Florida Supreme Court Sets Settlement Ground Rules

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Daily Business Review
April 23, 2015

The Florida Supreme Court just made it abundantly clear that statutory proposals for settlement must be apportioned whenever multiple plaintiffs or multiple defendants will have their claims or the claims against them resolved.

This is no fine point about which only lawyers should care. It is a major business issue for companies and people involved in civil lawsuits.

Namely, how do you use what is arguably the best weapon the law provides to minimize the legal fees you pay to your own attorneys? As important, how do you maximize your chance of being reimbursed by the unreasonable opponent for such legal fees after you prevail in court?

In two cases decided April 16, the Florida Supreme Court made it clear that when more than two people or companies are involved in a lawsuit, statutory proposals for settlement must almost always be apportioned.

Without getting into the minutiae of how this rule operates, the short of it is that you can recover attorney fees you have incurred due to a lawsuit if you beat your proposal by at least 25 percent. Apportionment is a fancy way of saying that the amount of money you are offering to take or give as a settlement amount must be "cut" into portions.

Conditions

Often, economic interests suggest that parties on one side of a lawsuit simply come up with a single amount of money and propose to "throw it over the fence" to those on the other side of the lawsuit in a lump sum.

The two cases at issue make it clear that sending over such proposals via Florida's formal statutory proposal for settlement tool will not work. Instead, the equivalent of "gift tags" are needed. For example, "to" and "from" gift tags are essential for identifying recipients when wrapping multiple gifts.

The two cases the court just decided make it mandatory that figurative "gift tags" be used and, most importantly, the decision mandates that only one name can be placed in the "to" area, and only one name may be placed in the "from" area.

These analogies make more sense in the context of the two recent cases.

The first is *Pratt v. Weiss*. Ancel Pratt Jr. sued two hospital companies, FMC Hospital Ltd. and FMC Medical Inc., for medical malpractice. During the litigation, the hospital companies served Pratt a statutory proposal for settlement in the amount of $10,000.

The hospitals did not apportion the $10,000, meaning they did not say, for example, $7,500 of it was from one entity and $2,500 was from

the other. Stated another way, they did not package separate "boxes" with "to/from" gift tags when they issued their proposal for settlement.

The hospital entities later won at trial and then sought to collect their attorney fees pursuant to their proposal for settlement. The court ruled, "FMC Hospital and FMC Medical failed to apportion the amount and, therefore, the proposal was invalid." The hospital companies could not collect any attorney fees from the other side after trial.

The court acknowledged that although there may have been no "logical apportionment" that could have been made among the hospital companies, apportionment "is nonetheless required where more than one offeror or offeree is involved."

Apportionment

The second of the two recent cases from the Supreme Court of Florida is *Audiffred v. Arnold*. Valerie Audiffred and her husband sued Thomas Arnold for injuries and vehicle damage from an auto accident.

Audiffred served a proposal for settlement in the amount of $17,500, meaning that she and her husband would accept such an amount for both of them to dismiss their suit, including his complaint was for consortium. Audiffred was awarded $26,055 at trial by the jury.

Her attorneys argued after trial to the judge that she and her husband had beaten the proposal by 25 percent and they were therefore entitled to an award of attorney fees from the losing side. The court held that their proposal for settlement was invalid and that they were not entitled to any attorney fees from the losing side.

The court also held that although the proposal only mentioned that it was from Audiffred, it also stated that both she and her husband would dismiss the suit. Thus, the $17,500 they offered to accept should have been apportioned between her and her husband before the proposal was served before trial.

The court also stated a bright-line rule for when a proposal is considered joint: if the acceptance of the offer would resolve pending claims by or against multiple parties, the offer is joint and must be apportioned. Stated another way, if the offer is going to resolve the claims of more than one plaintiff or resolve the claims against more than one defendant, it must be 100 percent clear who is contributing what portions of any money and who will be receiving what portions of any money.

Time To Revise?

There is still one major exception to the apportionment requirement. This is the exception for vicariously/technically liable parties. Joint unapportioned proposals for settlement may still be made by or to a party whose alleged liability is only vicarious or technical (e.g., by virtue of an employment relationship or of being the owner of a vehicle involved).

Notwithstanding such exception, the Audiffred and Pratt decisions from the Florida Supreme Court make it clear that litigation decision makers should always consider whether apportionment is necessary in a statutory proposal for settlement situation.

If you do not apportion among the parties on your side of the suit and among those on the other side of the suit, but the proposal is trying to end the litigation or get claims against more than one person on your side or the other side resolved, there is a good chance your proposal for settlement is worthless.

You will have no leverage as the litigation progresses and no chance at recovery of attorney fees after the trial.

And because these cases clarify what was previously a murky area of Florida law, any

proposals that have already been made in existing suits should be reviewed for compliance and followed by subsequent proposal revisions as needed.

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