Rosen v. Florida Ins. Guar. Ass'n
Fla.App. 1 Dist.,1999.

District Court of Appeal of Florida,First District.
Bonnie ROSEN, Appellant,
v.
FLORIDA INSURANCE GUARANTY ASSOCIATION, Appellee.
No. 98-334.

May 14, 1999.
Rehearing Denied June 16, 1999.

Law firm's former client brought action against Insurance Guaranty Association (IGA) for declaratory judgment that defense costs paid by professional liability insurer were to be deducted from $1 million limit of the law firm's policy. The Circuit Court, Duval County, Frederic A. Buttner, J., entered summary judgment in favor of IGA. Client appealed. The District Court of Appeal held that defense costs paid by insurer were to be deducted from $300,000 statutory limit of IGA's liability.

Affirmed.

West Headnotes

[1] Insurance 217 1499

217 Insurance
217VII Guaranty Funds or Associations
217VII(D) Claims and Proceedings
217k1499 k. Limitations on Amount of Coverage. Most Cited Cases

Defense costs paid by professional liability insurer were to be deducted from $300,000 statutory limit of Insurance Guaranty Association's (IGA) liability, not from one million dollar limit of the law firm's policy, since the client had agreed to release the firm from liability at the conclusion of the litigation against the IGA and thereby relieved the IGA of any obligation as an insurer. West's F.S.A. § 631.57(1)(a)2.

[2] Insurance 217 3367

217 Insurance
217XXVII Claims and Settlement Practices
217XXVII(C) Settlement Duties; Bad Faith
217k3366 Settlement by Insured; Insured's Release of Tort-Feasor
217k3367 k. In General. Most Cited Cases

Release of insured tort-feasor relieves liability insurer of obligation to pay.

***491** Lauri Waldman Ross, of Ross & Tilghman, Miami; and Tilghman & Vieth, P.A., Miami, for Appellant.

Helen Ann Hauser, of Dittmar & Hauser, P.A., Coconut Grove, for Appellee.

PER CURIAM.

Bonnie Rosen, the plaintiff below in a declaratory judgment action, appeals from the trial court's order granting appellee's motion for summary judgment. We affirm.

Mrs. Rosen had sued a Dade County law firm (known by the pseudonym of “the AB Law Firm”), its principal and one employee for breach of contract, fraud, breach of fiduciary duty, negligent supervision, conversion and intentional infliction of emotional distress. The dispute arose out of representation of appellant on several matters; she alleged that the firm grossly overcharged her by double-billing and churning, that it would not surrender files to new counsel and that one member of the firm threatened to reveal confidences to a party opponent.

The firm had a $1,000,000 liability insurance policy with Manatee Insurance Co., (the policy was originally issued by Rumger Insurance Co.) and the insurer initially provided the firm with legal representation. The policy had a “declining balance” ***492** feature, meaning that defense costs reduced the amount of money available to pay damages.

Manatee was declared insolvent during the litigation, and the Florida Insurance Guaranty Association (FIGA), assumed the defense as receiver. FIGA took the position that its $300,000 per claim liability (established in section 631.57(1)(a)2., Florida Statutes) applied to the Rumger-Manatee policy's declining balance provision, meaning that only $300,000

was available for both indemnification and costs.

As the matter neared trial, all but $39,000 of the $300,000 coverage limit had been spent in costs by FIGA. Shortly after being notified of this fact, the parties settled the case on the following terms: AB Law Firm would consent to a judgment of $261,000 against it, but the judgment would never be recorded, would create no liens and could not be executed. Instead, appellant would accept $39,000 from FIGA, would attempt to collect the balance of the $300,000 from FIGA, and upon conclusion of that litigation would release the law firm or file a notice of satisfaction of judgment. It appears that other than to agree to pay the remaining $39,000, FIGA in no way participated in the negotiations.

[1] Mrs. Rosen then filed this suit in Duval County, seeking a determination that appellee was not entitled to deduct the $261,000 paid out in defense costs from the per-claim limit, and an order requiring appellee to pay her $261,000 in satisfaction of the judgment against the law firm. The core of appellant's claim was that the declining balance should be computed from the $1 million limits of the Rumger-Manatee policy, and not from the $300,000 statutory limit for claims.

[2] Both sides moved for summary judgment. The trial court granted FIGA's motion, reasoning that because appellant had agreed to release the AB Law Firm at the conclusion of the litigation with FIGA, it had extinguished any liability that FIGA had as an insurer. Thus, the trial court ruled, by agreeing to release the law firm, appellant thereby released the insurer.

We believe this reasoning to be correct in light of two cases that present similar factual scenarios.

In *Kelly v. Williams*, 411 So.2d 902 (Fla. 5th DCA 1982), the insurer offered policy limits to the plaintiff, who thereupon released the tortfeasor with the intention of pursuing a bad-faith claim against the insurer. The release of the tortfeasor, however, relieved the insurer of any legal obligation to pay damages, as the trial court ruled and the appellate court affirmed.

Kelly was cited in support of the holding in *Fidelity & Cas. Co. v. Cope*, 462 So.2d 459 (Fla.1985), which held that a release to the insured eliminates the obligation of the insurer to pay damages, absent an assignment of claim.

The order below is affirmed.

ERVIN, MINER and KAHN, JJ., CONCUR.
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734 So.2d 491, 24 Fla. L. Weekly D1192

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