

October 2003

OFFERS OF JUDGMENT
by Ted Babbitt

Florida's Offer of Judgment Rule RCP 1.442, was intended to provide incentives and encouragement for settlement. Instead, it has continually been the subject of appellate judicial discussion. The Rule contemplated that if an offer of settlement was made by either side which was rejected, and the offering party beat the offer by more than 25%, the rejecting party would have to pay attorney's fees. Appellate construction of the Rule has resulted in a quagmire of traps that makes it difficult, if not impossible, for the prevailing party to obtain attorney's fees. The recent case of Willis Shaw Express, Inc. v Hilyer Sod, Inc., 28 F.L.W. S225 (Fla. March 13, 2003) has added to the complexity.

When there are multiple plaintiffs and an offer of judgment is made, the District Courts have been divided as to whether each plaintiff has to make a separate offer. The Second District in Allstate Insurance Company v Materiale, 787 So.2d 173 (Fla. 2nd DCA 2001) held that where there are multiple plaintiffs, the defendant is entitled to know the amount and terms of settlement attributable to each plaintiff so that the defendant can independently evaluate the offer as to each party. The Third and Fifth Districts respectively in Flight Express v Robinson, 736 So.2d 796 (Fla. 3rd DCA 1999) and Spruce Creek Dev. Of Ocala v Drew, 746 So.2d 1109 (Fla. 5th DCA 1999) held that since the defendant only wants a release in return for accepting an offer of judgment, it matters not to the defendant how the plaintiffs are splitting the offer and thus concluded that an offer of judgment made by multiple plaintiffs in order to be valid need not attribute the amount applicable to each plaintiff.

The First District in Hilyer Sod v Willis Shaw Express, Inc., 817 So.2d 1050 (Fla. 1st DCA 2002) sided with the Second District and certified conflict to the Supreme Court. The

Supreme Court, in turn, broke the tie among the Districts and ruled that multiple plaintiffs must separate the amount of an offer of judgment as it relates to each plaintiff individually in order to make a valid offer. The Court reasoned that the 1996 amendment to RCP 1.442 which required that “a joint proposal shall state the amount and terms attributable to each party” must be strictly construed because both the offer of judgment statute as well as the Rule are in derogation of the common law which provides that each party bears their own fees.

A strict construction of the plain language of rule 1.442(c)(3) requires that offers of judgment made by multiple offerors must apportion the amounts attributable to each offeror. Cf. MGR Equipment Corp. v Wilson Ice Enterprises, Inc., 731 So.2d 1262, 1263-64 n. 2 (Fla. 1999) (noting that rule 1.442, as amended in 1996, ‘mandates greater detail in settlement proposals, which will hopefully enable parties to focus with greater specificity in their negotiations and thereby facilitate more settlements and less litigation’). We therefore hold that under the plain language of rule 1.442(c)(3), an offer from multiple plaintiffs must apportion the offer among the plaintiffs.

While the case under discussion involved multiple individual plaintiffs rather than a consortium claim, Allstate v Materiale, supra, dealt with a husband and wife and a consortium claim. Thus, it must be concluded that even where multiple plaintiffs have primary and derivative claims, this rule applies to require separate amounts attributable to each plaintiff stated in the offer. How exactly one separates out the value of consortium claim remains to be seen. As a practical matter, it is highly unlikely that a defendant would ever be interested in accepting an offer as to one claim without its’ companion. Nevertheless, one more land mine has been laid to prevent the application of the rule and lawyers need to be aware of this requirement.

In the same advance sheet that contained the case under discussion, another case, Pearson v Gabrelcik, 28 F.L.W. D676 (Fla. 1st DCA, March 4, 2003) held invalid an award of attorney's fees based upon an offer of settlement which failed to state the amount and terms attributable to each defendant. With the Supreme Court's decision in Hilyer Sod, supra, disapproving the Third District's opinion in Flight Express v Robinson, supra, the rule now reciprocally requires separate statements as to the amount attributed to both plaintiffs and defendants clearly stated in the offer.

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