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Offers of Judgment

In its July 18, 2003 decision in Matetzschk v. Lamb, 849 So. 2d 1141 (Fla. 5th DCA 2003), the Fifth District Court of Appeal altered its interpretation of the offer of judgment statute and held that an offer of judgment must apportion the amounts between multiple defendants, despite the fact that some defendants may only be vicariously liable. Previously, the Fifth District held in Spruce Creek Development Co. of Ocala, Inc. v. Drew, 746 So. 2d 1109 (Fla. 5th DCA 1999), that a single and undifferentiated offer from joint plaintiffs to a defendant was proper where the defendant would be entitled to a release by both plaintiffs upon the defendant's acceptance of their offer. But the Florida Supreme Court disapproved the Spruce Creek decision in Willis Shaw Express, Inc. v. Hilyer Sod, Inc., 28 Fla. L. Weekly S225 (Fla. Mar. 13, 2003), and the Fifth District resolved Matetzschk, which presented similar facts, to comport with the Willis Shaw decision.

In Matetzschk, the plaintiff sued the driver who rear-ended him and sued the defendant's wife on grounds that since she co-owned the vehicle driven by her husband, she was vicariously liable to the plaintiff. The couple made two offers of judgment to the plaintiff. Both offers were undifferentiated between the two defendants and rejected by the plaintiff. The critical issue was whether the offers of judgment were proper. In light of the Florida Supreme Court's recent Willis Shaw decision, the Fifth District Court held that a joint proposal must state the amount and terms attributable to each party, whether the offer emanates from joint plaintiffs or is directed to joint defendants. This is required even where one party's liability is purely vicarious.

The Fifth District certified conflict with Barnes v. The Kellogg Co., 28 Fla. L. Weekly D1031 (Fla. 2d DCA April 25, 2003), which held that an offer of judgment from a plaintiff to two defendants need not be apportioned where one defendant was only vicariously liable. The Barnes court had recognized that it may be impossible to apportion fault among jointly and severally liable parties where one party's liability is strictly vicarious. But in Matetzschk, vicarious liability was not so clear, as it turned out that the wife was not a co-owner of her husband's vehicle, and therefore, she was not vicariously liable. The Fifth District explained that to follow Barnes would require the wife either to reject the plaintiff's offer or pay it entirely, without having the option to settle based on her individual evaluation of the claim against her, including damages and the likelihood that a fact finder might find her vicariously liable. Thus, the Fifth District required apportioned offers of judgment made by a plaintiff to two defendants, even where one party's liability was purely vicarious.

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