

## ***Oakes v. Progressive Transportation Services Inc. (2021) DJDAR 11710***

*The cost-shifting provisions of Code of Civil Procedure 998 should be applied before labor code provisions governing the distribution of a judgement*

**FACTS:** After Mitchell Oakes was rear-ended by Progressive Transportation Services' employee-driver, he experienced back, neck, and shoulder pain. Liberty Insurance, his workers' compensation insurance, paid for his treatment. Oakes later sued Progressive and the employee-driver. Before trial, defendants made an offer to settle pursuant to Code of Civil Procedure § 998 in the amount of \$200,000. Oakes rejected the offer.

After trial, the jury awarded Oakes \$150,000. Oakes sought attorneys' fees and expenses using Labor Code § 3856(b), which controls the distribution of a judgement in workers' compensation cases. The trial court noted that this provision of the Labor Code requires costs to be paid from the judgement, and calculated Oakes' award as follows: \$115,000 + \$56,600 (attorneys' fees) + \$475.98 (preoffer filing fee) = \$ 166,075.98. The trial court awarded defendants' \$174,830.20 in costs under § 998 and concluded that defendants had a net gain of \$8,754.22.

**PROCEDURAL POSTURE:** On appeal, Oakes argued that Labor Code § 3856 should have been applied before § 998's cost-shifting provisions.

**HOLDING:** Affirmed. The Second Appellate District Court overruled without reversing the judgement of the trial court and held that Code of Civil Procedure § 998's cost-shifting provisions apply before the entry of a final judgement and Labor Code § 3856 applies after the entry of a final judgement, thereby dictating the procedural order in which courts must apply the two provisions.

**DISCUSSION:** The *Oakes* court placed great weight in a distinction it drew between the the respective kind of judgements to which the operative sections of the Labor Code and Code of Civil Procedure appertain. The court pointed to the plain language of Labor Code § 3856, which it said contemplates an *already existing* judgement. It then pointed to Civil Procedure § 577, which defines "judgment" as "the final determination of the rights of the parties in action or proceeding. The court reasoned that by extension, Code of Civil Procedure § 998 contemplates entry of a final judgement *after* the provision's own cost-shifting provisions have been applied. Therefore, § 998's cost-shifting provisions are applied before the entry of a final judgement, while Labor Code § 3856 apply only after final judgement has been entered.

Here, the trial court should have entered an order awarding Oakes \$475.98 in proffer costs. Oakes' total damages award would have totaled \$15, 475.98 (\$475.98 + the \$115,000 jury verdict). The court should have then deducted from the \$15, 475.98 award the \$174,830.29 in postoffer costs awarded to defendants under § 998. A judgement in the resulting net amount of \$59,354.31 should then have been entered in defendants' favor. This result would conform to §998. Only after entry of the judgement should the trial court have applied Labor Code § 3858. Despite the error, as defendants did not appeal, the court merely affirmed the existing judgement.