Florida First District Court of Appeal
(Credit: Jhw57 via Wikimedia Commons)

NEWS

This Blunder Lost $1M in Attorney Fees: 'Think Twice About What You are Putting in Those Offers'

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Litigation

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What You Need to Know

- Plaintiff's counsel extended a proposal for settlement for $1.3 million to be paid within 30 days, which the defendant did not accept.
- After the jury returned an $11 million verdict for the plaintiff, the defendant appealed a subsequent attorney fees award of more than $1 million.
- A lawyer said the appellate court's reversal of the attorney fees award followed a trend in which judges are increasingly scrutinizing proposals for settlement.

Florida's First District Court of Appeal struck down a seven-figure attorney fee award based on a proposal for settlement the judges characterized as "cash on the barrelhead."

Anthony J. Russo Jr., a trial lawyer based in Delray Beach, is not involved in the case in which State Farm Insurance Co. convinced First DCA Judges Bradford Thomas and M. Kemmerly Thomas to reverse the attorney fees award by arguing that opposing counsel failed to make a settlement offer in good faith.

The decision turned on an offer to settle, which required a $1.3 million cash payment within 30 days.

Now, the First DCA has reversed a judgment for more than $1 million in attorney fees.

In entering the ruling, the appellate judges distinguished that an offeror does not have to consider an offeree's finances and ability to pay before tendering the proposal, nor did the court take issue with the amount alone or the condition of the actual payment alone. But it was the combination of the money and the time period in which it had to be paid that rendered the offer "illusory."

"I've been seeing a trend where the courts are making the requirements on the proposal for settlement increasingly stricter over the last few years," Russo said. "They're making it more difficult for plaintiff attorneys to accomplish the proposal for settlement's purpose, which is to put the insurance company in a position where if they are not negotiating in good faith, there is some sort of repercussion."

Jacob A. Epstein of Haber Law in Miami said he has seen opposing counsel frequently attempt to "sneak in overbroad release language that no attorney in their right mind would ever advise their client to agree to," and when opposing the attorney-fee motion after the verdict, he would plan to present the language to the judge and argue that the proposal was not sent in good faith.

"Attorneys could use this case as a guideline to think twice about what you are putting in those offers," said Epstein, who is not involved in the litigation.

Rebecca B. Creed and Dimitrios A. Peteves, partners at Creed & Gowdy in Jacksonville, were among the lawyers who represented Lightfoot. They did not respond to a request seeking comment. Neither did Hunt's counsel, Warren B. Kwavnick, a partner at Cooney Trybus Kwavnick Peets in Fort Lauderdale.

Jacob A. Epstein of Haber Law. (Credit: Courtesy Photo)

The dispute in this case dates back to when State Farm's client, Marilyn Hunt, rear-ended James Lightfoot, the plaintiff, according to the complaint. Hunt held a $50,000 bodily injury liability insurance policy. And Lightfoot sued the defendants for the injuries he sustained in the accident. Creed and Peteves issued an offer to settle if Hunt paid $1.3 million in cash within 30 days.

However, when Hunt did not pay, the case went to trial before Duval Circuit Judge Katie L. Dearing. The jury returned an $11 million verdict after finding that Hunt was negligent in the collision. And soon afterward, the First DCA affirmed the ruling.

Lightfoot moved for attorney fees and costs, pursuant to section 768.79 and Florida Rule of Civil Procedure 1.442. Under the statute, a lawyer has an entitlement to attorney fees if the client recovered a judgment that exceeds the settlement offer by more than 25%.

But Hunt argued the proposal for settlement was invalid and unenforceable, because it was impossible to accept. And while the trial court disagreed, the First DCA was receptive to the argument, calling the settlement offer an "impossible condition that was designed to fail."

"We understand the trial court's hesitance to consider Ms. Hunt's particular finances and ability to pay," the appellate court ruled. "But this case does not require an evaluation specific to Ms. Hunt. We are confident very few Americans could come up with $1.3 million cash within 30 days. Even very wealthy individuals diversify their assets, and very few would have that amount of expeditiously accessible liquidity."

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