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Small Victory for Prevailing Employers Following Rejection of a Statutory Offer of Compromise

Recently, a California appeals court ruled that a prevailing defendant can recover fees paid to a plaintiff's expert witness, rejecting the argument that fees may only be recovered for payments made to the employer/defendant's own expert. The case, *Chaaban v. Wet Seal*, is the first California case to expressly rule on the issue. In *Chaaban*, Wet Seal made an early statutory offer of compromise (commonly referred to as a "998 offer") to the plaintiff, who declined. Shortly before trial, Wet Seal sought to depose the Plaintiff's expert, Miles Locker, and was forced to pay him \$2,500 for time he spent testifying at deposition. Mr. Locker, a former senior attorney at California's Division of Labor Standards Enforcement, is an oft-hired expert, particularly in wage/hour cases. The jury returned a verdict for Wet Seal and the company filed a memorandum of costs for a total of \$29,770.67, including the \$2,500 expended on Mr. Locker, plus the cost of his deposition transcript. The court awarded Wet Seal all of these costs.

On appeal, the plaintiff argued Wet Seal was only entitled to recover fees it paid to its own expert, not to hers. The appellate court disagreed, affirming the trial court's ruling and pointing out that the language of section 998 does not limit recovery to a defendant's own expert. The court further emphasized that the purpose behind statutory offers of compromise is to encourage plaintiffs to settle, and allowing recovery of costs paid to a plaintiff's expert is squarely in line with that purpose.

The lesson here is this: In connection with any litigation, consider statutory offers of compromise early on, particularly when expert witnesses are likely to be called by either side. Now that it is clear that an employer may recover hefty fees it is forced to cough up for a plaintiff's expert, plaintiffs may be more likely to seriously consider these statutory offers (and the costs of their experts) than in the past.

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