

Florida Supreme Court Issues New Offer of Judgment Decision

January 10, 2013

Today the Florida Supreme Court issued an extremely important decision regarding proposals for settlement/offers of judgment ("OJs"), made pursuant to section 768.79, Florida Statutes.

The Court held that section 768.79, Florida's OJ statute, does not apply to "cases that seek both equitable relief and money damages." (page 19)

The Court reasoned that because section 768.79 expressly states it applies only to "civil actions for damages," strict construction requires the application of Florida's OJ statute be limited to claims for money damages. The Court did note that cases/claims involving claims for declaratory relief that are wholly about recovering a money judgment, such as insurance coverage and escrow actions, are still subject to Florida's OJ statute.

The Court did not rule on whether an OJ can be targeted to a specific count seeking money damages in a case involving separate (non-alternative) counts for money damages and declaratory relief. In fact, the Court noted it remains something of an open question. It is clear, however, that any count in which a party makes both a demand for declaratory/equitable relief and money damages will not be subject to Florida's OJ statute.

The Court also reasoned that it does not want to get into the business of valuing non-monetary relief or deciding if a party's claims for non-monetary relief were "meritorious" or "meritless" for the purpose of determining if the total amount of an OJ beats the net judgment obtained by the offeree by 25 percent.

Finally, and perhaps most important as relates to OJs, the Court once again made clear that it will strictly construe each and every technical requirement of Florida Rule of Civil Procedure 1.442. Thus, any failure by an offering party to meet any requirement, such as stating whether the OJ includes attorney's fees or stating whether attorney's fees are part of the legal claim, will result in the OJ's invalidation for enforcement purposes.

This significant case has great impact on our clients facing cases with mixed claims for declaratory relief and money damages. It sharpens the competitive edge created by good OJ drafting, and provides another important tool with which to evaluate the enforceability of proposals for settlement/offers of judgment. READ THE DECISION: [*Diamond Aircraft Industries, Inc. v. Alan Horowitch*](#)

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