SANDBERG PHOENIX

BAD FAITH BLOG

Florida Consent Judgment Was Negotiated in Bad Faith

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The Eleventh Circuit considered whether the insurer was bound by a settlement agreement between a homeowner's association insured and a homeowner, settling the homeowner's claim for attorneys' fees by stipulating the homeowner would not enforce the resulting consent judgment against the homeowner's association. The Eleventh Circuit found these Florida *Coblentz* Agreements unenforceable against insurers if tainted with fraud or collusion. There was substantial evidence to support the district court's bench trial determination the negotiations were conducted in bad faith. Therefore, the Eleventh Circuit affirmed the district court's Judgment that the settlement agreement could not be enforced against the insurer.

Sidman, et.al. v. Travelers Casualty and Surety

Initially, the insured homeowner's association sued the homeowner to enforce restrictive covenants alleging the homeowner had failed to maintain her lawn and landscaping. The homeowner filed a counter-claim for slander of title and also demanded her attorneys' fees and costs, which are permitted by Florida statute.

The homeowner's association notified its insurer of the counter-claim. The insurer provided counsel to defend the counter-claim under a reservation of rights. The homeowner's association had separate counsel which it continued to pay to represent it in its claim against the homeowner for violating the restrictive covenants.

The court granted summary judgment to the homeowner and the homeowner filed a motion seeking her attorneys' fees and costs. The homeowner's association notified its insurer it was potentially liable to the homeowner for her fees and requested coverage under the policy. The insurer disclaimed coverage and denied the request for a defense of the attorney's fees claim.

Following the insurer's disclaimer of coverage, the homeowner and the homeowner's association litigated the attorneys' fees issue. Initially, the attorney for the homeowner indicated his attorneys' fees were approximately $87,000, and he would seek a multiplier of 2 to 2 ½ on any fee awarded. The homeowner's association contested this amount and retained an expert who opined the requested fee was unreasonable and unnecessary.

At the same time, the parties explored the prospect of settling the attorneys' fee claim. The homeowner's association kept the insurer informed of the on-going settlement negotiations and continued to try to convince the insurer to provide coverage. When the parties were close to an agreement, the homeowner's association informed its insurer it was prepared to agree to a $295,000 Judgment on the attorneys' fees claim. The insurer never objected or advised its insured against agreeing to the Judgment. The insurer acknowledged it knew of the settlement discussions and the specific terms discussed before the settlement agreement's execution.

The parties entered into a joint stipulation and agreement in which the homeowner's association agreed to an entry of a $295,000 consent judgment against it for attorneys' fees and costs. In addition, they agreed to assign to the homeowner the proceeds from any and all actions the homeowner's association had against its insurer in exchange for the homeowner's agreement not to execute the Judgment against the homeowner's association. The state court approved the settlement agreement and entered the consent judgment without a hearing.

Thereafter, the homeowner's personal representative (the homeowner had suffered a stroke) brought a third-party breach of contract suit against the insurer, which was later removed to federal court. After discovery, the district court granted summary judgment to the insurer because the insurance policy did not cover the homeowner's claim for attorneys' fees. On appeal, the Eleventh Circuit concluded the insurer owed a duty to defend and indemnify the homeowner's association with respect to the homeowner's claims for attorneys' fees and thus, reversed and remanded for further proceedings.

Upon remand, the district court held a bench trial to determine whether the settlement agreement bound the insurer. Evidence was presented by the insurer showing the amount of the homeowner's attorneys' fees was unreasonable and that the homeowner and the homeowner's association colluded when they entered into the settlement agreement. With respect to collusion, the insurer presented evidence about the homeowner's association's attempt to settle a similar attorneys' fees claim with another homeowner. The attorney for the homeowner in the other similar claim testified that during settlement negotiations the homeowner association likewise offered to agree to any attorneys' fees amount the homeowner sought so long as they agreed to never execute the judgment against the homeowner's association. Based upon the evidence, the District Court found the settlement agreement was neither reasonable in amount nor negotiated in good faith, and thus, could not be enforced against the insurer. Specifically, the District Court found the homeowner's association "acted in bad faith when it offered to 'lie down' and accept a judgment of $295,000 against it as long as recovery of that sum came from [its insurer]."

On appeal, the Eleventh Circuit found the District Court applied the correct legal framework to determine whether the settlement agreement was enforceable against the insurer. An insurer who wrongly refused to defend its insured is bound under Florida law by the insured's settlement agreement unless the agreement is obtained through fraud or collusion even though the insurer did not appear in the underlying action.

The Florida standard evaluates whether a *Coblentz* Agreement is tainted by fraud and collusion by weighing countervailing interests. Those interests are (1) protecting insurers against settlement agreements that overstate their liability, and (2) preserving incentives for insureds and injured parties to resolve claims when they can through settlement. In determining if *Coblentz* Agreements are enforceable, courts must look to evidence of an unreasonable settlement amount and bad faith on the part of the negotiating parties for collusion or fraud. The party seeking to enforce a *Coblentz* Agreement has the initial burden of producing "evidence sufficient to make a *prima facie* showing of reasonableness and lack of bad faith, even though the ultimate burden of proof will rest upon the [insurer]."

The homeowner argued the *Coblentz* Agreement legal framework was inapplicable because the insurer knew about and acquiesced in the settlement. The Eleventh Circuit rejected this assertion as unsupported. Under Florida law, an insurer may challenge a *Coblentz* agreement as fraudulent and collusion notwithstanding its prior notice of an opportunity to challenge the agreement.

Finally, the Eleventh Circuit found there was evidence to support the inference the settlement was negotiated in bad faith. There was evidence the parties had entered into a side agreement which they did not disclose to the state court. In the side agreement the homeowner's association agreed to pay the homeowner and her attorney up to $50,000.00, depending on their success in enforcing the settlement agreement against the insurer. The Eleventh Circuit agreed this evidence supported the inference the settlement agreement was negotiated in bad faith -- it showed the homeowner's association was willing to "lie down" and accept a judgment of any amount against it so long as it would not be on the hook to satisfy the judgment. Furthermore, a reasonable party would not be indifferent to the amount of the judgment entered against it when its own money was at stake. Therefore, the district court's finding the settlement agreement was negotiated in bad faith was not clearly erroneous.

In a final note, the Eleventh Circuit indicated it was not necessary for the parties to the settlement agreement to agree to share the settlement proceeds. Citing dictionary definitions of collusion, it found the definitions did not require an agreement to split the proceeds in order to be collusive.