

COURT AWARDED ATTORNEY'S FEE IN MULTI-PARTY ACTION

by Ted Babbitt

Courts have strictly construed RCP 1.442 and its companion statute 768.79(7)(b), Fla. Stat. (1997) as to whether an offer of judgment triggers an award of attorney's fees. The above cited statute and rule provides that when the plaintiff receives a verdict 25% greater than the amount of an Offer of Judgment or a defendant has made an offer which is 25% more than the verdict, attorney's fees are triggered. When there are multiple defendants, it is quite possible that the total amount of the judgment may exceed that 25% number and because of joint and several liability a judgment against each defendant can be entered which collectively is greater than 25% of the offer, while the defendants individually may be responsible for less than that amount. Has the plaintiff satisfied the requirements of the offer of judgment rule so as to be entitled to an attorney's fee against each of these defendants or not? That question is decisively answered by the Fourth District in Labaton v Mellert, 25 F.L.W. D2849 (Fla. 4th DCA, Dec. 13, 2000).

In that case, plaintiffs, at a time when there was only one defendant, made an offer of judgment in the amount of \$75,000.00. After the initial defendant declined to accept the offer, the plaintiff joined three additional corporate defendants. Plaintiffs obtained a verdict close to \$130,000.00, approximately \$100,000.00 of which was economic loss subject to joint and several liability and approximately \$30,000.00 of which related to noneconomic losses. The trial

court awarded plaintiffs an attorney's fee and the defendants appealed. The defendants contended that since the vast majority of the amount of the verdict necessary to exceed the 25% limit was a joint and several verdict, the plaintiff had not succeeded in exceeding the triggering sum to justify an award of an attorney's fee. The Fourth District ruled to the contrary. Citing Schmidt v Fortner, 629 So.2d 1036 (Fla. 4th DCA 1993), the Court held that while the defendants were found liable in a percentage which when divided into the verdict resulted in a number less than the requisite amount necessary to the award of attorney's fees, since the portion of the verdict that related to economic loss was the responsibility of each defendant jointly and severally, the full amount of the economic damages became a part of the judgment obtained by the plaintiff as to those defendants and had to be counted to determine whether a fee should be awarded.

This case is also interesting because, despite the fact that the amount of the verdict was approximately \$130,000.00, plaintiff was awarded a fee of over \$390,000.00 which was three times the amount of the verdict. With respect to the issue of whether that should be considered an excessive fee, the Court held:

Finally, appellant challenges the amount of the award as excessive on its face. An award is not unreasonable merely because the fee exceeds the recovery. See *Baker v Varela*, 416 So.2d 1190, 1192 (Fla. 1st DCA 1982). Rather, in determining what fee is reasonable, courts must consider whether the claim had merit, the number and nature of proposals made, the closeness of questions of fact and law at issue, whether the party making the proposal has unreasonably refused to provide the necessary information to evaluate the

reasonableness of the proposal, whether the suit presented questions of 'far-reaching importance affecting nonparties.' '[t]he amount of the additional delay cost and expense that the party making the proposal reasonably would be expected to incur if the litigation were to be prolonged,' and all other 'relevant criteria.' §768.79(7)(b), Fla. Stat. (1997); Fla.R.Civ.P. 1.442(h)(2); see also *Rowe*, 472 So.2d at 1151 (holding court should consider, in determining whether the award is reasonable, the time and labor required, the novelty and difficulty of the question involved, the results obtained, and whether the fee is fixed or contingent). The trial court's ruling above is not an abuse of discretion but a careful analysis of the entire case and testimony before the court.

It is not difficult to predict that this case will be cited often in cases where attorney's fees are sought pursuant to an offer of judgment. It holds that the formula to be used in calculating the judgment obtained by the plaintiff in comparison with the offer made must include all economic damages against all defendants found to be jointly and severally liable. In addition, the amount of the fee may bear little relationship to the amount of the verdict and, in fact, can be far in excess of the amount recovered on behalf of the client.