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**MULTIPLE UNRELATED PLAINTIFFS NOT PERMITTED
TO MAKE SINGLE UNALLOCATED OFFER OF JUDGMENT**

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In a recent published medical malpractice case, the trial court held that the N.J. Court Rule 4:58-1 et. seq., "Offer of Judgment," did not permit multiple, unrelated plaintiffs from making a single unallocated offer of judgment.

In Jacobsen v. Dara, the ninety plaintiffs collectively filed an Offer of Judgment pursuant to R. 4:58-1 for three million dollars (\$3,000,000). The matter was not being tried as a class action. Defendants moved to strike plaintiffs' offer of judgment arguing that Rule 4:58-4 only allowed a "single unallocated offer" in situations where a plaintiff had joined another plaintiff for purposes of asserting a per quod claim. The court agreed and granted defendants' motion to strike plaintiffs' offer of judgment.

Following Wiese v. Dedhia, 354 N.J. Super. 256 (App. Div. 2002)(single offer of judgment permitted to be filed by husband and wife), the New Jersey Supreme Court adopted paragraph (a) of Rule 4:58-4 which governs the ability of multiple plaintiffs to make a single, unallocated offer if a party joins a plaintiff for the purposes of asserting a per quod claim. The New Jersey Supreme Court limited the availability of a single offer of judgment to per quod claimants.

Here, the trial court reiterated the dangers of a more expansive interpretation of Rule 4:58-1. A joint offer of judgment could deprive a defendant of the ability to evaluate each individual offer separately and may overstep the purpose of the Rule by forcing settlement. A potential conflict of interest may also arise in allocating an aggregate settlement award in a way acceptable to all plaintiffs with distinct claims. In other situations, the damages awarded to one or more individual plaintiffs might be lower than the amount the defendant would consider a proper settlement amount for that particular plaintiff.

The ruling is significant for parties in a multiparty action who are considering filing an offer of judgment.

DISCLAIMER: This Article is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Article, please send a message to Peter A. Marra, Esq., at ptm@spsk.com. Mr. Marra is a member of the Health Care Practice Group and the Professional Liability Practice Group at Schenck, Price, Smith & King, LLP.

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