most advantageous to respondent. (See *Espinoza v. Machonga*, supra, 9 Cal.App.4th at p. 277; *Dillingham*, *supra*, 64 Cal.App.4th at p. 287.) It is undisputed that appellant's stipulated damage award in this case was solely for economic damages. (See *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1264 [economic damages include funeral and burial expenses].) Therefore, under Civil Code section 1431.2, respondent was entitled to a credit against appellant's entire damage award. (*Hellam, supra*, 239 Cal.App.4th at p. 862.)

The court should not have allocated the full settlement amounts to the wrongful death claim. Since it is undisputed that the settlements with the two bankruptcy trusts released other claims as well, allocating the entire settlement amounts to wrongful death was an abuse of discretion. Nevertheless, we see no miscarriage of justice or prejudice requiring reversal. (See *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 198, quoting Cal. Cons., art. VI, § 13; Code Civ. Proc., § 475.) As the cases make clear, the range that may reasonably be allocated to wrongful death claims varies widely—from 20 to 70 percent. (See *Hackett*, *supra*, 98 Cal.App.4th at pp. 1241-1242; *Wilson, supra*, 81 Cal.App.4th at p. 862.) Appellant's stipulated damage award in the wrongful death case was $5,409.02. That amounted to about 20 percent of the $26,250 Manville Trust settlement and to about six percent of the $87,286.74 Gypsum Trust settlement. An allocation as high as

80 or even 90 percent to other claims, and only 10 or 20 percent to the wrongful death claims, would have been sufficient to offset appellant's entire damage award in this case. The court need not have made a 100 percent allocation in order to achieve a result "most advantageous" to respondent. (*Dillingham*, *supra*, 64 Cal.App.4th at p. 287.)

Appellant's further arguments for reduction of the offset are not persuasive. Appellant claims the court erred in not considering the jury award of noneconomic damages in *Stewart I*. The argument is based on the premise that appellant was awarded postdeath loss of consortium damages in that case. As we have discussed, there is no evidence that appellant was awarded such damages in *Stewart I*, and she was barred from seeking them in this case. Appellant cites no authority for using a noneconomic damage award in a previous case to reduce the offset from a subsequent settlement in a subsequent case, in which the plaintiff is precluded from recovering noneconomic damages.

Appellant assumes that Code of Civil Procedure section 877 applies to "claims" rather than cases. Therefore, she argues that respondent could have requested that the court in *Stewart I* retain continuing jurisdiction to offset any future settlements against the award in that case. But Code of Civil Procedure section 877 provides for a setoff when a settlement is entered into "before verdict or judgment." It has no application to a postjudgment settlement that "may or may not be sought, may or may not occur, and would be in an unknown amount." (*Paulus v. Crane Co.* (2014) 224 Cal.App.4th 1357, 1367.) The case on which appellant relies, *Garcia v. Duro Dyne Corp.* (2007) 156 Cal.App.4th 92, 100, is distinguishable because it dealt with

"future settlement payments," not future settlements. Thus, respondent could not have sought a setoff from unknown future settlements in *Stewart I*.

Nor is allowing respondent to claim a full credit in this case inequitable to appellant. The delay in obtaining settlements from the Manville and Gypsum trusts until after judgment in *Stewart I* effectively prevented respondent from seeking an offset in that case based on those settlements. (See *In re Garlock Sealing Technologies, LLC* (Bankr. W.D.N.C. 2014) 504 B.R. 71, 84-86 [noting tendency to delay filing claims against bankruptcy trusts in order to maximize recovery from solvent defendants].) Thus, the damage award in *Stewart I* already was maximized at respondent's expense.

Appellant argues that respondent's settlement with her stepchildren is relevant to the allocation between economic and noneconomic damages on the assumption that all heirs' claims in a wrongful death action are indivisible. As we have explained, that assumption is incorrect. While heirs may be compelled to join in the same wrongful death action, "each wrongful death claimant has a separate cause of action resulting in unique pecuniary loss to each heir . . . ." (See *San Diego Gas & Electric Co. v. Superior Court*, *supra*,146 Cal.App.4th at pp. 1551-1552.) The damage award in this case is not a lump sum award to all heirs after trial, and appellant cites no authority for creating such a lump sum award by combining appellant's stipulated damages with the amount of the stepchildren's settlements with respondent.

Additionally, it is undisputed that appellant alone received the entire amount of the settlements with the Manville and Gypsum trusts, even though those settlements resolved all heirs'

wrongful death claims. Since appellant is the only heir who collected payment under the settlements, she is the only party with a potentially double recovery in this wrongful death case. (See *Reed v. Wilson*, *supra*, 73 Cal.App.4th at p. 444.)

There is no prejudice or injustice in allowing respondent a credit against appellant's entire economic damage award.

DISPOSITION

The judgment is affirmed. Respondent is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.