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Alert

Avoiding entry of judgment by offers of compromise in Connecticut *The difference between Public Act 05-275 and the amended Public Act 06-40*

Overview

In order to allow defendants to avoid the legal implications of a judgment entered against them, the Connecticut General Assembly created a kinder, more amicable method for parties to resolve a legal action during the last stages of litigation. Essentially, the Connecticut state legislature resorted to semantics and renamed what used to be known as “offers of judgment” to “offers of compromise.”

Background

With the passage of Public Act 06-40 on May 8, 2006, the state legislature corrected the discrepancy created by earlier legislation aimed at encouraging settlements. The new law, Public Act 06-40, provides for “offers of judgment” to actions accruing prior to October 1, 2005, and addresses the void left by the original law. In 2005 the state legislature passed Public Act 05-275, which did not provide for actions accruing prior to October 1, 2005.

Procedurally, other than avoiding an entry of judgment, there is not much difference between the two laws. However, there are significant practical advantages for the defendant with the “offer of compromise.” No longer does a defendant face the stigma of an entry of judgment, which was the result of the acceptance of an “offer of judgment” under the prior statutory scheme.

A judgment against an entity or an individual significantly impacts the ability of the party to get credit, costs of borrowing, reputation, the outcome in subsequent legal claims involving similar issues, and sometimes even the ability to gain entry or admission into organizations, institutions, or employment positions. Acceptance of the “offer of compromise,” on the other hand, has the same results as a settlement. The “offer of compromise” does not indicate admission of liability and keeps the terms of the resolution of the case out of public records and out of the credit ratings of lenders.

Differences in the laws

Offers by plaintiffs

A. Offers of judgment by plaintiffs: actions initiated prior to October 1, 2005

Where action was initiated prior to October 1, 2005, the former statute applies.¹ The plaintiff may file an offer of judgment no later than 30 days before trial. The defendant has 60 days, or until the rendering of the verdict, whichever comes first, to accept it. If the defendant declines (silence equals rejection) and

the verdict is for a sum equal to, or greater than, the offer, the court will add 12 percent interest, accruing from the date the offer was filed. If the offer of judgment was filed up to 18 months from the date of filing the complaint, the plaintiff gets a bonus: the interest is calculated from the date of filing of the complaint, rather than the filing of the offer of judgment. Regardless of when the offer of judgment was filed, the court can add up to \$350 in reasonable attorney's fees. However, where there is a contractual agreement between the parties, the statutory provision for reasonable attorney's fees does not preclude plaintiff from collecting attorney's fees pursuant to contractual provisions for same.

B. Offers of compromise by plaintiffs: actions initiated on or after October 1, 2005

Where the action is initiated on or after October 1, 2005, the amended statute applies. The offer of compromise differs from the offer of judgment in the following respects:

1. Plaintiff must wait until 180 days after service of process before an offer of compromise may be made upon the defendant;
2. The defendant has 30 days (rather than 60 days) or until rendering of verdict, whichever comes first, to accept the offer of compromise;
3. If the offer of compromise is accepted by the defendant within the statutorily prescribed time limit, the plaintiff shall file withdrawal of the action with the clerk, which the clerk shall so record; and
4. The interest added to a verdict that is equal to, or greater than, the sum certain in the offer of compromise is 8 percent (rather than 12 percent), accruing in the same manner as under the prior version of the statute.

Offers by defendants

A. Offer of judgment by defendants: actions initiated prior to October 1, 2005

Under the previous statutory version, still in effect for actions initiated prior to October 1, 2005, the defendant also has up to 30 days before trial to file an offer of judgment.² Unless the offer specifies that it is exclusive of costs, the court shall add plaintiff's costs up to the time of defendant's offer of judgment to the sum certain of the offer. The plaintiff has 10 days or until rendering of the verdict, whichever comes first, to accept it. The trial is not postponed during the period for acceptance except at the discretion of the court. If the verdict is equal to or less than the defendant's rejected offer of judgment with interest from its date, plaintiff will not recover his costs accruing after receipt of notice of filing of such offer of judgment and shall pay defendant's costs accruing after the plaintiff received notice of the filing of defendant's offer. Defendant's costs may include reasonable attorney's fees of no more than \$350, unless written contractual provisions regarding attorney's fees exist between the parties.

B. Offers of compromise by defendants: actions initiated on or after October 1, 2005

Where action is initiated on or after October 1, 2005, the defendant may file an offer of compromise, which differs from the offer of judgment in the following respects:

1. The plaintiff has until 60 (rather than 10) days after being notified by the defendant of the filing of the offer of compromise to file acceptance of same with the clerk;
2. The court does not add for plaintiff's costs up to time of acceptance of offer of compromise, even where defendant's offer does not explicitly state that it is exclusive of costs; and
3. Where plaintiff accepts the offer of compromise, the action is not disposed until after the plaintiff has filed his offer of acceptance and filed receipt of the sum certain contained in the offer, at which time the plaintiff must file a withdrawal of the action with the clerk, which the clerk shall record accordingly.

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¹ C.G.A. § 52-192a

² C.G.A. §§ 52-193 to 52-195

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