

# WASHINGTON CASE UPDATE

## A Global Offer of Compromise Dictates a Global Assessment of the Trial Award

**From the desk of Kyle Riley: Should attorney fees and costs be awarded when the party requesting trial *de novo* rejects a global offer of compromise and does not improve his position at trial in relation to each plaintiff's arbitration award? Read on to find out.**

**Claims Pointer: Offers of compromise replace an arbitration award for purposes of determining whether a party has improved their position at trial. When a global offer of compromise is made, the court will consider the trial award globally. Under these circumstances, attorney fees and costs are appropriate only if the global trial award is more than the global offer of compromise.**

case in point...

Gautam v. Hicks, 177 Wash.App. 112, 310 P.3d 862 (2013)

Sunny Gautam suffered injuries after his car was struck by a vehicle driven by Donald Hicks. Sunny and his wife, Suman, filed suit against Hicks. Sunny claimed personal injuries and Suman claimed loss of consortium. At arbitration, Sunny was awarded \$28,136 for his personal injuries claim, while Suman was awarded \$3,000 for her loss of consortium claim. Following the arbitration award, Hicks timely requested a trial *de novo*, which involves judicial review of the claims without consideration of the claims' prior proceedings.

Pursuant to RCW 7.06.050, the Gautams made an offer of compromise prior to the trial *de novo*. In relevant part, the compromise stated, "Sunny Gautam and Suman Gautam hereby make an Offer of Compromise in the sum of Thirty Two Thousand Dollars (\$32,000.00) for full and final settlement of all claims in this action." Hicks rejected the offer.

At trial, the jury found Hick's liable and awarded Sunny \$30,000. The jury, however, awarded nothing for Suman's loss of consortium claim. While the jury's award to Sunny of \$30,000 was greater than the arbitrator's award to Sunny of \$28,136, the jury's total award for both claims, \$30,000, was less than the Gautams' \$32,000 offer of compromise. The trial court also awarded attorney fees and costs against Hicks in the amount of \$49,947.40, which Hicks appealed.

Under Washington law, when a party requires trial *de novo* and fails to improve their position, reasonable costs and attorney fees shall be assessed against them. When an offer of compromise is made and rejected, the offer of compromise replaces the amount awarded at arbitration for purposes of determining position improvement. Hicks asserted that he improved his position at trial and, as a result, the award of fees and costs was erroneous.

On appeal, the Gautams argued that Hicks only improved his position in relation to Suman's claim, as Suman was awarded nothing at trial for her loss of consortium claim. The Gautams pointed out that Hicks did not improve his position regarding Sunny's personal injury claim, as the jury awarded Sunny more at trial than was awarded at arbitration.

The Washington Court of Appeals noted that under RCW 7.06.060, for purposes of determining position improvement, an offer of compromise would replace an arbitration award. The \$30,000 jury award was clearly a position improvement for Hicks over the Gautams' \$32,000 offer of compromise. The Gautams responded by asserting that their offer of compromise was broken down between Sunny, Suman, and statutory fees at \$28,147.10, \$3,000, and \$852.90, respectively. The court, however, did not adopt the Gautams' rationale as it was unsupported by the language of the offer of compromise.

The offer of compromise was global, and purported to settle all claims for \$32,000. The Gautams' decision to not segregate their offer was their downfall on appeal. After receiving a global offer of compromise, Hicks was entitled to respond as if the Gautams were a single party.

Had Hicks accepted the Gautams' offer of compromise, he would have paid them \$32,000. His rejection of the offer and appeal reduced his liability to \$30,000. Due to the fact that Hicks improved his position at trial relative to the global offer of compromise, an award of attorney fees and costs under RCW 7.06.060 was in error.



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