

Settlement Offer Referencing Costs Includes Attorney Fees

August 3, 2011 by David J. McMahon

In *Martinez v. Los Angeles County Metropolitan Transportation Authority*, 2011 DJDAR 7417 (2011), the California Court of Appeal for the Second District held that when a plaintiff accepts a defendant's settlement offer under Code of Civil Procedure Section 998, and that offer states that each side will bear its own costs, attorney fees are precluded as a matter of law.

The plaintiff filed suit against the Metropolitan Transportation Authority (MTA). The plaintiff alleged damages as one of the MTA drivers refused to allow the plaintiff to ride the bus with her service animal.

The MTA initiated settlement pursuant to Code of Civil Procedure Section 998.

The "998 offer" stated that each side would bear their own "**costs**." The plaintiff accepted the offer.

Several weeks later she filed a motion for attorney fees, contending that the settlement offer did not preclude her from recovering statutory attorney fees. The plaintiff argued that the MTA's offer only referred to "**costs**" and did not mention "attorney fees." The MTA argued that the term "**costs**" implicitly included attorney fees under the statute. The trial court denied the plaintiff's motion. The judge ruled that statutory attorney fees were an item of cost under CCP Section 1033.5, therefore implicitly included in the 998 offer.

The Court of Appeal affirmed the trial court's decision.

The appellate court noted that a party who accepts a Section 998 offer is entitled to costs and attorney fees unless they are excluded. The court also observed that pursuant to CCP Section 1033.5(a)(10) provides that attorney fees are allowable "**costs**" when authorized by contract or statute.

The court of appeal noted that the offer in this case specifically excluded "**costs**" but did not mention attorney fees. Therefore, unless it expressly stated otherwise, an offer under Section 998 that excludes "**costs**" also excludes attorney fees. Therefore, the trial court's denial of attorney fees was proper