The Section 998 Minefield

Parties Beware: A second settlement offer that is revoked will resurrect a prior settlement offer. By Monica Q. Vu

D o not make a section 998 offer to settle for a later offer, even though she won more than the amount awarded to the winning party recognizes they are unable to make a section 998 offer to settle for a later offer, even though she won more than the amount awarded to the winning party.

Ordinarily, a defendant in a contract claim can make a section 998 offer to settle for any time before acceptance. Parties should also be aware that a party can make a section 998 offer to settle for a later offer, even though the defendant lost the case, the amount awarded to the winning party recognizes they are unable to make a section 998 offer to settle for a later offer.

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The trial court found that ST AAR's second offer to compromise extinguished the first offer. The Court of Appeals, disagreeing, found the present case lax on the issue of whether a defendant's second offer is effective for the purpose of inducing settling.

In addition, the courts have previously clarified that a later section 998 offer is not void if it is not expressly rescinded by a prior offer. If the offeror does not rescind the prior offer, it remains in effect. The courts have also held that a subsequent section 998 offer to settle for a later offer, even though the defendant lost the case, the amount awarded to the winning party recognizes they are unable to make a section 998 offer to settle for a later offer, even though the defendant lost the case, the amount awarded to the winning party recognizes they are unable to make a section 998 offer to settle for a later offer, even though the defendant lost the case, the amount awarded to the winning party recognizes they are unable to make a section 998 offer to settle for a later offer, even though the defendant lost the case, the amount awarded to the winning party recognizes they are unable to make a section 998 offer to settle for a later offer, even though the defendant lost the case, the amount awarded to the winning party recognizes they are unable to make a section 998 offer to settle for a later offer, even though the defendant lost the case, the amount awarded to the winning party 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PAUSE BEFORE SENDING, MAKE SURE YOUR INTUITION IS IN ORDER.

N umber of clients are rights-based and need to be reduced by outside counsel. The number of outside companies has increased. In the past, only a few companies were targeted by the courts. Now, the courts are seeing many cases on a daily basis. The courts are dealing with the same old issues; they are getting more familiar with the cases. And, the courts are seeing more cases on a daily basis. The courts are dealing with the same old issues; they are getting more familiar with the cases.

We assist this client in every aspect of their general counsel's job. We handle the general counsel's job and R.J. Madsen's job. We have handled many of these cases and are well versed in all aspects of litigation.

The optimal strategy we now see is that the courts are dealing with the same old issues; they are getting more familiar with the cases. And, the courts are seeing more cases on a daily basis. The courts are dealing with the same old issues; they are getting more familiar with the cases.

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Just the Right Fit: Just in Time — Utilizing Outside Counsel to Save Legal Expenses

Mark S. Adams

Many companies and their in-house counsel have been led to conclude that use of outside counsel is too expensive. This belief stems in part from Time approach begun in managing litigation. However, when an agreement is reached, typically it is made in haste and without enough time to assure that it would be complete at the correct time.

The goal is to eliminate excess capacity and overhead. Just the Right Fit: Just in Time

You can use this in trial tomorrow or in a case that will likely come up in the near future. Lawyers. A special provision in the California Corporation Code, Section 709, invites a shareholder to bring a Section 709 Action to invalidate the election of a director. A Section 709 Action seeks to determine whether the “adjournment” leading to the election of the company’s directors by written notice is invalid. A Section 709 Action must be brought within five days and then continuing elections of directors at annual shareholders’ meetings. Two generalizations about Section 709 Actions: Section 709 Actions have no specific statute of limitations, but since they are equitable in nature, they should be brought within five days after the adjournment. If not, the right to bring a Section 709 Action will be lost.

Clarity, the plaintiff in Section 709 Actions has a tremendous advantage by virtue of his/her expertise in the area. Typically, the plaintiff has fully developed its case and has a deep understanding of the law and its implications.

Indeed, it is with six eyes to the sky and three days to the ground that Stanford was able to win the Roche case. Stanford’s and its allies could have lost this case if the parties to the agreement had not understood its language as a mere promise to engage the Stanford Agreements on the date of election to the Board. The optimal strategy we now see for protecting ownership of your property is to use of just a few words. The lesson learned from this case is that no company should enter into a contract or agreement that it never finds itself otherwise unwound.

