

IN THE SENATE

SENATE BILL NO. 1044

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO SPECIAL PROCEEDINGS; AMENDING SECTION 7-1509, IDAHO CODE, TO RE-
VISE PROVISIONS REGARDING AN AMOUNT IN DAMAGES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 7-1509, Idaho Code, be, and the same is hereby
amended to read as follows:

7-1509. EVALUATION DECISION -- TRIAL DE NOVO -- MISCELLANEOUS. (1)
Within fourteen (14) days following the evaluation, the evaluator shall
issue a written, signed decision. The evaluator shall determine all issues
raised by the pleadings, including a determination of any damages. The eval-
uator shall apply the applicable law as it exists; however, neither findings
of fact nor conclusions of law shall be required. The decision shall be
served on the parties. The evaluator shall file a notice of issuance of the
evaluator's decision with the clerk of the court, together with proof of
service of the notice and the decision on the parties. The decision shall
not be filed with the clerk of the court. The evaluator's decision shall not
exceed ~~twenty~~thirty-five thousand dollars (\$~~235,000~~35,000) in total damages to
a party. The evaluator's decision shall not include exemplary or punitive
damages. An evaluator may, in addition, award costs and attorney's fees un-
der the terms of an applicable contract. All other costs and attorney's fees
to which a party is entitled by statute or court rule shall be awarded by the
court.

(2) Within twenty-one (21) days after the notice of issuance of the
evaluator's decision has been filed with the clerk of the court, any party
may file with the clerk a request for a trial de novo in the district court on
all issues of law and fact.

(3) The trial de novo shall proceed as if the evaluation had not oc-
curred. No reference to the evaluation or to the amount of the evaluation
decision shall be made to the trial court or the jury during any part of the
trial de novo. Discovery taken and recorded statements made during the eval-
uation process may be used at the trial de novo as provided in the Idaho rules
of civil procedure and the Idaho rules of evidence; however, no reference
shall be made to the fact that any statement was made in an evaluation pro-
ceeding. Any dollar amount sought, demanded or awarded during the evalua-
tion, including the parties' agreement that for the purposes of the evalua-
tion the claim is limited to ~~twenty~~thirty-five thousand dollars (\$~~235,000~~35,000),
shall be treated as an offer of compromise pursuant to the Idaho rules of evi-
dence and shall not be admissible at trial. Any examination made pursuant to
the provisions of section 7-1507(1) (c), Idaho Code, shall be subject to rule
35 of the Idaho rules of civil procedure. Any violation of the provisions of
this subsection by a party or its attorney shall be subject to appropriate
sanctions by the trial court.

1 (4) The relief sought at trial shall not be limited by the evaluation;
2 provided however, that judgment for damages of more than ~~twentythree~~-five
3 thousand dollars (\$~~235,000~~), exclusive of costs and fees, may not be entered
4 for a party who has agreed that its claim does not exceed ~~twentythree~~-five
5 thousand dollars (\$~~235,000~~) for the purposes of initiating alternative dis-
6 pute resolution under this chapter and shall be reduced by the court unless
7 the claimant establishes the applicability of the factors of rule 60 of the
8 Idaho rules of civil procedure. An evaluator may not be called as a witness
9 at the trial de novo.

10 (5) The trial court shall assess costs, reasonable attorney's fees, and
11 the entire amount of the evaluator's fee against a party who requests a trial
12 de novo and fails to improve its position at the trial de novo by at least
13 fifteen percent (15%). For purposes of this subsection, "costs and reason-
14 able attorney's fees" means all attorney's fees and costs as provided for by
15 statute or court rule incurred after the filing of a request for a trial de
16 novo. In addition, the court shall award all other expert witness fees and
17 expenses in excess of those permitted by statute or rule if the court finds
18 that they were reasonably incurred.

19 (6) Within twenty-one (21) days following the filing of the request
20 for trial de novo, a party may serve upon the other party(ies) a written
21 offer of compromise. If an offer of compromise is not accepted by the other
22 party(ies) within fourteen (14) days after service thereof, the amount used
23 for determining whether the party requesting the trial de novo has improved
24 its position shall be the amount of the offer of compromise. Neither the
25 evaluator's decision nor the offer of compromise shall be submitted to the
26 trial court until the verdict or judgment has been rendered in the trial de
27 novo.

28 (7) The trial court may assess some or all costs and reasonable attor-
29 ney's fees against a party who withdraws its request for a trial de novo where
30 the withdrawal is not in conjunction with the acceptance of an offer of com-
31 promise.

32 (8) If no request for trial de novo has been filed at the expiration of
33 twenty-one (21) days following the filing of the evaluator's notice of deci-
34 sion, a judgment may be presented to the court by any party accompanied by a
35 copy of the evaluator's decision. If the judgment is in conformity with the
36 evaluator's decision it shall be entered and shall have the same force and
37 effect as any other judgment in a civil action but shall not be subject to ap-
38 pellate review and may only be set aside pursuant to the provisions of rule
39 60 of the Idaho rules of civil procedure. An accepted offer of compromise may
40 also be presented to the court to be converted to a judgment.

41 (9) Except as provided in subsection (5) of this section, the provi-
42 sions of this chapter do not affect or preclude the application of any other
43 statute or rule regarding fees or costs including, but not limited to, those
44 in title 7 or 12, Idaho Code, section 41-1839, Idaho Code, or the Idaho rules
45 of civil procedure. Awards of damages and of attorney's fees and costs, when
46 made to opposing parties, shall be set off against one another and judgment
47 shall be entered for the net amount to the party(ies) entitled thereto.

48 (10) An evaluator may obtain a judgment for his fees and costs in the
49 pending litigation against any party that refuses to pay its share. Judgment

1 shall be obtained by motion to the trial court which shall only be granted af-
2 ter the party failing to pay has had the opportunity to be heard and object.