CARLTON FIELDS

Trial & Litigation Section: Two Recent Decisions Invalidate Certain Types of Offers of Judgment

August 04, 2015

Recently, the Florida Supreme Court issued two opinions with regard to offers of judgment made pursuant to Florida law: *Pratt v. Weiss*, 161 So. 3d 1268 (Fla. 2015), and *Audiffred v. Arnold,* 161 So. 3d 1274 (Fla. 2015).

In *Pratt v. Weiss*, two defendants claimed they were a "single offeror" and their liability was "coextensive" even though they were separate entities. The court found that despite their coextensive liability, when the two defendants made an offer of judgment, they needed to have apportioned the total amount as between each of them, so that the plaintiff could know how much he would receive from each entity. From the *Pratt* case, we learn that when evaluating offers of judgment made before 2011, if two defendants will be dismissed, both defendants need to make the offer and apportion the total amount between them. Since 2011, however, Rule 1.442(c)(4) allows unapportioned joint offers of judgment to be made by or served on a party when that party is alleged to be solely vicariously, constructively, derivatively, or technically liable.

In *Audiffred v. Arnold*, the court invalidated an unapportioned offer of judgment that was made by a single plaintiff, when that offer really should have been made by both the plaintiff and her husband (who had a consortium claim), and held that the offer should have apportioned the total amount between the plaintiff and her husband. If the *Audiffred* offer of judgment had worked as intended, both the injured plaintiff and the consortium plaintiff would have dismissed their claims in exchange for a single payment from the defendant to just the injured plaintiff. In the disputed offer of judgment, the two plaintiffs offered the defendant the opportunity to buy peace with two plaintiffs for the price of one (essentially offering a bonus or incentive to the defendant). These types of offers had been supported by prior case law, and some district courts of appeal had approved similar offers

by defendants. The *Audiffred* decision holds that this type of bonus offer from plaintiffs is not enforceable for fee-shifting purposes. It also expressly disapproves of the district court cases that allowed similar offers by defendants. The direct lesson from *Audiffred* is that an offer of judgment made by one plaintiff that involves dismissal of itself and another plaintiff is going to be construed as a joint offer of judgment that must be apportioned. Like *Pratt, Audiffred* relates to offers served before the 2011 amendment to Rule 1.442. Going forward, we will simply need to rely on Rule 1.442 to determine whether the total amount of an offer of judgment from two offerors must be apportioned.

These cases demonstrate that the Florida case law relating to offers of judgment and proposals for settlement is constantly shifting. Because new cases continually adjust the application of the offer of judgment statue and rule, it is important to continually review offers of judgment in light of the changes in the law. *Originally published in Hillsborough County Bar Association's Lawyer magazine, Summer 2015.*

Related Practices

Consumer Finance