

New Law Encourages Earlier Offers Of Settlement

A 1990 statute preventing plaintiffs from recouping the costs of litigation when they reject a defendant's earlier settlement offer, but win a smaller amount at trial, may be reversed. The law became effective on July 1, 2008.

The new law is aimed at reversing the effect of the 1990 statute. It allows a plaintiff to recover litigation costs, such as depositions and expert witness fees, after obtaining a monetary judgment for less than the value of a defendant's rejected settlement offer.

Peter G. Koclanes, an attorney who represented the Colorado Trial Lawyers Association, which lobbied for the bill, said the new law would "provide the defendants with an incentive to make their offer of settlement a reasonable offer of settlement early on in the case."

Chris Ottele, an attorney representing the Colorado Civil Justice League, which opposed the bill, disagreed. "The net result is going to be that there will be fewer settlements".

When Colorado enacted the statute in 1990 it was designed to encourage settlement of civil cases. In cases in which a plaintiff rejected a defendant's settlement offer, the statute allows the defendant to recover litigation costs for the period beginning after the offer of settlement to the end of trial.

This new law may help plaintiffs to recover litigation costs after rejecting a settlement offer.

What This Means For Counties

Since the law allows plaintiffs to recover costs and fees even when the trial decision awards them less than defendant's earlier offer to settle, plaintiff attorneys are indirectly encouraged to go to trial on weaker cases because they are more likely to get paid.

Defendants will be likely to make offers before any substantial trial activity starts to prevent additional potential liability costs. In effect, the law requires defendants or their insurers to pay both defense and plaintiff costs if the plaintiff prevails and is granted any award of damages.

On the other hand, once a defendant's offer is rejected, it reduces the likelihood of additional give and take because the parties will be more focused on how much money is spent to date. Taking cases to trial will have more serious effects for defendants but not necessarily advantages for the claimants.

For more information, contact CTSI at 303-861-0507.