

NJ Supreme Court Finds That High-Low Agreement Supersedes Plaintiff's Offer Of Judgment

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On July 19, 2018, the New Jersey Supreme Court, in *Lucia Serico v. Robert M. Rothberg, M.D.* (A-69-16), declared you must make your intentions explicitly known if you intend to pursue expenses prescribed by R: 4-58 when entering a high-low agreement.

In *Serico*, a medical malpractice case, plaintiff served an offer of judgment in the amount of \$750,000 prior to trial. However, the offer was not accepted and the parties proceeded to trial. During jury deliberations, the parties entered a high-low agreement with a floor of \$300,000 and a ceiling of \$1,000,000. The terms were discussed “with specificity” on the record and the plaintiff asked that the defendant confirm insurance policy limits of \$1,000,000. Neither party mentioned Rule 4:58 or any costs or fees.

After deliberations, the jury returned a verdict in favor of plaintiff for \$6,000,000. Plaintiff moved to recover her attorney's fees and costs pursuant to New Jersey's offer of judgment rule (R. 4:58, et seq.).

The Court viewed the high-low agreement as a settlement contract and evaluated it within the purview of the rules of contract interpretation. Therefore, the Court looked for the “expressed intent of the parties and the context of the agreement”.

After discussing the purpose of the offer of judgment rule and high-low agreements, the Supreme Court held that the high-low agreement was a settlement agreement, which “superseded and extinguished the offer of judgment”. The record indicated a meeting of the minds as to the floor and ceiling of recovery, expressly stating that no interest or medical expenses would be added to that amount. If plaintiff intended to recover costs and fees, she should have stated so.

The salient point to remember is: be explicit if you intend to pursue costs and fees pursuant to Rule 4:58; otherwise your rights will not be preserved.