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No. 1233

H.P. 894

House of Representatives, March 14, 2019

An Act Regarding Offers of Settlement

Reference to the Committee on Judiciary suggested and ordered printed.

ROBERT B. HUNT Clerk

R(+ B. Hunt

Presented by Representative BAILEY of Saco. Cosponsored by Representative: CARDONE of Bangor.

2	Sec. 1. 14 MRSA §103 is enacted to read:
3	§103. Offers to stipulate to entry of judgment
4 5	1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
6 7	A. "Actual costs" means recoverable costs as described in section 1502-B and discretionary costs as described in section 1502-C.
8 9 10	B. "Adjusted verdict" means the verdict plus interest and costs from the filing of the notice of claim, or, if not applicable, from the filing of the complaint, through the date of the offer.
11 12	C. "Average offer" means the sum of an offer and a counteroffer, divided by 2. If no counteroffer is made, the offer must be used as the average offer.
13 14 15	D. "Counteroffer" means a written reply to an offer, served within 21 days after service of the offer, in which a party rejects an offer of the adverse party and makes that party's own offer.
16 17 18 19	E. "Offer" means a written notification to an adverse party of the offeror's willingness to stipulate to the entry of judgment in a sum certain, which is deemed to include all costs and interest then accrued. If a party has made more than one offer, the most recent offer controls for the purposes of this section.
20	F. "Verdict" includes:
21	(1) A jury verdict;
22	(2) A judgment by the court after a nonjury trial; and
23 24	(3) A judgment entered as a result of a ruling on a motion after rejection of the offer of judgment.
25 26 27	2. Offer. Prior to 28 days before trial, a party may serve on the adverse party a written offer to stipulate to the entry of judgment for the whole or part of the claim, including interest and costs then accrued.
28 29	3. Acceptance or rejection of offer. The following provisions govern the acceptance or rejection of an offer.
30 31 32 33 34	A. To accept an offer, the adverse party, within 21 days after service of the offer, must serve on the other parties a written notice of agreement to stipulate to the entry of judgment offered and file the offer, the notice of acceptance and proof of service of the notice with the court. The court shall enter a judgment according to the terms of the stipulation.
35	B. An offer is rejected if the offeree:
36	(1) Expressly rejects it in writing; or
37	(2) Does not accept it as provided in paragraph A.

Be it enacted by the People of the State of Maine as follows:

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1	A rejection does not preclude a later offer by either party.
2	C. A counteroffer may be accepted or rejected in the same manner as an offer.
3 4	4. Imposition of costs following rejection of offer. If an offer is rejected, costs are payable as follows.
5 6 7	A. If the adjusted verdict is more favorable to the offeror than the average offer, the offeree must pay to the offeror the offeror's actual costs incurred in the prosecution or defense of the action.
8 9 10 11	B. If the adjusted verdict is more favorable to the offeree than the average offer, the offeror must pay to the offeree the offeree's actual costs incurred in the prosecution or defense of the action. An offeree who has not made a counteroffer may not recover actual costs unless the offer was made less than 42 days before trial.
12	C. The court shall determine the actual costs incurred.
13	D. Evidence of an offer is admissible only in a proceeding to determine costs.
14 15	E. Proceedings under this section do not affect a contract or relationship between a party and that party's attorney.
16 17	F. A request for costs under this subsection must be filed and served within 28 days after the entry of judgment or entry of an order denying a timely motion:
18	(1) For a new trial;
19	(2) To set aside the judgment; or
20	(3) For rehearing or reconsideration.
21 22	Sec. 2. 14 MRSA §1502-C, sub-§§1 and 3, as enacted by PL 1985, c. 384, §4, are amended to read:
23 24 25	1. Reasonable expert witness fees and expenses. Expert All reasonable expert witness fees and expenses, as allowed by Title 16, section 251 including fees associated with consulting, preparation and testifying at deposition or trial;
26 27 28	3. Visual aids. The reasonable costs of charts, diagrams, photographs and other visual aids necessary for clear understanding of the case by the court or jury not to exceed \$500;
29	SUMMARY
30 31 32 33 34 35	This bill provides that prior to 28 days before trial, a party to a lawsuit may serve on the adverse party a written offer to stipulate to the entry of judgment for the whole or part of the claim. It sets forth how an offer or counteroffer may be accepted or rejected. It provides for the payment of costs if an offer is rejected. It provides that reasonable expert witness fees and expenses included as discretionary costs include fees associated with consulting, preparation and testifying at deposition or trial.