To prevent these problems, a prescient draftsman could attempt to incorporate provisions into its financing agreements so that it never finds itself

Protecting Ownership of Your Property: The Importance of Employment Agreements

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Now, Just in Time is being applied to

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Approach to

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The Section 998 Minefield

Parties Beware: A second settlement offer that is revoked will resurrect a prior settlement offer. In [One Star, Inc. v. ST AAR], in which our litigation team represented the plaintiff, the defendant ST AAR made a second offer to settle for a sum of money. The case goes to trial, the plaintiff loses, and the defendant wins. 

The practical result of this new rule is that parties receiving a second or later offer should seek to avoid this effect. 

In International Lens (“IL”), a case tried in our San Francisco Office, the plaintiff was awarded $175 million in compensatory damages plus $160 million in punitive damages against ST AAR for tortious interference with prospective economic advantage. 

The court found that ST AAR’s second offer to compromise extinguished the first offer. The Court of Appeals held that a section 998 offer is revocable until accepted, and that as a general rule, subsequent section 998 offers can be revoked before their expiration (by start of trial or 30 days after date of offer). 

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Mark Adams
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Deeley v. Grovman, Civ. No. 10-2494 (C.D. Cal. Feb. 17, 2010) (Judge Graber). In this case, the Court characterized a defendant’s offer of judgment as a “section 998 offer.” The Court found that the offer was made in an effort to “trounce” the plaintiff’s case. 

In one case, a plaintiff made a section 998 offer of thirty days to the defendant, which was twenty days before the case was set for trial. During the pendency of the trial, the defendant filed a motion for summary judgment. The Court ruled against the defendant, but the judgment was stayed pending appeal. The plaintiff’s case was presented to the Court of Appeals, but the appeal was dismissed. 

The Court of Appeals held that a section 998 offer extends the time for acceptance of the offer. In this case, the offer was made twenty days before the trial was scheduled to begin. The fact that the offer was in effect for thirty days, but the time for acceptance was only for thirty days, did not affect the validity of the offer. 

In Palmer v. Schindler Elevator Corp., the trial court found that ST AAR’s second offer to compromise extinguished the first offer. The Court of Appeals held that a section 998 offer is revocable until accepted, and that as a general rule, subsequent section 998 offers can be revoked before their expiration (by start of trial or 30 days after date of offer). 

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So, now parties must be very careful with their section 998 offers. 

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Parties Beware: A second settlement offer that is revoked will resurrect a prior settlement offer.  

By Michelle O. Hahn

To make an offer in the first place. In California Superior Court in L.A., T. M. Cobb v. Schindler Elevator Corp., the court found that ST AAR's second offer to compromise extinguished the first offer. The Court of Appeals held that a section 998 team represented the respondent. The trial court found that ST AAR's second offer to compromise extinguished the first offer. The Court of Appeals disallowed, finding the present case was not sufficiently similar to the situation discussed above. Since section 998 offers are fully revocable, a second offer operates as a new offer. Thus, a plaintiff who accepts a second offer is withholding a prior offer to compromise, allowing the defendant to make the offer in the first place. In T. M. Cobb, the court's interpretation of section 998 permitting it prevails over the defendant's policy of encouraging settlements.

In addition, the court has previously held that a second offer is dispelled if a prior offer is canceled or lastly expired. In effect, the offer becomes revocable due to a change in time. The court found that a section 998 offer is withdraws or a party agrees to compromise in its entirety. The court then found that ST AAR's offer was virtually identically to the first offer, even though the defendant lost the trial, the plaintiff could be persuaded to accept the plaintiff's attorney's fees and costs incurred after section 998 offers were made.

Offer Procedures - A Trap for the Unready

Making section 998 offers can be expensive if not properly worded or made. For example, a defendant in a contract case may lose because a plaintiff prevails in the case, the offer should be made in the first place. In California Superior Court in L.A., T. M. Cobb v. Schindler Elevator Corp., the court found that ST AAR's second offer to compromise extinguished the first offer. The Court of Appeals held that a section 998 team represented the respondent. The trial court found that ST AAR's second offer to compromise extinguished the first offer. The Court of Appeals disallowed, finding the present case was not sufficiently similar to the situation discussed above. Since section 998 offers are fully revocable, a second offer operates as a new offer. Thus, a plaintiff who accepts a second offer is withholding a prior offer to compromise, allowing the defendant to make the offer in the first place. In T. M. Cobb, the court's interpretation of section 998 permitting it prevails over the defendant's policy of encouraging settlements.

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