

TRENDOWSKI & ALLEN, P.C.

NEWSLETTER

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Offers of Compromise and You

Offers of Compromise are being used more frequently lately. So, we felt it would be useful to review the law authorizing and interpreting these offers.

Connecticut General Statutes §52-192a, 193 and Connecticut Practice Book §17-11 through 17-18, provide for the filing of Offers of Compromise, which are also often referred to as Offers of Judgment. Offers of compromise are written offers of settlement, containing a sum certain, filed by a party with the court. Connecticut case law repeatedly cites encouragement of settlement or other pretrial resolution as the purpose of such offers. Thus, the courts have agreed to construe and apply the applicable statutes liberally as a means to effectuate public policy.

Requirements for Filing an Offer of Compromise

If filed by plaintiff:

1. Action must be a civil action based in contract or seeking the recovery of money damages;
2. Must be filed no earlier than 180 days after service;
3. Must be filed not less than 30 days before trial;
4. The offer must be directed to a defendant(s) or defendant(s) attorney;
5. Offer must contain a sum certain;
6. Opposing counsel must be notified of such filing.

Special provisions for plaintiff filing Offer of Compromise in a medical malpractice action:

1. Offer of Compromise must state with specificity all damages then known to the plaintiff upon which the action is based;
2. Sixty days prior to the filing of an Offer of Compromise, plaintiff is required to provide the defendant with HIPAA authorizations;
3. Sixty days prior to the filing of an Offer of Compromise, plaintiff is required to disclose any and all expert witnesses who will testify on the prevailing standard of care;
4. Plaintiff is required to file with the court certification that the plaintiff provided each defendant with all documentation supporting his damages.

If filed by defendant:

1. Action must be a civil action based in contract or seeking the recovery of money damages;
2. Must be filed not less than 30 days before trial;
3. The offer must be directed to plaintiff(s) or plaintiff(s) attorney;
4. Offer must contain a sum certain.

Accepting an Offer of Compromise

Acceptance by defendant:

1. Written acceptance must be filed with the court within 30 days after notice of the filing;
2. Must be filed prior to a jury verdict or other award by judicial authority;
3. Must contain the sum certain;
4. Once acceptance filed and sum certain received, plaintiff must file withdrawal of the action.

Acceptance by plaintiff:

1. Written acceptance must be filed with the court within 60 days after notice of the filing;
2. Must be signed by plaintiff's counsel;
3. Once acceptance filed and sum certain received, plaintiff must file withdrawal of the action;
4. No trial may be postponed because the 60 day period for a plaintiff to accept an offer has not run, except at the discretion of the judge.

When an Offer of Compromise is not accepted

Not accepted by defendant:

1. If the offer is not accepted within 3 days or before a verdict, it is deemed to have been rejected;
2. After the 30 days, the offer is not subject to acceptance unless it is refilled;
3. If the plaintiff recovers an amount equal to, or greater than, the amount offered, he is entitled to interest at 8% per annum;
4. In the case of a counterclaim, interest shall be added at 8% to the difference between the amount recovered and the sum certain specified in the Offer of Compromise;
5. The interest shall be computed from the date the complaint was filed with the court, so long as the Offer of Compromise was not filed more than 18 months after the complaint;
6. If the offer was filed more than 18 months after the filing of the complaint, then the interest is computed from the date that the offer was filed;
7. Attorney's fees may be awarded, but may not exceed \$350.00.

Not accepted by plaintiff:

1. If the offer is not accepted within 60 days or before a verdict, it is deemed to have been rejected;
2. After the 30 days, the offer is not subject to acceptance unless it is refilled.

Unified Offers of Compromise

In a case where there is more than one defendant, the plaintiff may file a unified Offer of Compromise. This is an offer that is not directed at one particular defendant, but rather, is direct to all defendants, as a total sum for global settlement. A unified Offer of Compromise may be preferable for a plaintiff in a matter where settlement with one defendant would compromise a claim against a non-settling defendant, such as certain matters involving vicarious liability.

It is unclear whether or not a unified Offer of Compromise must be clearly labeled as "unified", or in the alternative, be directed specifically at "all defendants." In *CL&P v. Gilmore*, a defendant argued that the court erred in rendering the particular defendant responsible for interest, because the Offer of Compromise was not directed at any particular defendant; rather, it was directed to "the defendants." *Connecticut Light & Power v. Gilmore*, 956 A.2d 1145 (2008). The Supreme Court deemed the argument

abandoned because the brief submitted was insufficient. However, before declining to issue a decision on the issue, it recited dicta favorable to the plaintiff. This, together with other case law and the decidedly liberal construction of the applicable statutes, almost certainly indicates that, if there is more than one defendant to an action, and a plaintiff files an Offer of Compromise that is not directed at any particular plaintiff, it will be deemed to be unified.

When a unified Offer of Compromise is filed and a jury returns a verdict, awarding different amounts as to different defendants, a particular defendant will only be responsible for interest if the judgment against *that particular defendant* is equal to or exceeds the Offer of Compromise. *Blackeslee v. El Const., Inc.*, 687 A. 2d 506 (1997). However, if a jury finds that two or more defendants share a unity of interest in a matter, and the jury verdict for only one defendant is equal to or exceeds the Offer of Compromise, the other defendants found to have a unity of interest may be responsible for interest, despite not having a verdict equal to or exceeding the Offer of Compromise. *Willow Springs Condo Ass'n v. seventh BRT Development*, 717 A.2d 77 (1998).

Motions for Extensions of Time to Respond to an Offer of Compromise

There is no specific statute or practice book section that provides for or prohibits the filing of a Motion for Extension of Time to Respond to an Offer of Compromise. It has been our experience that, in the absence of an objection, most judges are inclined to allow it. Having said that, there are at least a few judges who will not grant the motion.