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New Jersey Supreme Court Bars Offer-of-Judgment Fee Awards To Defense Counsel In Fee-Shifting Cases

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The New Jersey Supreme Court recently ruled in *Best v. C&M Door Controls, Inc.*, [_N.J._](#) (Oct. 14, 2009) that defendants can never be awarded counsel fees under the offer-of judgment rule in any case in which plaintiffs benefit from a statutory fee-shifting provision, including the Prevailing Wage Act (“PWA”).

The offer of judgment rule, New Jersey Court Rule 4:58, provides that any party may, at any time more than 20 days before the actual trial date, serve on any adverse party, without prejudice, and file with the court, an offer to take a momentary judgment in the offeror’s favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein (including costs). Historically, the offer-of-judgment rule permits an award of counsel fees and costs to a prevailing party whose offer of judgment had been rejected by the other side. The recent decision in [Best](#) attempts to reconcile the offer of judgment rule, which uses fee awards to penalize parties who do not accept reasonable settlements, with laws that allow fee shifting for plaintiffs in workplace rights cases.

In [Best](#), the plaintiff, a window installer, claimed that his employer violated the PWA and the Conscientious Employee Protection Act (“CEPA”). The defense made an offer of judgment of \$25,000 which was rejected by the plaintiff. The jury then returned a no-cause verdict on the CEPA claim and a verdict below the defense offer on the PWA claim. The

defense, thereafter, sought legal fees as provided by the offer-of-judgment rule. The defense, however, was faced with a obstacle because the rule was amended in 2006 to bar fee awards to the defense if such an allowance would conflict with the policies underlying a fee-shifting statute or rule of court. The Appeals Court in Best held that while the amendment covered CEPA, it did not apply to the PWA because that law was intended to benefit both employees and employers. The New Jersey Supreme Court, however, held that whether the law intended to benefit both employees and employers did not matter and only employees can win fees in suits under the PWA.

Despite the holding in Best, there still remains incentive for defense counsel to consider making an offer of judgment in a fee-shifting case. The Court noted that in awarding reasonable attorneys' fees to prevailing plaintiffs in such cases, judges should consider whether the defendant's offer of judgment was reasonable and whether plaintiff's fee award for time spent after the offer was warranted.

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